THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

VOL. III.

PART II.

(15th January, 1923 to 31st January, 1923.)

THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

Chamber Prorogated 18.1

SIMLA
GOVERNMENT CENTRAL PRESS
1923.

CONTENTS.

LEGISLATIVE ASSEMBLY.

Wednesday, 31st January, 1923.

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

MESSAGE FROM THE GOVERNOR GENERAL.

Mr. President: I have received the following Message from His Excellency the Governor General:

'For the purpose of sub-section (1) of section 67A of the Government of India Act, and in pursuance of rules 43, 46 and 47 of the Indian Legislative Rules and of Standing Order 70 of the Council of State Standing Orders, I, Rufus Daniel, Earl of Reading, hereby appoint the following days for the presentation to the Council of State and to the Legislative Assembly of the statement of the estimated annual expenditure and revenue of the Governor General in Council (in the said Rules and Standing Order referred to as the Budget) and for the subsequent stages of the said Budget in the Council of State and in the Legislative Assembly, namely:

Thursday, March the 1st, Presentation of the Budget in both Chambers.

Monday and Tuesday, March 5th and 6th, General discussion in the Legislative Assembly.

Wednesday, March 7th, General discussion in the Council of State.

Monday to Saturday, March the 12th to 17th, Voting of demands for grants in the Legislative Assembly.

(Signed) READING,
Governor General.'

GIFT OF BOOKS BY SIR WILLIAM GEARY, BART.

Mr. President: I have further to acquaint the Assembly that through the generosity of an English gentleman interested in the welfare of the Indian Legislature, namely, Sir William Geary, Bart., the Library of the Indian Legislature now possesses some interesting Parliamentary records of English history. These records are mainly in the form of Reports of the Proceedings of the House of Commons, and in some cases also of the House of Lords, during the 17th and 18th Centuries. They have an historical interest of their own, and they form the foundation of the procedure which we ourselves are engaged in practising from day to day within these walls. I am sure I shall be voicing the unanimous feeling of the Assembly if I transmit to Sir William Geary, the donor of these volumes, our very cordial thanks for this substantial pledge of his interest in the welfare of the Indian Legislature. (Cheers.)

THE INDIAN NAVAL ARMAMENT BILL.

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

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be taken into consideration."

When I introduced the Bill in this Assembly last September I explained briefly its purpose and significance. The legislation contemplated arises out of the Treaty for the limitation of Naval Armament signed at Washington on behalf of His Majesty, the King, and certain other Powers on the 6th February 1922, the object of the Treaty being to contribute to the maintenance of the general peace and to reduce the burden of competition in armament. The Bill requires no further justification or explanation from me.

Mr. President: The question is:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be taken into consideration."

The motion was adopted.

Mr. President: Clause 1. The question is that this clause stand part of the Bill.

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14. The question is that these clauses stand part of the Bill.

The motion was adopted.

Mr. President: The question is that this be the Schedule to the Bill.

The motion was adopted.

Mr. President: The question is that this be the Title and the Preamble of the Bill.

The motion was adopted.

Mr. E. Burdon: Sir, I move that the Bill be passed.

Mr. President: The question is:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be passed."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now resume 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.

On the last occasion when the proceedings were interrupted the Assembly was engaged in the consideration of the amendment by Mr. Agnihotri to the effect that in clause 33, in the proviso to sub-section (1), insert the words 'allow inspection to the accused and'.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I think it is advisable in the first instance to endeavour to remove the misapprehensions which have been disclosed in the debate which has already proceeded

on this amendment. Clause 38 proposes to substitute a new sub-section for sub-section (1) of section 162. That, Sir, is one of the most important sections in the Code of Criminal Procedure, not only from the point of view of the investigation of offences but also from the point of view of the proper prosecution of offences, particularly, if I may say so, in our Magistrates' Courts. Now, Sir, in the course of the debate, my Honourable friend, Dr. Gour, said that " under the Code copies of these statements were furnished to the accused. Later on in the consolidating Act this proviso was modified and found its place as it does in the current Code of Criminal Procedure." He was referring, Sir, to the Code of 1882. Section 162 in that Code ran as follows:

" No statement, other than a dying declaration, made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it or be used as evidence against the accused."

I am aware, Sir, of the different rulings under that section, but it is clear that Dr. Gour was not quite correct in suggesting that it expressly gave the accused the right to obtain copies of these statements. That section was replaced by section 162 of the present Code, and we are dealing now with the proviso inserted by the Lowndes Committee in lieu of the proviso to sub-section (1) of that section. That proviso, Sir, introduces a difference in the ordinary rule of evidence regarding the use of previous statements made by witnesses. Generally speaking, they may be used not only for corroborating the evidence of witnesses in Court but for discrediting the evidence. The proviso in the Code of 1898 and the proviso in the clause as drafted by Sir George Lowndes' Committee restricts the use of these statements to the purpose of impeaching the credit of a witness produced for the prosecution. I want also, Sir, to impress upon the House that we are dealing here with statements recorded by a police officer. We are not dealing with the police diary. Police diaries are dealt with under section 172, and in the police diary the police officer day by day enters his proceedings, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and the statement of the circumstances ascertained through his investigation. That, Sir, is a different thing entirely to the statements which we are now dealing with. In the police diary there may be the purport of the statement of a witness to the police, but the record of the statement will not usually, or ought not to, be contained in the diary. Now, under the proviso it will be seen that the court is required on the request of the accused person to refer to such writing and may then, if the court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof. The Honourable Mover of the amendment wishes to make it compulsory on the part of the court to allow to the accused person inspection of the statements in all cases. What were the arguments used in support of this amendment? In the first place my Honourable friend Mr. Agnihotri said, referring to the time when the accused was brought up for trial: " It therefore generally happens that though the accused knows nothing about the statements, still he requests the court to go through them to find out if there are any contradictions, and the Magistrate has therefore to waste his time unnecessarily." The whole ground, therefore, of his amendment, as stated by him, was that the present procedure involves a waste of time. I submit, Sir, that in the circumstances of India, in view of the prosecuting agency which is usually available to our Magistrates, it is most necessary that the Magistrate should refer to these statements. It is his duty to do so; that is the only way in which he can

[Mr. H. Tonkinson.]

find out what the witness is able to testify to, and it is the only way in which he can be sure that he is conducting the trial properly. I think, therefore, Sir, that we may at once neglect this argument.

My Honourable friend Sir Henry Stanyon stated that he did not remember one single instance in seven years' work as a Divisional Sessions Judge in which he was ever asked to delay the trial so that copies of these statements might be prepared and handed over to the accused. As regards that suggestion, Sir, I will merely remark that in my own experience I have used the provisions of the proviso and I am sure that that must be the experience of other persons in this Assembly who have experience as Magistrates or as Sessions Judges.

I turn now, Sir, to the objection raised by my Honourable and learned friend Dr. Gour. He says, "Ever since this proviso was inserted I have had numerous cases in which I have asked the Judge or the Magistrate, as the case may be, to refer to the statements of witnesses made before the police. He has looked at it and he says to me, 'I have referred to it' and thus complied with the provisions of this proviso; but I was none the wiser by the Judge's reference to the police diary and the result was that I was not able to cross-examine witnesses with reference to the previous contradictory statements which in the appellate court were a revelation to me." Well, Sir, that is an entirely different question and I propose to return to that later. We must remember, as I have said already, that we have here a modification of the ordinary rule of evidence as to the use of previous statements, and I submit, Sir, that it is impossible for us to provide in the Code that it shall be compulsory on the part of the Magistrate to allow to the accused person inspection of these documents in every case. Let us refer, Sir, to the remarks in the report of the Select Committee on the present section 162—I mean the Select Committee which sat on the Code of Criminal Procedure Bill which became the present Code of 1898. They said:

> "In the first place, it is essential in the interests of public justice that the sources of police information should be kept secret. If the names of informers or detectives and the nature of their information be disclosed the detection of crime would be seriously crippled."

Well, Sir, does this Assembly wish to cripple the detection of crime? I am sure that the answer is 'No.'. But if this amendment in the form in which it has been moved is carried, I submit that we shall be going a long way towards crippling the detection of crime. These statements, Sir, are the statements of a witness; a portion of them may be of use to the accused, it may be in the interests of justice that he should see them in order to be able to discredit the statements made by the witness in the court afterwards. But, Sir, they may contain all sorts of other information. Why do we have that provision in section 125 of the Indian Evidence Act which says that:

> "No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence."

The sources of police information may well, Sir, be contained within the four corners of these statements, and we cannot therefore amend the Code so as to require that in all cases the accused person shall be able to inspect these statements. I agree, Sir, that in cases such as those referred to by

Dr. Gour the intention of the present provision in the Code is that, if it is in the interests of justice that the accused should be supplied with a copy, and unless there is some paramount reason against this course being taken, the court ought to supply a copy of the statement. I hope that most Courts would do that at the present time without requiring any amendment of the provisions in the proviso. But in order to meet the wishes of the Mover of this amendment and of those who supported him, I would suggest that in lieu of the present amendment the following amendment should be made, *viz.*,

"That in clause 33 in the proviso of the proposed new sub-section (1) of section 162 for the words beginning with 'may then' and ending with 'in order that any part of such statement,' the following be substituted, namely:

'shall then direct that the accused be furnished with a copy of such part, if any, of the statement as the Court thinks it expedient to furnish in the interests of justice in order that such part',"

and so on. (*Dr. H. S. Gour*: "That is no good at all.") I will read out the proviso as it will stand:

"Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall, on the request of the accused, refer to such writing and shall then direct that the accused be furnished with a copy of such part, if any, of the statement as the Court thinks it expedient to furnish in the interests of justice in order that such part may be used to contradict such witness in the manner provided . . . ."

(*Dr. Nand Lal*: "I do not think it will serve the purpose.") That, Sir, meets entirely any substance that there is in the arguments which have been adduced in favour of the amendment now before this House. We must, Sir, retain for the Court the power of deciding. It is impossible, Sir, for us to provide in the Code that these statements shall in any case be given over to the accused. That would be the result of the amendment proposed. As soon as any witness appears the accused will ask the Court to refer to the statement. It will be the normal course; it will be done every time, and then the Court is bound to hand it over. That, Sir, I submit, would entirely cripple the detection of crime in this country, (*Voices*: 'How?') because as I have said already these statements not only contain statements which may be of value to the accused person but they will also contain all sorts of other information. (*Dr. H. S. Gour*: "That is part of the case diary"); (*Dr. Nand Lal*: "Confidential reports are quite separate.") Before I sit down, Sir, I would like to refer to another point. It will be remembered that in the course of the discussion of Mr. Pantulu's amendment on the first part of section 162, an arrangement was come to between the Honourable Members opposite and the Members on this Bench. The amendment moved by my Honourable friend Mr. Pantulu was for the substitution of the words "as evidence" for the words "for any purpose". We, on this Bench, were prepared to accept that amendment, but at the instance of Honourable Members opposite, we decided not to vote for it, because they agreed that when discussing section 172 later we should provide in it for the use of these statements in the same way as the diary may be used to assist the Court in its inquiry. The Court, Sir, must be able to use these statements to this extent; otherwise, what, Sir, is the use of the police officer recording these statements? It will be of no value at all if it cannot be used *for any purpose* in the inquiry or trial of the offence which is then being investigated. This, Sir, is not a new amendment at all. It follows definitely from the discussion of Mr. Pantulu's amendment, and after the amendment which I have just

[Mr. H. Tonkinson.]

moved has been put to the House, I should propose, with your permission, Sir, the following amendment also:

"That in clause 33 to the proposed new sub-section (1) of section 162 the following proviso be added, namely:

"Provided further that the Court may in the course of the inquiry or trial send for the record of any such statement and may use such statement not as evidence in the case but to aid it in the inquiry or trial."

We propose, Sir, that this should be included in section 162 rather than in section 172 which was suggested by my Honourable friend, Mr. Seshagiri Ayyar, because section 172 refers to the diary, and this section, which refers to the recorded statements taken down by a police officer is the proper section in which to provide for this provision.

Mr. President: I cannot put the amendment moved by the Honourable Member on my right, because, though it offers an alternative to the amendment standing in the name of Mr. Agnihotri, it cannot be included in the same place. I propose, however, to allow the discussion to proceed on the basis of the alternative proposed, so that the matter open now is not only the original amendment of Mr. Agnihotri but the alternative proposal of the Government, on the understanding that if hereafter we come to the actual moving of the amendment by Mr. Tonkinson that will be treated as a formal stage.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, this is a very important amendment before the House. If the administration of criminal justice in this country is to be improved at all, this amendment ought to be carried. It is not only my opinion, Sir; it is only yesterday I received a letter from a gentleman who is practising in Coimbatore for the last 35 years and he is not a politician at all, as he says. He says:

"The reason for my troubling you is my very grave anxiety and concern in the matters which I am now placing before you. I have had nearly 35 years' experience in the mofussal Courts mostly on the criminal side, and I feel very strongly that as the law is now being administered in the mofussal, unless these amendments are embodied in the Bill, accused persons are gravely handicapped and there will be a strong feeling that there is no longer British justice. As you know, I have never been an Indian politician, never joined the Congress and I am supposed to be an anti-Congressman. The amendments that I consider very essential are that the grant of copies of statements under section 162, etc., to the accused should be made mandatory and imperative and not discretionary as it now is and that they should be granted as soon as the inquiry or trial has commenced and before the accused are called upon to cross-examine the prosecution witnesses."

Sir, let us remember where we are and what the matter is. We are now in a Court of Justice. The police have passed the stage of investigation of the crime and placed the accused before the Court; and, as a matter of fact, under this section, the witness is actually in the box, mark the words—provided that when any witness is called for the prosecution, etc.,—then only this question arises. Therefore it is not the detection stage which my Honourable friend has in view and which he is so anxious to safeguard. The detection stage is already over; we have now come to the prosecution stage. The police are in possession of evidence which they place before the Court, and this witness is actually put in the box against the accused person. And what is wanted? His previous statement recorded by the police. For what purpose? In order to see if he has made contradictory statements. Sir, it is admitted in the section as it stands that

it will be useful for the accused that these previous statements shall be available to the Court, but what the section now lays down is that the Court is to determine whether it should allow a copy to be given or not. Sir, those of us who have to practise in the profession know how little the Courts know as to what the accused wants. The accused is the man to judge. He knows his line of defence; he knows what the weakness of the prosecution witness is. He knows best how to deal with the previous statement made by a witness in the defence. How is the Court in a position to judge? The Court is not in possession of the full facts of the case. The prosecution has just begun; the prosecution witnesses are being examined. The Court does not know what the case of the accused is and what his evidence will be. Therefore the Court is called upon to do a thing which it is humanly difficult for any human being to perform. Therefore I say this is a futile provision. And it is not only a futile provision. In this country as we know all executive and judicial functions are combined in the same individual and Magistrates depend for their promotion and livelihood on the goodwill of the District Superintendent of Police, and also on the District Magistrates. Sir, what is the meaning of leaving this discretionary power in the hands of Magistrates like that? I can understand Sessions Judges being entrusted with discretionary powers like that; they are only concerned with justice. We, Sir, in this Legislature are anxious to promote the administration of justice. Courts do not exist merely to secure convictions; Courts exist to promote justice. Let the accused have full opportunity. What is it after all? Here is a public officer—a policeman is a public officer—who records a statement from a witness. It is that statement which is asked for. How is it going to prevent a detection of crime, I fail to see. That is the substantial argument used by Mr. Tonkinson, because the accused looks at the previous statement of a witness. Is it my Honourable friend's contention that the witness in the box has made statements not relating to the case about some other crime? Is it that the witness has not made statements with reference to the crime under investigation, but has been called upon to make statements irrelevant to the crime? Then, Sir, if that is the practice, the sooner that practice is abandoned, the better, and this will be the best method of having that practice abandoned. Let all statements be confined to the particular case concerned. Why should the police go about hunting for information about other cases from witnesses connected with the crime? Therefore I fail to see how detection will suffer. My Honourable friend referred to section 135 of the Evidence Act. I fail to see what that has got to do with it. We are now concerned with the previous statement of the witness, not with the source of knowledge of the policeman or the officer. It is not a question of the accused trying to ferret out information which the policeman may know. This is a record made of this man's statement who now comes forward as a witness. What the prosecution will be afraid of is that this man has made a contradictory statement beforehand and they will carefully suppress it. They do not want the accused to know what this man has said. That is the real secret of the opposition of the police in many cases to showing these statements to the accused person. Therefore, Sir, justice suffers by this provision remaining as it is. It is a futile provision to entrust this discretion to the hands of Magistrates who are not judicial officers pure and simple. Therefore, Sir, I think this right ought to be given to the accused person, and I strongly support the amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, as one who I think may claim to take just as much interest in the proper

[Sir Henry Moncrieff Smith.]

administration of justice as my Honourable friend, Mr. Rangachariar, I feel very anxious indeed that the House should not treat this matter lightly, and that they should understand most carefully what it is they are setting about to do. I still see some indication that there is some confusion in the minds of Honourable Members with regard to these two matters, sections 162 and 172. Members are freely talking about diaries. 162 does not deal with the diaries. Do let us get that point clear in our minds. Members have talked about diaries being shown to the defence.

Rao Bahadur T. Rangachariar: We did not say anything about diaries.

Sir Henry Moncrieff Smith: Section 172 lays down what the diary contains:

"Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation."

Now the statement of the circumstances ascertained through his investigation will mean the purport of the evidence that he has received from the witnesses; it won't be the statement, certainly not the statements recorded under section 161 of the Code. Now we are not concerned in this case with showing the defence the diaries at all. These are statements recorded in full and verbatim, quite apart from the record of his proceedings which the police officer makes in the diary. Now what Mr. Agnihotri's amendment of this clause contemplates is this. A case comes before the Magistrate. A prosecution witness is called. That is how the proviso begins. A prosecution witness is called and the Court hands the defence the statement. This is to be obligatory and is to take place on every occasion on which a prosecution witness is called. That will be sometimes on the average 25 times a day in every Magistrate's Court; the Court will hand across this statement. (*Mr. K. B. L. Agnihotri*: "No.") My Honourable friend says no. He has not the slightest idea of the amount of criminal work our Magistrates have got to get through. If they take up twelve cases a day, and two witnesses per case is not an extravagant number to allow, I say and I repeat that some 25 times a day the Magistrate will have to hand over to the accused a copy of the statement which has been made by the prosecution witness who is being called at that moment and who is stepping into the witness box. Now, Sir, what will be the effect of that? The police will know that this is going to happen. They record what the witness says to them. What the witness says may be relevant or it may not. My Honourable friend, Mr. Rangachariar, said everything that a witness said, everything that is recorded is relevant, and therefore the accused should have it. Now, Sir, is the ordinary investigating officer so familiar with the law of evidence that he knows what to record and what not to record, which statements made by the witness are to be relevant and which are not? He does not know, Sir. He takes down everything that is said to him by the witness hoping that there may be something which, though for the moment he cannot see the relevancy of it, will aid him in his investigation. Now the police officer, as I say, being in the habit of recording this statement in full, will say to himself "if I put the witness into the witness box, the whole of his statement will have to be handed by the Court to the defence." What is going to be

the effect of that? Honourable Members will find that there is no provision in the Code which makes it compulsory for a police officer to record a statement in writing. Section 161 gives the investigating officer power to examine witnesses orally. If the statement is of any importance he records it in writing; if it is not, there merely goes down in the diary a record that such and such a witness was examined and corroborated another witness, or just the purport goes into the diary. If these statements are all going to be made available to the defence, every word of them, the police officer will say " If I am to disclose to a particular accused person all the sources of my information, I shall record nothing; I shall merely put into the diary a bare purport of what I have discovered from examining a witness under section 161." The defence will get nothing, the Court will merely get the assistance under section 172 of that brief record; the Superintendent of Police will be prevented from checking thoroughly the work of his subordinate investigating officers; the diaries will not be of much help to him, to the Court or to the accused. That is the first effect. 25 statements handed over by the Magistrate daily to the defence to use or not to use as they think fit. Surely, Sir, this House will realise that the present system, where discretion is left with the Magistrate, is much more convenient and tends much more to the speedy administration of justice. Cases will be intolerably delayed when the witness is put into the witness-box and the defence pleader says: " Give me ten minutes: I want to read this and see what I can get out of it." The duration of every case will be prolonged and, if you go by the figures of cases that the Magistrates try, the delay in the disposal of criminal cases will be intolerable.

Mr. Rangachariar said that the courts do not exist merely for the purpose of securing convictions. I would seriously ask this Assembly to put it to itself whether the Legislature exists merely for the purpose of securing acquittals.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, may I know from the Honourable Sir Henry Moncrieff Smith, what is the object of the criminal administration of justice? The object is to secure justice to a man who is supposed to have committed a crime. The police are asked to investigate. Why? Simply to save the time of Magistrates in going over matters which may, after all, result in nothing. The object is that the police officer may go to the place where the crime is supposed to have been committed at once, that is, at the earliest opportunity, collect together the men who are living in the locality and learn from them as to what is the real state of things. If he does his duty, he records the statements made to him. Having done so, what is there to hold those statements back from the accused. It is perfectly plain that the police must place their cards on the table. If they have done their duty, they have nothing to fear; but what I know happens, especially in the mufassil, is this. It is all very well in the abstract to say the Magistrate shall in every case exercise his discretion. But I know, as a matter of fact, that they do not, especially in the mufassil, where you have a number of Honorary Magistrates, who, to use an Urdu expression are *anari* Magistrates, that is to say, they are perfectly ignorant. I happen to be an Honorary Magistrate myself, and, therefore, I have the courage of my convictions to say before this Assembly what I generally notice. These Magistrates, Sir, are under the thumb of the police. (*Mr. R. A. Spence*: " Are you not an Honorary Magistrate "?) Are there no exceptions, Sir? In the mufassil what happens is this. When the police chalaan a case

[Mr. Pyari Lal.]

they consider it to be a point of *izzat*, they consider it to be a point of honour, with them, that the man whom they have sent up should be convicted. For this purpose they bring pressure to bear on the Magistrate and if, unfortunately, he is an Honorary Magistrate, a kind of pressure which he is not able to withstand. The result is that this provision in the law that a Magistrate is allowed a discretion remains a dead letter. Sometimes, when the Magistrate is a mild sort of a gentleman, he smiles at the request of the counsel for the defence and says: "Yes, I will go into it," and in the end you find he has not done so and that you have trusted to his mere word. As the saying goes "It is much better that 100 guilty men should escape rather than that one innocent man should suffer." What I submit is that the Magistrates and the Courts exist for the purpose of doing justice, and no matter what amount of time they have to spend over it they must do their duty. I do not quite realise what the Honourable Sir Henry Moncrieff Smith means by saying that it would mean any amount of inconvenience to the Magistrates who have got very heavy work. There may be 80 witnesses that they have to go through and if they are to supply copies, how will they get through their work? That is all very well, but, if they are there, they must do their work properly; whether it takes them two days or a week, they must get through it, because it may be a matter of life and death for the person who is standing in the dock as an accused. I submit, Sir, that these statements made to the police are not only necessary for the purpose of contradicting witnesses, who appear before the Court, but they are very important in other respects, and I say this from my experience of the last 40 years both on the Bench and at the Bar. You find a particular witness comes before the Court and deposes to a certain state of things. The private information of the counsel for the defence is that this witness is not speaking the truth and that this witness said something very different before the police, and that this witness was procured 8 or 10 days after the actual occurrence and at the instance of the accused's enemies. Now, how are you to clear up those points? The man may say exactly what he had said, but he has said so to the police 8 or 10 days after the crime, whereas, if he were a truthful witness, he ought to have been present when the police officer went to investigate the crime, on the same day. We also want to know whether this witness has come forward of his own accord or whether some pressure of the kind suggested by the accused has been brought to bear on him.

Now will not these things matter very seriously in deciding as to whether the witness is credible or otherwise, and therefore from all points of view I do not see any purpose in the Government withholding those police papers from the accused at the time when he is put on his trial.

Mr. P. P. Ginwala (Burma: Non-European): Sir, in my opinion no case has been made out by the Government for the rejection of this amendment. The last speaker on behalf of Government made the remark that it would be extremely inconvenient if on every occasion a Magistrate had to give a copy of a witness's statement as he was being examined in Court. I do not understand what he means by that argument at all. Why does he suppose that if the Magistrate is deprived of this discretion and if the furnishing of copies is made obligatory, copies will have to be as these witnesses are produced in Court. The accused can apply for copies of statements made before the police in the same way as he applies for copies of evidence, in the ordinary way.

Mr. H. Tonkinson: What is the position if any witness is not called by the prosecution?

Mr. P. P. Ginwala: That is so, no doubt. But before the case actually commences a list of witnesses is drawn up and is filed on the record as the Honourable Member (Sir Henry Moncrieff Smith) must be aware. But even if there is a certain amount of inconvenience involved in this, it will be counterbalanced by the convenience of the accused and the safety of the accused. I can see no objection whatsoever to the copies being furnished as soon as the police have made up their minds as to what witnesses they are going to call. True the prosecutions are conducted in the lower courts in the most perfunctory fashion. The police do not know what witnesses they are going to call. They call them as they require them, so to say. But if the furnishing of copies was made obligatory, it would be incumbent on the police to make up their minds before the case begins in Court as to which witnesses they are going to examine, and as soon as they have made up their minds it would be quite convenient to furnish copies to the accused if he applies for them.

Now I will tell the House my experience of this business. I come from a province from which my friend Mr. Tonkinson also comes, and as he knows, the administration of justice in that province is not as developed as in India. And what happens there? We have Magistrates there who would refuse to refer to the police papers if the accused asked them to do so. I say that from personal knowledge. They will say "Oh, what is the use of that? The witness is being examined in Court, we shall do it later on." If the Counsel for the Prosecution happens to be fair-minded especially when the accused is undefended, he draws the attention of the Court to some statement by a particular witness before the police. The Magistrate, instead of feeling grateful to the Counsel for the Prosecution, goes for him and says it is no part of his business to draw the attention of the Court to what took place before the police. I am not exaggerating at all. I have heard it with my own ears and I have been rebuked by the Court on several occasions and the Court has been rebuked back by me—it is needless for me to say. Things like that do happen.

Sir Henry Moncrieff Smith: In Burma.

(*Some Honourable Members*: "In other Provinces also. All over India.")

Mr. P. P. Ginwala: In Burma; I have experience of another Presidency also, but I hope that Presidency has improved since I left it.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Burma is a part of India.

Mr. P. P. Ginwala: The point remains, Sir, that,—I would put it in this way—that prosecutions are conducted in such a perfunctory fashion in the courts of the Magistrates that unless a Magistrate is extremely conscientious, and, what is more, not afraid of the police at all, all the facts will not be produced before the Court.

I will give you another instance. On several occasions even in the Sessions Court—the High Court this time and not the Court of a Magistrate—I have discovered that when a case was committed to the Court the Magistrate had been so careless as not to have made a reference to the statement made before the police by a witness though it was entirely

[Mr. P. P. Ginwala.]

different from that made before the Court, and no Court could have convicted if the Magistrate had been careful enough to go into the police papers and get the truth out of the witness.

And do you think you are going to prevent the accused from obtaining copies of these statements? If an accused person is a well-to-do individual I have always noticed that he is extremely well prepared as to the facts which have been taken down by the police. How does that happen? I have seen, in a large number of cases, actual copies of statements made before the police in the possession of the Counsel for the accused.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): The police is fair-minded, I suppose.

Mr. P. P. Ginwala: I have known a Judge of the High Court ask Counsel for the accused, how he had come to know what a certain witness had said to the police; and this Counsel for the accused had to tell the Court to mind its business. In any case, the facts were in his possession. On the other hand, in the case of an undefended accused, even if the Counsel for the Crown has read the statements recorded by the Magistrate; and he is, unfortunately more interested sometimes in obtaining convictions than in securing justice. There are such men, there is no doubt about that. He himself has not studied the police papers. The Judge sits there. He has never examined the police records. The poor accused is undefended. A most important statement might have been made to the police which escapes the attention of the Court, the Counsel and the Jury and the accused is convicted.

Now, Sir, is it worth while running so much risk in order that some time may be saved to the police and to the Courts, for that is what the argument amounts to.

Another argument put forward by the last speaker on behalf of Government was that the police do not know what is relevant and what is irrelevant when they take down a statement. Well, I say if the police is so incompetent, change it. They ought to know their business and because they do not know their business that should not be an argument. When they are investigating a case, they must know what facts are relevant and what are not; and supposing a fact that is irrelevant is recorded by the police, what injury will it do to the prosecution that an irrelevant fact gets into the hands of the accused. If the accused were entitled to obtain copies of statements, there would be a certain guarantee that the police would do their work in a more efficient manner, would be more careful, would be more honest; and, it would certainly lead to the purification of police administration. You may take it from me, Sir, when I say this, that it is true—that when an accused is a well-to-do individual he manages to obtain copies of statements or is placed in possession of statements made before the police. And that is a thing that ought to be put a stop to.

Then it was stated that it is not obligatory on the part of the police to record statements. What police officer is going to run the risk of keeping in his memory a statement which was orally made to him? He will never be able to get a conviction. He knows his business too well to run that risk; for a witness may be examined by him to-day and may not be produced in Court for a month. Is the police officer going to take the risk of his forgetting or remembering what that witness stated? He is bound

to take it down for his own protection and for the protection of justice. A statement which ought to be taken down under section 162 can not be entered in the diary alone. He must take down the statement in the ordinary way. In addition to that, he has to summarize it down in the diary. The diary is more for the guidance of the police themselves, whereas these statements are more for the guidance of the Court, and he can not impose on the Court by transferring to the diary what he ought to have recorded in another place: that would be thoroughly dishonest—to record statements in the diary in order to prevent the accused from knowing what a particular witness stated. There is also another reason. He has got to have a certain guarantee that a statement made to the police will be adhered to by the witness when examined in Court. And where is the guarantee if he does not take the statement down? For his own protection he has got to take the statement down. If the prosecution is prepared to take the risk of the statement not being taken down the accused is prepared to do so likewise. The accused does not care whether the prosecution witnesses' statements are taken down by the police or not. I repeat, Sir, that for his own protection the police officer should make a point of taking down the statements unless he wishes to be thoroughly dishonest and takes it down in some other record to which the accused cannot have access in the ordinary way. I submit, further, that far from taking more time it would facilitate the ends of justice, it would expedite the prosecution cases if the accused before he is tried is furnished with copies of the statements because it is common experience that many questions have to be put by the counsel for accused to witnesses as to what they might have stated to the police, and that is a way in which more time is likely to be wasted than would be the case if counsel were to be prepared with copies of the statements before he comes into court; and if he finds there is nothing in those statements, if he knows his business, he will not waste the time of the court. On the other hand you cannot shut out counsel from asking questions, very often irrelevant questions, which take up more time than the relevant questions and which he would not have put if he had got copies of the statements. On these grounds I support the amendment and I hope there will be no question of a difference of opinion on this point on the part of those at least who are interested in the administration of justice and who have practical experience of the working of magisterial courts as well as courts of sessions.

12 Noon.

The Honourable Sir Malcolm Hailey (Home Member): Sir Henry Moncrieff Smith has given so luminous a description of our position, that I should not have attempted to add to it, if we had not since he spoke heard lately to my own astonishment and, I think, to the astonishment of the House also, some very extraordinary statements. We were told, for instance, that Magistrates are entirely under the thumb of the police. I shall illustrate to the House, by one of the best methods of testing the truth of such statements, the extent to which our Magistrates are under the thumb of the police. I assume that where you have a highly developed police system the police must have all the greater authority over Magistrates, and you would in such circumstances secure, if the charge is true, almost universal convictions. Now take the figures for a single year in one province, Bombay. (*Mr. K. Ahmed*: "Take Calcutta.") My case would be even stronger in Calcutta. Out of 207,735 persons who were under trial, these extremely subservient Magistrates only convicted 125,000 or under 62 per cent. Take the most serious classes of offences, offences against person . . . .

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Official): Were they all police cases, may I know, or cases on complaint also?

The Honourable Sir Malcolm Hailey: Take the police cases only if you will—instance for offences affecting life—1,164 persons under trial and 443 convictions; or serious hurt—25,000 persons under trial—2,000 convictions. This is the extent to which our Magistrates are under the thumb of the police. I have been told again that the statements recorded under this section under discussion must be open to inspection because they are useful for a good number of other purposes—that is Mr. Pyari Lal's description of them. Well, if they are used for any other purpose, then it is a clear breach of the law; the law lays down that they are to be used for one definite and defined purpose only and for no other.

Then Mr. Ginwala tells us that cases are put forward in the courts by the police in a haphazard way; he says that since the list of witnesses is prepared in advance, the accused ought to be able to obtain, as soon as that list of witnesses is put in, a copy of their statements. The police officers, he says, ought to make up their minds what witnesses they would put in. Is it for the police to do that or for the prosecution? Does the Government Prosecutor or the police choose what witnesses should appear? He also says in addition that the threat which Sir Henry Moncrieff Smith held out—though indeed it is more correctly described as an apprehension from my point of view—that if this amendment were carried the police officers would not record statements—he says that that would be an act of distinct dishonesty on the part of the police. Why? I suppose that he holds the theory that the police only record these statements to assist the court or the accused. That is not so. The statements are recorded mainly for the assistance of their own superiors in deciding on the necessity for and for guiding prosecution. It is true that the law by a somewhat exceptional provision allows these statements to be used for challenging the credibility of certain witnesses; but the primary object of recording these statements is not, as he suggests, in order that they may be used as any species of evidence before the court; they are primarily recorded for police purposes. That we in India allow them to be used for the specified purpose provided in the Act, constitutes an unusual procedure, confined, I imagine, to India alone. Do you in English courts have statements made before the police regularly recorded, and utilised for purposes of rebutment or conviction by the Court? Of course not, the law nowhere compels the police to record statements, and the exceptional procedure for the utilization of such statements as have been recorded for police purposes has only been introduced because such statements happen to be recorded; it would be no act of dishonesty at all if the police officer did not record those statements; the law does not direct him to do so. Nor would it be an act of dishonesty on the part of the senior police officers if they ordered that statements, instead of being recorded at length by police officers, were simply to be taken orally, and the purport given in their diaries. He says that the police officer would do it for his own protection. He seems to regard a statement recorded by a police officer as something equivalent to a statement recorded by a Magistrate for the purpose of binding down a witness to his statement. It is obviously nothing of the sort, the law does not allow it to be used in that manner. Now, will or will not the passing of this amendment mean that such statements will not be recorded? I say emphatically that the chances are that it will have this consequence It will be likely to have this consequence, because the police will have

reason to see real harm in making such statements public. Some doubt has been passed upon Mr. Tonkinson's substantive statement that if this amendment is carried it will be a serious hindrance to detection. Mr. Rangachariar argued that we are now at the stage of prosecution and that detection is over; the making of these statements public could not, he says, hinder detection. But I will give a concrete instance within my own experience, an instance which could perhaps be paralleled by other officers here, to know how the placing of statements of this nature, (and the amendment demands that the whole and not part of the statements should be given) in the hands of the defence would seriously re-act on detection. We were investigating a widespread conspiracy case which ended in the throwing of bombs. I believe that the approver's statement to the police ran up to 40 printed pages. Certain accused were subsequently brought up in regard to one stage only of those transactions. It was a largely ramified conspiracy which operated all over India; one particular case was brought up before the courts in regard to incidents which occurred at Lahore alone. Now I ask you—was the whole of that approver's statement to be placed in the hands of the defence? (*A Voice*: "Yes.") An Honourable Member says: 'Yes'. I welcome his interruption as allowing me to show the absurdity of any such contention. It is obvious that if you had placed the whole of the statement of the approver as recorded by the police in the hands of the defence, you would have prejudiced very gravely indeed the possibility not only of conviction but even of arrest in other cases. You would have endangered the life of more than one informer. We could not wait in that case until we had traced the whole of that conspiracy with its many ramifications throughout India; we prosecuted in the one section where we had the evidence. There must be many such cases. Take a big dacoity case. Look at its development. The police do not know exactly in the first instance what to look for, what is likely to be relevant or irrelevant; but thinking that their witness knows something about it, take down the whole of his evidence. It turns out to refer to a large series of transactions of a gang. I have known gang cases which have taken in the trying many months, have involved hundreds of accused, and a vast series of transactions. Are you going to place, in the course of the trial of one small transaction only, the whole of the statement of a witness who made a statement referring to some 10 or 20 different transactions? Is that a reasonable proposition? If you do demand this and if you secure this, then the inevitable result will be that the police will be chary of recording statements in this way. They will depend on a number of records in their diaries, and there will be no statements available for the purpose which you suggest. In the alternative if such statements are recorded, and are placed in the hands of the defence, they will very gravely impede the course of detection. That is the point I wish to make against Mr. Rangachariar. We are, it is true, considering here the stage of prosecution; that is perfectly true. We wish as much as anybody here to give the accused every fair chance of rebutting the evidence against him. We are no more anxious that a sentence of conviction should be passed on an innocent man than any one else. But at the same time we must realise that although we are now at the prosecution stage yet there are cases, it may be many cases, in which to place in the hands of the defence a large number of statements ranging over a very considerable number of transactions, may re-act on the possibility of detection of crime, may endanger the lives of informers, may allow other guilty men to escape, and I do not think that anybody here seriously desires that result. If we are anxious to secure justice for the accused, we should be equally anxious to secure

[Sir Malcolm Hailey.]

the protection of life and property by aiding as far as possible in the detection of crime.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I have listened to the arguments on both sides in regard to this question with great interest. I have experience of a Magistrate's duties for about 20 years both stipendiary and honorary as my friend Mr. Pyari Lal calls it. There can be no denying the fact that in the mofussil some Magistrates, particularly of the second and third class, are considerably in the hands of the police; but I have also noticed in some cases weak first class Magistrates are also guided by police inspectors and sub-inspectors. I may say that probationary *mamlatdars*, what are called in Sind Mukhtiarars, or Tahsildars in other Provinces and acting men are so prone to police influences that very often justice in their courts cannot be properly obtained. No doubt Magistrates of position and education and having an independent character are not so much under the thumb of the police as others of the class I have mentioned are; and so far as the province of Sind is concerned I know when I was in service orders had been issued by the Police Superintendents to all inspectors and sub-inspectors not to send copies of statements to courts at all and sometimes it happened that even when the Magistrate called for these statements they were refused. So far as Sessions Courts are concerned, they always call for these statements through the Magistrates committing cases to their courts, almost invariably, because they know that these statements are not supplied to Magistrates. Within my own experience, when Sessions Courts fixed the hearing of cases committed to their courts, they particularly called for these police statements to be submitted to their courts. This will show how anxious the police always are to suppress these papers from the Magistrates to whose courts they send such cases. I know, Sir, that very often these statements are very important and very often contradictions are brought to light between the statements made by witnesses in courts and the statements they made before the police, which have a considerable bearing on the cases themselves. But at the same time I can imagine cases in which it would be extremely unwise and hazardous to allow the accused to have a look at these statements or to allow them to take a complete copy. Yes, it may be in the interest of the accused to allow him to have copies of extracts from these statements, and that will lead to better justice being dealt out to the accused. But in every case to give a complete copy of the statement will be prejudicial to the interests of justice itself. For instance, if a person belonged to a secret society and he gave certain information to the police, and his statement was recorded, what would be the result if the statement is made public and the secret society learns how the police got at them through this particular individual. I think the result of such a course would be that in 9 cases out of 10 the man would be murdered immediately—and cases have occurred in which witnesses have been murdered. Therefore, it is no doubt not a very reasonable thing to allow in every case the accused to take complete copies of statements made by witnesses before the police. I see, Sir, however, that there are arguments for both sides. I quite admit that in 9 cases out of 10 it is very important that the Magistrate or the trying Court should allow copies of statements to be given to the accused, and more especially in ordinary cases. But in delicate cases and extraordinary cases it would be very unwise to allow the accused to have complete copies of these statements. I would, therefore, Sir, with your permission suggest a sort

of a compromise between the two parties; I would say, if the Government accepts that compromise, that in ordinary cases copies should be allowed to the accused, but if the Magistrate or the trying Court, for special reasons to be recorded, thinks it inexpedient to allow copies of such statements to the accused, he may have the power of refusing the same to him. I think a compromise of this kind would suit both sides, and ought to be accepted by the Government as well as by my friends on this side.

Mr. T. V. Seshagiri Ayyar: Sir, the section under discussion is of such a far reaching character that it is desirable to clear the air to some extent, especially as regards one answer which the Honourable the Home Member gave regarding the objection put forward on this side. The answer was this; if there is to be a detection of crime—and that also was voiced by the last speaker—if the statement made by one of the witnesses is in the hands of the counsel for the defence, the probability is that the accused will know who are the persons who gave the information; that may lead to unsavoury consequences so far as the persons who gave the information are concerned. Sir, the answer to that is very simple. Ordinarily speaking, a statement recorded by the police must be relevant to the case which is to be put up against the accused. If there is to be any information regarding the origin of the crime, and regarding the complicity of others in the crime, that matter would probably go into the diary and not into the statement recorded for the purpose of proving a case against the particular accused. If we make this difference, namely, that the statement must be confined as far as possible to the case to be charged against the accused, and any extra information that may be obtained during the course of the inquiry regarding the origin of the crime, regarding the existence of a conspiracy and so on, should find a place in the diary, there would be no difficulty in accepting the amendment. If, on the other hand, you refuse to give the accused a copy of the statement, the result of it will be that he will have to be groping in the dark, he will not know what evidence has been given against him, and he will have, as pointed out by Mr. Ginwala, to ask his counsel to put a large number of questions which will take more time of the Court than is necessary. Executive instructions can be issued to the police to take down in the statement, only such facts as are relevant to the case under inquiry and to relegate to the diary all the information which will be required for the purpose of following up the clue and finding out where a particular conspiracy has been hatched and where the conspirators are to be found. In that way information which you are anxious to safeguard and keep back from the accused can be very easily kept back, and information which it will be necessary for the accused to have for the purposes of defending himself will be available to him. Sir, one inconvenient question was put by Mr. Pyari Lal, and that is, what is the object of the Criminal Procedure Code if you are going to keep back information from the accused which would enable him to defend himself? There has been no answer to that. After all, the object of Criminal Procedure Code is to enable the accused to defend himself. It was stated by the Honourable Sir Henry Moncrieff Smith that the result of compelling the Court to give copies of the evidence will be that the police will only note down a very meagre statement and that would be of no use to anybody. Sir, I take it the police will be acting honestly,—that the police are not dishonest. I take it that the police, if it is good, will be recording all the statements which have been made by a witness relevant to the inquiry and it is that statement which it is necessary for the accused to have, in order to enable him to show that the witness has not been speaking truth. Sir, it

[Mr. T. V. Seshagiri Ayyar.]

will also have this further effect. If a witness knows that he will be confronted by the statement previously made by him he will take care to speak the truth; if on the other hand he knows that there is no chance of his previous statement being used against him, he will boldly speak falsehoods, and he will not be inclined to place the true facts of the case before the Court. Therefore, the amendment will have a good effect also upon the witness. Sir, there is one other aspect of the case as to which I take a very different view from others who have preceded me and it is this. I consider it is a misfortune that in this country the Magistrate is given the discretion either to refuse or to allow any portion of the statement to be given to the accused. What is the result? Supposing the Magistrate is honest. He is asked by the accused on information which he has obtained from elsewhere to look into the statement and to find out whether there is anything in it which is favourable to him. The Magistrate finds that there is nothing favourable but a great deal that is unfavourable to him. What is the position of the Magistrate? The Magistrate ought to keep an open mind until the whole of the evidence is recorded; and he must be in a position to judge impartially between the accused and the Crown; but where he has got some information which he considers is prejudicial to the accused and not favourable to the accused, can a second or third class Magistrate be expected to wipe out from his memory all that he has learnt from the statement, and could he be expected to judge as between the complainant and the accused and fairly,—if this information is kept back from the accused and at the same time the Magistrate is allowed to pursue it; Sir, in every other country the Magistrate is asked to keep his mind altogether free from anything which has not been recorded and which will not be part of the evidence of the case on which he is to give his judgment. *Per contra*, this section enables the Magistrate to look into the diary and to find out whether it is favourable to the accused or unfavourable to him. If he considers it to be favourable and if he considers it is in the interests of justice that the accused should have it, then he is directed to give a copy; if he considers it unfavourable, certainly his mind will be prejudiced and the accused will be all the worse for having made the request to the Magistrate. Under those circumstances, the discretion given to the Magistrate to look into the statement and to keep the information to himself without furnishing a copy to the accused is likely to be prejudicial both to the Magistrate and to the police. I am speaking of the statement, not the diary. Under these circumstances, Sir, it seems to me that the provision as it is proposed to be enacted is not in the interests of justice. On the other hand, I think it is likely to stand in the way of the accused getting fair play and is also likely to make the position of the Magistrate very irksome. For these reasons, Sir, I think the amendment which has been moved is a very reasonable one and should be accepted by the House.

Dr. Nand Lal: Sir, the desire of the House, in the main, is that the discretionary power of the Magistrate or the court may be taken away and that a right may be given to the accused that he may obtain copies of the statements of those persons who have been called as witnesses against him in that prosecution. Now, Sir, there are Magistrates and Magistrates and there are courts and courts. There is no doubt about it that some Magistrates are very efficient and very conscientious. But the Honourable the Home Member cannot deny the correctness of the proposition that there are some Magistrates and some courts who are not efficient and who do not

perform their duties conscientiously. Now, the desire of the Assembly is that no room for doubt should exist and that those who are not efficient and are not conscientious may be made to perform their duties in a certain fixed manner. That is the real object of the House. The House is not prepared to say in a sweeping way that the whole judiciary is inefficient. That is not the object of the House. The object of the House, I may be allowed to repeat, is simply that the grievances which are occupying the mind of the public in these days may be redressed, and the easiest method of extending redress to them is by taking away this discretionary power from Magistrates and courts. Now, the Honourable Mr. Tonkinson said that there will be a mass of irrelevant evidence . . (*Mr. H. Tonkinson*: "No") a mass of irrelevant things brought on to the records of the police, namely, persons, to whom questions may be put by the investigating officer, may make reference to things which have no concern with the case, and the answers, given by them to the investigating officer, may expose them to prosecution. May I invite his attention to the provision which is incorporated in sub-section (2) of section 161 of the same Code:

"Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

Therefore the fear which has been entertained by the Honourable Member seems to have been misplaced.

The other ground which was advanced by him was that the police diary, for all intents and purposes, will be placed in the hands of the accused. In reply to that I may say at once, it will not happen at all. The accused will, simply, be entitled to obtain copies only of those statements in regard to which witnesses are called. He has not got the right to ask for copies of the statements of all the persons who have given answers to questions put by the investigating officer, namely, only of the statements of those witnesses who will be called by the prosecution. This proposition, therefore, Sir, will advance the cause of the administration of justice; the witnesses who come before the police officer investigating a case will realize their responsibility, they will know that a copy of the statement which they are making before the police, can be obtained by the accused and they will be subjected to cross-examination; they will consequently speak the truth and know that if in their depositions in court there is any contradiction, that contradiction will be brought on the record under the provisions of section 145 of the Evidence Act. They will therefore be induced to speak the truth. But in the present condition of the law in this behalf, they do not care; they, in some cases, regard themselves as irresponsible men who can make any statement they like. To my mind the procedure, proposed, now will improve the administration of justice and the statements recorded by police officers will become more accurate.

The other ground, which has been advanced on behalf of the opposition to this amendment, is that it will be very inconvenient and the work of the courts and Magistrates will be impeded. Of course there is some force in that; it will not be so convenient as it is now; work will not be done so expeditiously as it is done now. But, Sir, consider the advantage which the Government will derive—an advantage of sterling worth; for justice will be done; there will be no room for injustice. Is not that a good return, Sir? Even if two hours more are spent in arriving at the correct conclusion, I think that expenditure of time may be considered as worth while. So, on the ground of convenience, or on the ground of expedition, I may say, the opposition has got no case.

[Dr. Nand Lal.]

Then the Honourable Sir Henry Moncrieff Smith said, "Oh, then the police will not do their duty; they won't put many questions to witnesses; they will simply put down a line or two giving the gist of the whole thing." Why should we grudge that? If the police officer writes his diary in full and the statements in a brief manner, that will save public time. So on that ground also the opposition has no case.

Then the Honourable the Home Member took this exception, namely, that this amendment will not be of any utility, because, confidential documents will be open to the public through the medium of that accused, and most probably that will spoil the prosecution. In reply to that I may submit that the statement of the approver is recorded generally by a very responsible officer, the Superintendent or Deputy Superintendent, and that is if I mistake not, no part of the investigation within the scope of section 161, Criminal Procedure Code. I think the Honourable the Home Member will accede to this contention which I am placing before him in reply to his argument. In the second place, that statement is recorded before the Magistrate. So the statement of the approver will not, if I think aright, come within the purview of section 162.

On these grounds, in brief, I support this amendment which speaks for itself and will be very useful both to the public and to Government. I trust that the Government Benches will accept the recommendation of the amendment.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I venture to suggest that after this lengthy debate the question before the House has narrowed itself to two points of importance. The first point for the House to decide is whether these statements recorded by the police can safely in the interest not only of the accused but of other witnesses and of the maintenance of peace and order, be practically made public, and if the House is of the opinion that this cannot be done, that such statements cannot without any restriction be made public, to what extent it should be permitted and who is to regulate it. Now, Sir, with regard to the first point, I trust the House has listened with attention to the remarks that fell from Mr. Hussanally. Mr. Hussanally spoke as a stipendiary Magistrate of many years' standing and also as an Honorary Magistrate. He spoke as one having full knowledge of police methods. He said that in his opinion many subordinate Magistrates, especially of the lower grades, were at times unduly influenced by the police, and yet he said he could not recommend that any such statements should as a matter of course and as a matter of right be practically made public in Court, because of the grave danger involved to other witnesses in the case or to other persons whose names may be mentioned in the statement. I hope the House will take that seriously into consideration, because it is a point that, I suggest, those who have supported this amendment are rather apt to overlook. The Honourable Mr. Seshagiri Ayyar stated that the whole object of Criminal Procedure is to enable the accused to defend himself. I suggest that there are other considerations. There is such a thing as the maintenance of law and order, the maintenance of peace, the protection of innocent persons, the protection of witnesses who honestly give evidence in the Courts. These are not things to be lightly overlooked or entirely ignored. It has been suggested that the difficulty can be overcome if only the police will record in these statements what is strictly

relevant to the case; and Mr. Ginwala made some very scathing remarks on the utter incompetence of a police officer who could possibly include in a statement of this kind things that were not strictly relevant to the statement that the witness now before the Court is about to make in Court. Possibly Mr. Ginwala has never taken part in the investigation of a crime. (*Mr. P. P. Ginwala*: "I am very thankful for it.") Well, he may be congratulated on not having had that unpleasant duty to perform, but had he taken part in the investigation of a crime, he might not have been perhaps so scathing in his remarks upon the unfortunate investigating policeman. How is a police officer when he begins to investigate crime and to record the statement of a witness to know exactly what is relevant and what is not? He goes to a village where a dacoity or a murder has been committed. Perhaps a man comes forward who appears to know a good deal about what was going on in the village on the night of the occurrence and for the sake of getting an accurate record of what that man says, not trusting to his memory, he proceeds to record what the man tells him. How can he possibly conceive at that stage what is and what is not going to be relevant to the case? Minutest facts may come out which appear to have nothing whatever to do with the case and yet may prove of vital importance later on. The man may depose, for example, 'I went the day before to see about a buffalo or something of the kind' an apparently trifling occurrence, which may in the end be the very fact on which detection is based. It is absurd to suppose that these statements recorded by the police in the course of investigation can refer simply and solely to just the fact about which the witness will be asked to depose in Court. (*Dr. H. S. Gour*: "These are not the statements.") I do not understand what Dr. Gour means by saying that these are not the statements. These are the statements in the case; and these are the statements Dr. Gour wants to have produced in Court. Well, Sir, I submit, that if we once grant that these statements must contain much that may be irrelevant to the immediate statement of the witness that is going to be made in Court, it is essential that the disclosing of them should be a matter of discretion, because we cannot take the risk of allowing all these things to be published and possibly not only to interfere with the detection of the offence itself, but to involve other persons and other witnesses. The Honourable the Home Member has given a striking example in the matter of the big conspiracy case that he referred to, and I do not need to cite any further examples. That is one very convincing instance of a case in which the whole statement could not be allowed to be disclosed. Well, in that case, who is to exercise the discretion? No other person can possibly do so except the Magistrate or the Judge. You cannot leave the matter entirely to the police as to whether they are to exercise a discretion, or to the prosecuting counsel. The only person who can be vested with the discretion is the Magistrate in charge of the case. With regard to these Magistrates, I venture to make a reference to something that Mr. Rangachariar was pleased to say. He said that Magistrates "depend for their promotion on the good will of the District Superintendent of Police," and he added (as an after-thought), and "also of the District Magistrate." Well, Sir, so much has been said in the course of this debate about the influence of the police over Magistrates that I venture to contradict categorically that statement that subordinate Magistrates depend on the District Superintendent of Police for their promotion. The District Superintendent of Police has nothing whatever to do with the promotion of Magistrates. (Laughter.) Honourable Members laugh, but I know . . . (*Rao Bahadur T. Rangachariar*: "We know the contrary"; *Dr. Nand Lal*: "Secret

[Mr. P. B. Haigh.]

reports are more valuable than the open recommendation of superior officers.") Possibly Honourable Members will allow me to proceed. Promotions of subordinate Magistrates are made on the recommendation of the District Magistrate after consultation with the Sessions Judge; and the District Magistrate has every opportunity of forming his own opinion on the work of subordinate Magistrates. Not only does he see the record of their cases which he may call for from time to time, but he hears appeals from them. Every time they convict a man they send a summary of the case to the District Magistrate, and he has every opportunity of forming his own firsthand opinion on their work. He does not, as a matter of fact, consult the police at all. I have referred to this matter at some length because I think too much has been made of the supposed subservience of our Magistrates to the police officers. I do not wish to detain the House any longer after this somewhat lengthy debate but I trust that Honourable Members will not, in order to serve the interests of the accused, be led astray into failing to consider altogether the other side of the question and the imperative necessity of protecting the other persons whose interests may be gravely involved if the publication of these statements is allowed in the ordinary course of procedure.

Mr. President: Amendment moved:

"In clause 33 . . . ."

Sir Deva Prasad Sarvadhikary: May I have your leave, Sir, to move an amendment on the lines suggested by Mr. Hussanally.

Mr. President: The amendment which the Honourable gentleman has placed before me necessarily can only be moved later on.

Sir Deva Prasad Sarvadhikary: It will depend upon certain words being deleted on the lines of Mr. Agnihotri's amendment.

Mr. President: I am only pointing out that I cannot put the amendment laid before me at the present moment as an amendment of Mr. Agnihotri's amendment; it is in substance an alternative, but in form it cannot be put now, because it comes at a later stage. The House will understand that if Mr. Agnihotri's amendment should be defeated, such a proposal as the one made by Sir Deva Prasad Sarvadhikary would still be in order. But I cannot put one proposal against the other, because they do not stand together in the same position in the clause.

(*An Honourable Member*: "The question may now be put.")

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I speak on Mr. Agnihotri's amendment? I fully appreciate the difficulties which are at the bottom of Mr. Agnihotri's amendment and the arguments of those who have supported it to meet them, but I put it to the House, do they or do they not appreciate also the strength of the argument that to make it obligatory to give a complete copy of the whole of the statement made would, in the interests of justice and on grounds of expediency, be sometimes undesirable. I am not drawing upon my imagination; I can recall a case in which there was a statement taken down by a police officer of about 40 pages, in which the names of five different public men were said to have been involved, and it would have been unfair to these men if the giving of a copy of that whole statement were made obligatory. I trust, therefore, that a *via media* will be found acceptable to the Members of

this House, as suggested by Mr. Hussanally, in some terms which will make it ordinarily obligatory on the Magistrate to furnish copies, but the Magistrate may refuse to do so for reasons to be recorded by him in certain cases, or may cause extracts only to be given in certain cases and not the whole statement. I trust Mr. Agnihotri will agree to that.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): That will come in after my amendment has been accepted.

Mr. N. M. Samarth: Meanwhile the proposal for a complete copy to be invariably furnished, which is the nature of Mr. Agnihotri's amendment, should be thrown out.

Mr. President: The question is:

"That in clause 33, in the proviso to sub-section (1) insert the words 'allow inspection to the accused and'."

The Assembly then divided as follows:

AYES—38.

Abdul Quadir, Maulvi.	Kamat, Mr. B. S.
Abdul Rahman, Munshi.	Latthe, Mr. A. B.
Abdulla, Mr. S. M.	Mahadeo Prasad, Munshi.
Agnihotri, Mr. K. B. L.	Man Singh, Bhai.
Ahmed, Mr. K.	Misra, Mr. B. N.
Ahsan Khan, Mr. M.	Mukherjee, Mr. J. N.
Asad Ali, Mir.	Nag, Mr. G. C.
Asjad-ul-lah, Maulvi Miyan.	Nand Lal, Dr.
Ayyar, Mr. T. V. Seshagiri.	Neogy, Mr. K. C.
Bagde, Mr. K. G.	Pyari Lal, Mr.
Basu, Mr. J. N.	Rangachariar, Mr. T.
Bhargava, Pandit J. L.	Reddi, Mr. M. K.
Chaudhuri, Mr. J.	Sen, Mr. N. K.
Ginwala, Mr. P. P.	Sircar, Mr. N. C.
Gour, Dr. H. S.	Sohan Lal, Mr. Bakshi.
Gulab Singh, Sardar.	Srinivasa Rao, Mr. P. V.
Ibrahim Ali Khan, Col. Nawab Mohd.	Subrahmanayam, Mr. C. S.
Irwar Saran, Munshi.	Venkatapatiraju, Mr. B.
Jatkar, Mr. B. H. R.	Zahiruddin Ahmed, Mr.

NOES—36.

Aiyar, Mr. A. V. V.	Ley, Mr. A. H.
Allen, Mr. B. C.	Lindsay, Mr. Darcy.
Barua, Mr. D. C.	Moir, Mr. T. E.
Blackett, Sir Basil.	Moncrieff Smith, Sir Henry.
Bray, Mr. Denys.	Muhammad Hussain, Mr. T.
Burdon, Mr. E.	Muhammad Ismail, Mr. S.
Cabell, Mr. W. H. L.	Nabi Hadi, Mr. S. M.
Chatterjee, Mr. A. C.	Nayar, Mr. K. M.
Cotelingam, Mr. J. P.	Percival, Mr. P. E.
Davies, Mr. R. W.	Ramayya Pantulu, Mr. J.
Faridoonji, Mr. R.	Samarth, Mr. N. M.
Haigh, Mr. P. B.	Sarfaraz Hussain Khan, Mr.
Hailey, the Honourable Sir Malcolm.	Sarvadhikary, Sir Deva Prasad.
Holme, Mr. H. E.	Sassoon, Capt. E. V.
Hullah, Mr. J.	Singh, Mr. S. N.
Hussanally, Mr. W. M.	Sinha, Babu L. P.
Innes, the Honourable Mr. C. A.	Spence, Mr. R. A.
Jamnadas Dwarkadas, Mr.	Tonkinson, Mr. H.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is consequential on the amendment that has just been allowed by the House. If we allow inspection of the statement to the

1 P.M.

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

accused, as we have just done, then this clause becomes unnecessary and superfluous, and I therefore propose:

"That in clause 33 in the proviso to sub-section (1) after the word 'shall' omit the words 'may then if the Court thinks it expedient in the interest of justice'."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is:

"That in clause 33 in the proviso to sub-section (1) omit the words 'if duly proved'."

We have allowed that the statement made before police be shown to the accused in the Court. Then, when the statements coming from the police are used for the prosecution, it is not necessary that, for the purpose of contradicting a witness, the statements should be proved. Therefore, Sir, the words 'if duly proved' become unnecessary and should be deleted.

Sir Henry Moncrieff Smith: Sir, I did not quite follow Mr. Agnihotri's reasons for cutting out these words "if duly proved". If the words are removed—he suggests that they are unnecessary—then this copy of the statement which is furnished to the defence will be used in the manner provided for by section 145 of the Indian Evidence Act. Perhaps Mr. Agnihotri suggests that section 145 lays down that the statement must be proved. This is what section 145 of the Evidence Act does say: "but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." Therefore, section 145 clearly contemplates that the statement must be proved though it does not actually require it, and it is necessary to retain these words in section 162. The removal of the words will simply mean that any statement made to the police officer, though it may be proved or may not be proved, can be used to contradict the witness. That, surely, I think the House will realise, will be extremely dangerous.

The motion was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

The Honourable Sir Malcolm Hailey: May I suggest that the further consideration of this clause be postponed. Many of my friends here have, I think, a feeling that it is justifiable, in view of the previous decision of the House, to place on the Bill some proviso which would obviate the danger, to which many of us referred, of the whole of the statements referring to a large number of transactions being handed to the defence. From several parts of the House we have heard an admission that that would be dangerous; and I suggest that the consideration of this clause be not completed until we have had an opportunity of considering the advisability of inserting some such proviso.

Mr. President: The original question was:

"That clause 33, as amended, do stand part of the Bill,"

since which an amendment has been moved:

"That further consideration of clause 33 be postponed."

The question I have to put is that that amendment be made.

The motion was adopted.

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

"That in clause 34, sub-clause (i) omit all words commencing from the words 'and any Magistrate' to the words 'Government may'."

This clause 34 of the Bill provides that the authority may be given by the Local Government even to a second class Magistrate to record confessions of accused persons. The recording of confessions is a very complicated affair and it is better that it should be restricted only to experienced first class Magistrates and not to other Magistrates. As the Honourable Mr. Wali Mahomed Hussanally and the Honourable Mr. Pyari Lal have pointed out, there are Magistrates of the second and third class who are not quite experienced enough to realise that they are not to be guided by any outside influence but are to do justice in the case and they are often influenced by the police. Under section 164 we have provided for the admissibility of these confessions when they are made before the Magistrate and have excluded the confessions made before the police. It is necessary that the second and third class Magistrates should not be authorised to record confessions and this could be done by omitting the words as suggested in my amendment. Sir, the Honourable Members must be aware that the complications and difficulties in the recording of confessions have been recognised by the various High Courts. They will find from the law reports that the confessions recorded even by first class Magistrates were often not recorded with the proper safeguards, and care necessary in such cases. Therefore, Sir, I submit that it is undesirable and would be very dangerous to extend this power of recording confessions to second class Magistrates.

With these words I move my amendment.

The Honourable Sir Malcolm Hailey: As the House will see, what the Honourable Member proposes, is that:

"Any Magistrate of the first class may, if he is not a police officer, record any statement or confession made to him."

In consequence, no Magistrate of the second class, even though specially empowered by the Local Government, would be able to record a statement. I do not know whether the Honourable Member, who laid great stress on the question of confession, realised that that would be the effect of his amendment. Such, however, is the effect. The original Bill proposed a distinction between statements and confessions; it contemplated that any Magistrate could record a statement but only first class Magistrates, or specially empowered second class Magistrates, should record a confession. The Joint Committee, however, went further and limited the recording of a statement to first class Magistrates and to second class Magistrates specially empowered in this behalf.

Something may, of course, be said perhaps for special safeguards in regard to confessions. They must be recorded with particular care and by highly responsible Magistrates. That may be the case, but in the case of statements, is it necessary that the House should show such mistrust of even second class Magistrates, even when specially empowered by Local Governments, as to refuse to allow them to record statements? What would be the consequence? Often these statements are not of the

[Sir Malcolm Hailey.]

highest importance; very often they are not even brought on to the record of a trial. But that as many Magistrates as possible should be allowed to record statements is obviously a distinct convenience in the course of investigation. Take the case of a woman who has merely to testify to the simple fact, that she recognises a particular article or object concerned in an investigation. The statement is a simple one; and yet the result of the Honourable Member's amendment, if carried, would be that she would have to go into headquarters to record the statement before a first class Magistrate. That can hardly commend itself to the House. Second class Magistrates have powers up to imprisonment of six months, and yet you will not allow them to record the simplest facts testified to by a witness brought before them by the police—an unreasonable mistrust of the Magistrates, an undue hindrance, to the course of investigation, and possible source of inconvenience to witnesses themselves. For that reason, I oppose the amendment.

Mr. President: The amendment moved is:

"In clause 34 in sub-clause (*i*) omit the words 'and any Magistrate of the second class, specially empowered in this behalf by the Local Government'."

The motion was negatived.

Sir Henry Moncrieff Smith: Sir, before we leave sub-clause (1) of clause 34, I would like to invite the attention of the House to what is obviously a somewhat serious omission in the clause as drafted by the Joint Committee. It has till just this moment escaped the notice of the House. In the way it is drafted, no Presidency Magistrate can record a statement or confession. I think this is a most serious defect and I would like to ask the indulgence of the House to enable me to move an amendment which will remedy that defect. The amendment will run as follows:

"That in sub-clause (*i*) of clause 34, before the word 'Any Magistrate', the words 'Any Presidency Magistrate,' be inserted."

The motion was adopted.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, on behalf of Dr. Gour, who is absent, I move that:

"In clause 34 (*ii*) (*a*) after the word 'that' insert the words 'he is not bound to make a confession, and that if he does so'."

Sir, this clause is practically in force in some Provinces—that is, under departmental instructions Magistrates are enjoined to tell a person who is put before them to make a confession, to tell him that he is not bound to make a confession. This clause is intended to give statutory force, to make it obligatory upon the Magistrate, to say that as well, to tell the man that he is not bound to make a confession and that if he makes a confession it will be used against him. There is no harm in this, it is only a safeguard.

Mr. H. Tonkinson: Sir, as my Honourable friend, Mr. Subrahmanayam, says, this is one of the precautions which are laid down in some Provinces by executive orders as to the course which a Magistrate must take before he records a confession. It is only one of many instructions which have been issued to the Magistrates to guard against any abuse of the recording of confessions. I do not think, Sir, that any very great purpose would

be served by inserting it in the section; but we have no objection, if that is the wish of the House. But, of course, if it is inserted in this place, it must also be inserted in the memorandum.

The motion was adopted.

Mr. H. Tonkinson: Sir, that amendment having been adopted, I should like to move the amendment of the memorandum:

"In clause 34, sub-clause (*ii*) (*b*) after the words 'that' insert the words 'he is not bound to make a confession and that if he does so'."

The motion was adopted.

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

"That in clause 34 in sub-clause (*ii*) after sub-clause (*a*) insert the following sub-clause (*aa*), 'after the word 'unless' the words 'when satisfied that the deponent has been free from police influence for at least twenty-four hours and' shall be inserted'."

Sir, under the present clause when an accused is put before a Magistrate for recording a confession, the Magistrate may record it. What I wish to provide is that when the accused is put up before the Magistrate the accused should be kept away from police custody for about 24 hours before his confession be recorded. It may be within the experience of many of my lawyer friends that when an accused has been brought up before the court and has made a confession, he often retracts his confession afterwards,—sometimes before the trying Magistrate or sometimes in the Sessions Court. This retraction may be due either to his second thoughts or it may be due to the fact that he is away from police custody; and some times he confesses before the police but if Magistrates before recording such confessions put the accused in jail custody and when the accused appears the next day, he declines to make any confession. All these things go to show that when the accused is put before the Magistrate he is often under the police influence. In order, therefore, to do away with that influence it is necessary that some time should be allowed to enable the accused to think over for himself as to his best course and whether or not he should make a confession. Therefore I propose for the acceptance of the House that the insertion be made and the accused be allowed at least 24 hours time free from police custody before his statement is recorded.

The Honourable Sir Malcolm Hailey: We should all agree that a confession made directly under police influence (to use Mr. Agnihotri's words) ought not to be admitted in evidence at all; on that we should all agree. Mr. Agnihotri seeks to prevent this by providing that no confession shall be recorded unless the deponent has been free from police custody for 24 hours; but let us see in what terms he proposes it. The deponent, he says in his amendment, shall have been free from police influence for 24 hours. I do not know how he seeks to define influence; nor how he will set and limit on the duration of the effects of a threat or of force. He supposes that the magistrate will have such psychological skill that he will be able to probe into the mind of an accused person—a mind disturbed and unbalanced by the recent commission of crimes and by arrest—and to determine exactly at what time, to the very second, the effect of such a threat or such inducement has passed away. An inducement in itself is not an easy thing to define. I have had the curiosity to look into a commentary on the Evidence Act, and I saw that the discussion on what

[Sir Malcolm Hailey.]

constitutes inducement, occupies some four or five pages; the effect of influence, if it could be defined would, I imagine, establish a case law which would occupy not five but twenty-five pages. But that is the sort of problem which he proposes to set before the Magistrate.

Mr. K. B. L. Agnihotri: I will put in 'custody' instead of 'influence' if you like.

The Honourable Sir Malcolm Hailey: I do not like it at all; and wish to point out that when Mr. Agnihotri sets out to draft amendments to a Code of this complexity, which has stood so long in the Statute Book, he should exhibit more thought if he is to avoid the most obvious and glaring mistakes. However I shall not further argue the question of influence; because the Mover has already given it up. One could have developed, had it been necessary, a sufficiently interesting and even amusing argument on the subject. He would now, recognizing his mistake, propose that the deponent should not have been within police custody for 24 hours. Therefore, if the police find a murderer red-handed and glorying in his crime and bring him immediately before a magistrate, that officer is not to be allowed to record his confession. Again, will Mr. Agnihotri tell me how his stipulation is possible in practice? The magistrate has a man brought before him by the police. This will not do; he must send him to the jail. Here he must wait till 24 hours are up. But who, Sir, will bring him from the jail but the police? The magistrate is here again at a stop; he must send him back to jail until he can be brought back thence by some other agency, or keep him in his court for 24 hours in order that he may not see a policeman before his confession is recorded. It will all end in one thing only, the magistrate will in every case have to go to the jail to record a confession. Is all this reasonable? It is so unreasonable that I would again attempt to bring home this lesson to the Honourable Member, that a little more thought, a little more care, a little more provision is required in attempting to modify a code which has served our purpose so long. I have answered Mr. Agnihotri; but lest any one should think that there remains the shadow of substance in what he says, I would refer the House to the very ample guarantees and safeguards that are provided already under section 24 of the Evidence Act in regard to confessions, and those safeguards ought to be sufficient.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, this section 164 deals with the statements and confessions made to magistrates at any time before the commencement of the inquiry or trial. If they are accused persons they make confessions; if they are witnesses they make statements; but an accused person may make a statement which may not amount to a confession. We are now concerned with a magistrate who really takes part in an investigation, as is were, who assists in the investigation of a crime, not the Magistrate who actually tries the case. This is because this section deals with cases at any time, *i.e.*, either during investigation or at any time afterwards before the commencement of the inquiry or trial. The object of my amendment is that any oral statement which may be made by the accused person to a magistrate who is taking part in this way in an investigation should not be used against the accused person. I have come across cases where the provisions of this section have not been complied with. Still the magistrate who

holds the inquiry as it were in the course of the investigation prior to inquiry or trial sometimes gives evidence that the accused told me so and so, probably to contradict the defence which the accused may put forward later on. Supposing in the course of the investigation, the accused person is casually asked by the magistrate and he says something to the magistrate, that statement is sometimes used against the accused person at the trial or inquiry. I want to prevent the use of such statement and I do not want the accused person's statement to be brought in against him—that is as amounting to admissions but not amounting to confession. Of course if they amount to a confession, then they should be recorded in the manner required for a statement under section 364 and, under section 91 of the Evidence Act, oral statements cannot be used in evidence. I am quite alive to that, but there may be oral statements which may be used against the accused person but not amounting to a confession. In such cases sections 364 and 164 would not apply and it is not safe to rely on the memory of a magistrate who goes and takes part in an investigation or assists the police in investigating the crime and it is not safe to allow that evidence to be used against the accused person. That is the object of this amendment. Of course confessions do not require this clause. It is only statements which do not amount to confessions which will come under this saving clause which I provide and therefore I move, Sir, that to clause 34 the following sub-section be added, namely:

"To clause 34, add the following sub-clause at the end:

'(*iii*) After sub-section (3) the following sub-section shall be inserted, namely:

'Oral statements made to Magistrates by accused persons shall not be admissible in evidence against them unless the provisions of this section are complied with'."

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, under the main section, as my Honourable friend has admitted, it is only the confessions made by accused persons that are recorded in the manner prescribed. If the amendment which my Honourable friend seeks to introduce into the section were accepted by the House, it would mean that a Magistrate, during the course of the investigation, would be bound to record any and every statement that an accused person may make to him, whether it amounts to a confession or not, before he is able to make any statement in court with regard to such statement. I submit that neither the ends of justice nor any principles of law justify the enactment of such a provision as this by the Legislature. My Honourable and learned friend said that he had come across cases in which Magistrates had made statements in order to contradict what the accused stated in court, that is to say, they have stated that on a certain occasion during the investigation the accused had made such and such a statement. That may or may not be. When the Magistrate makes a statement like this in the witness-box he is just as much a witness as any other person produced as a witness by the prosecution. That statement by the Magistrate is subject to cross-examination by the accused and the counsel for the accused just as much as the statement of any other witness. If the Magistrate has told a lie, I have no doubt that the court will be in a position to judge for itself whether it ought or ought not to believe that statement. But to say that no Magistrate shall be allowed, practically it comes to that, to make any statement as a witness during the course of the trial with regard to statements made by the accused to him, statements other than confessions, is, I submit, carrying legislation a little too far. Such a provision introduced in an Act would be unreasonable and the Legislature is presumed to be reasonable in all the provisions that it may enact into a

[Dr. Mian Sir Muhammad Shafi.]

Statute. It seems to me, Sir, that when you remember that the witness who is deposing to an oral statement made to him by an accused person is not a police officer, is not even an ordinary witness but is a Magistrate, who *prima facie* at any rate is believed to realise the consequences, the serious consequences of any statement that he may make in the witness-box against an accused person, surely to exclude the Magistrate's statement, unless the oral statement to which he is deposing has been reduced into writing by him during the course of the investigation, is I respectfully submit somewhat unreasonable and I would earnestly appeal to my Honourable friend that the administration of justice will not be promoted if a provision of this kind is introduced in our Code.

Sir Henry Moncrieff Smith: I wish to add two words to what the Honourable the Law Member has said. Mr. Rangachariar has argued one amendment and then at the end he moved another. He explained that his intention in this amendment is to confine its operation to oral statements made to Magistrates by accused persons in the course of a Magisterial inquiry and he argued that they should not be admissible in evidence against them, unless the provisions of this section are complied with. Now, Mr. Rangachariar's amendment merely says that oral statements made to Magistrates by accused persons shall not be admissible in evidence. Sir, I want the House to realise how wide that is. I do not know whether Mr. Rangachariar has forgotten section 342 of the Code, which lays down how oral statements to Magistrates are to be dealt with. An oral statement is always an oral statement, if made by word of mouth, even though it has to be reduced to writing under section 164 or 364, and an oral statement made in the course of the trial therefore under section 342, according to Mr. Rangachariar's amendment, could not be used against the accused unless all the provisions of this section had been complied with. It is not this section that has to be complied with but it is sections 342 and 364, which have to be complied with in those cases. Section 342 is the section which enables the court to examine the accused for the purpose of explaining the circumstances appearing in the evidence against him and sub-section (3) of that section says:

"The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into or trial for, any other offence which such answers may tend to show he has committed."

Mr. Rangachariar's amendment is a direct contravention of that provision of sub-section (3) of section 342. I have one more point to make with regard to this amendment. Section 533 of the Code deals with the admissibility of confessions and statements made under section 164, and if Mr. Rangachariar wants to add anything to the provisions of the Code in that respect the amendment should be in section 533 and not in section 164. The present amendment is far too wide, is not confined to statements made under section 164 and covers any conceivable sort of statement made by an accused person to a Magistrate, and to require that the provisions of section 164 should be complied with in all cases is I think entirely unnecessary, if not ridiculous.

Mr. President: The amendment moved is:

"To clause 34, add the following sub-clause at the end:

'(*iii*) After sub-section (3) the following sub-section shall be inserted, namely:

(4) Oral statements made to Magistrates by accused persons shall not be admissible in evidence against them unless the provisions of this section are complied with'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 34, as amended, do stand part of the Bill.

The motion was adopted.

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

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

MESSAGE FROM THE COUNCIL OF STATE.

Mr. President: The Secretary will now read a Message received from the Council of State.

Secretary of the Assembly: From the Secretary of the Council of State to the Secretary of the Legislative Assembly. The Message runs as follows:

"*Sir, I am directed to inform you that the Message from the Legislative Assembly to the Council of State desiring its concurrence in a motion to the effect that a Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India be referred to a Joint Committee of the Council of State and the Legislative Assembly and that the Joint Committee do consist of twelve Members, was considered by the Council of State at its meeting to-day and that the motion was concurred in by the Council of State.*

"*2. The following Members of that body were nominated to serve on the Joint Committee, namely:*

The Honourable Sir Maneckji Dadabhoy,

The Honourable Mr. Purshotamdas Thakurdas,

The Honourable Mr. Lalubhai Samaldas,

The Honourable Sardar Jogendra Singh,

The Honourable Khan Bahadur Nawab Muhammad Muzammil-ullah Khan, and

The Honourable Mr. Sarma."

Mr. J. Hullah (Revenue and Agriculture Secretary): In connection with that Message, Sir, have I your permission to make a motion in order to complete the Committee?

Mr. President: Yes.

Mr. J. Hullah: I move:

"That the following six Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, namely:

Mr. T. V. Seshagiri Ayyar,

Baba Ujagar Singh Bedi,

Mr. Jamnadas Dwarkadas,

[Mr. J. Hullah.]

Captain E. V. Sassoon,
Mr. J. N. Mukherjee, and
the Mover."

Mr. President: The question is:

"That the following six Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, namely:

Mr. T. V. Seshagiri Ayyar,
Baba Ujagar Singh Bedi,
Mr. Jamnadas Dwarkadas,
Captain E. V. Sassoon,
Mr. J. N. Mukherjee, and
Mr. J. Hullah."

The motion was adopted.

THE INDIAN OFFICIAL SECRETS BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to present the report of the Select Committee on the Bill to assimilate the law in British India relating to Official Secrets to the law in force in the United Kingdom.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870.

Rao Bahadur T. Rangachariar: Sir, to facilitate business, some amendments of mine which have been put in have been redrafted by the department, most of which I accept; only they have not accepted some portions. Therefore, I propose, with your permission to move them in parts, Sir. The first amendment relates to section 165, and I move it. It reads:

"That in sub-clause (1) of clause 35 in the proposed new sub-section (1) for the words 'in the diary hereinafter prescribed relating to the case' the words 'in writing' be substituted."

The object of this amendment is, so far as the search records go, they need not be embodied in the diary of the case. The object of the proposed amendment is, in case it is made in writing, not in the diary, then copies can be freely given to the persons who are entitled to copies. If it is made in the diary, there may be objection to showing the diary or giving copies of the diary to the persons interested. Therefore, there is no object served in maintaining the words "in the diary hereinafter prescribed relating to the case." I therefore move that the words "in writing" be substituted.

Mr. President: Clause 35. Amendment moved:

"In sub-clause (1) of clause 35 in the proposed new sub-section (1) for the words 'in the diary hereinafter prescribed relating to the case' the words 'in writing' be substituted."

Mr. H. Tonkinson: Sir, I accept that amendment.

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

The motion was adopted.

Rao Bahadur T. Rangachariar: I move my next amendment, Sir, which is as follows:

"In clause 35 (i) after the word 'belief' insert the words 'and specifying therein the thing for which the search is to be made.'"

Mr. President: It is on the printed paper.

Rao Bahadur T. Rangachariar: Yes; it is there. The word 'and' is not there. I add the words "and specifying therein the thing for which the search is to be made". Honourable Members will remember that the scheme of the Code as regards searches is three-fold. First of all you can obtain warrants for search.

Mr. President: The Honourable Member wants to have the words 'therein' as referring to the writing and not to the diary?

Rao Bahadur T. Rangachariar: Yes.

Mr. President: It has been suggested to me that the amendment ought to run "and specifying in such writing".

Rao Bahadur T. Rangachariar: I accept it. Probably it is more correct. As I was stating, the scheme of the Code is when a thing could not be got at under section 96, the Magistrate is empowered to issue a search warrant for the production of any document or thing which is required for the purpose of a case, and the Magistrate is also empowered under section 105 to make a search himself for which he could issue a search warrant. Section 165 deals with cases where the police themselves can search without a warrant, in urgent cases where it may not be possible for them to go to the Magistrate to get that warrant, where perhaps the thing might disappear and all that. Therefore the Code provides that the police themselves may have the power in certain cases. Now, the section as it stands would enable a general search to be made of the person's house As the section stood originally in the Code of 1898, Honourable Members would remember that the language there was:

"Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or thing is necessary to the conduct of an investigation, into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing . . . ."

then he was entitled to search himself, and the Calcutta High Court and other High Courts have held that under this section a general search is not possible, because you can search only for specified articles. Apparently to get rid of that ruling this amendment is made. I think, Sir, that it is a very vicious thing to allow a police officer to have power to conduct a general search. A policeman has to resort to this method as he believes he cannot go to a magistrate and get a warrant because time would be lost, it is only then the police are entrusted with power to make this search. Making a search without knowing what it is you are going to search for, but merely to see if you can find something incriminating in a person's house, is

[Rao Bahadur T. Rangachariar.]

not contemplated nor wise to allow. I think it is not wise to entrust the police with such power. And this is recognised in the latter portion of this clause, even in the amended clause (3) of section 165 where the police officer authorises somebody else to make the search where he is unable to do it. Under clause (3) Honourable Members will notice he must give the other person an order in writing specifying the thing for which the search is to be made. So that when this officer has to ask somebody else to do it, he is called upon to specify the thing for which the search is to be made, and when he makes the search himself under this clause, why should he not be under the same obligation to specify what the search is to be made for? General searches ought to be avoided. General warrants ought to be avoided. And Honourable Members will notice that he has to satisfy himself, before he takes action, " that such a thing cannot in his opinion be otherwise obtained without undue delay." The clause itself contemplates that the man himself has some information and he thinks that such a thing cannot be otherwise obtained. Therefore that very clause itself contemplates that the man must know what it is that he is after, and it will be necessary for him to record this in writing and forward the record to the magistrate, so that it will be a check upon irresponsible general searches which have frequently disfigured the police administration in various parts of the country. Even as the section stood the police have resorted to general searches, and the Calcutta High Court and the other High Courts had to come down upon them and hold such searches to be illegal, and now the intention of the Government amendment is to get rid of that ruling. I submit it is not sound to do that and I therefore move that these words be inserted and specifying in such writing the thing for which the search is to be made.

The Honourable Sir Malcolm Hailey: I do not think that the ruling of the Calcutta High Court to which Mr. Rangachariar refers carries him quite as far as he would lead the House to believe. If I am correct what happened in that case was, a report of a dacoity had been made and the sub-inspector of police had been investigating it. A constable was sent to look for the accused person and get a search witness, and when a search was made in the house of the accused and while the search was going on the police party was attacked; certain persons were in consequence charged with rioting and assault of a police officer in the discharge of his duties. They were all convicted under these sections. The High Court said that section 165 refers to a specific document or thing which may be the subject of a summons or order under section 94. The main argument was that section 165 did not authorise a search for stolen property in the house of the absconding offender. The judges remarked (and this is the material part of the judgment) " remarkable as it may appear there is no other section, admittedly, which would cover such a search." The convictions for riot were set aside. I do not think that quite amounts to a statement on the part of the judges so general as was indicated. Still we may agree that a warrant should be definite and a search should, as far as possible, be for a definite object. We have in the succeeding sub-clause, as Mr. Rangachariar says, certainly provided, that where an investigating officer has to issue instructions to another officer, he should tell that officer what he is to search for, though we there put in the words " so far as possible." And I would agree myself that so far as possible, it is right that an investigating officer should state in writing, the object for which he is searching.

Rao Bahadur T. Rangachariar: I accept the addition of those words.

The Honourable Sir Malcolm Hailey: If the Honourable Member will accept that, I will not pursue my argument further; he will himself recognise that there is a very wide range of circumstances under which we could not insist on a precise statement of the object of search.

Mr. President: The further amendment to the amendment moved is:

"That the words 'so far as possible' be inserted after the word 'specifying,' in clause 35 (*i*)."

The motion was adopted.

Mr. President: The amendment moved is:

"In clause 35 (*i*) after the word 'belief' insert the words 'and specifying in such writing, so far as possible, the thing for which the search is to be made'."

The motion was adopted.

Rao Bahadur T. Rangachariar: I do not move the amendment to clause 35 (*ii*) as printed but I move that:

"For the words 'in the diary relating to the case,' the words 'in writing' be substituted. I have already explained in my former remarks why I wish these words to be substituted."

The Honourable Sir Malcolm Hailey: We accept this as a consequential amendment.

Mr. President: The amendment is:

"In clause 35 (*ii*) for the words 'in the diary relating to the case' the words 'in writing' be substituted."

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move:

"That after sub-clause (*iii*) of clause 35 the following sub-clause be added, namely:

'(*iv*) After sub-section (4) the following sub-section be added, namely:

'(5) Copies of any record made under sub-section (*i*) of sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost'."

As Honourable Members will see, the object of this amendment is that, as soon as a search is made, an immediate report should be made to the nearest Magistrate. That is one of the objects. The second object is that the person whose house is searched should have copies of the records made under sub-clauses (*i*) and (*iii*). Sub-clause (4), as it stands, enables the provisions of section 103 to apply, that is, the general rules relating to searches are made applicable. Under section 103 the occupier of the place where the search was made gets only a list of the articles taken, but what I want him to get is the reason for the search which has to be recorded in writing, which has to be sent to the Magistrate, and he gets a copy thereof. That is the object of this further sub-clause (5) which I move, Sir, as it stands.

3 P.M.

Mr. H. Tonkinson: Sir, I accept the amendment. I do not think it is necessary to explain it any further than has already been done by my Honourable friend Mr. Rangachariar.

The motion was adopted.

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

"That after sub-section (4) the following sub-section shall be added:

'(5) No search shall be made without having first given an opportunity to the owner or occupier of the place, if present, for the production of the thing for which the search is to be made'."

Sir, we have so far considered that the article that has to be searched for, should be specified. When we specify the article to be searched for to any police officer, that officer should, before entering the house ask the owner or occupier to produce that article, if possible. If he produces it the search may be abandoned; if he does not produce it the search may be made. The objection may be raised on the other side that, if such an opportunity is given to the owner or occupier it is just likely that he might hide or conceal it. My object is that it is not necessary to give him such a long time to produce it. The police might surround his house and ask him to produce it. If he does not produce it, then they may enter and search the house. It would obviate much of the inconvenience that is involved in searches, for instance, the damage or destruction of his property which is involved in such searches. To avoid such things, it is better that the police officer should, the moment he goes to search a house, ask the occupier to produce the article for which a search is to be made.

Rao Bahadur T. Rangachariar: I am afraid my friend is under a misapprehension. If you enact this clause, you will be contradicting clause (1). Clause (1) contemplates that a police officer has to be satisfied that he cannot otherwise obtain it; then only he resorts to this course, and he has to record it in writing. That in itself is a sufficient guarantee. Therefore, it becomes unnecessary and it is a contradiction of clause (1).

Mr. K. B. L. Agnihotri: I beg your permission to withdraw this amendment, Sir.

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

Mr. W. M. Hussanally: I suggest an addition to this section, which I hope will be accepted by the Government. I want to add a sub-clause to this section that "a police officer before commencing a search shall offer himself and his party to be searched by the owner or occupier of the house searched."

I suggest this amendment for this reason, that in several provinces executive orders have been issued to all police officers undertaking a search to offer themselves and the whole of their party to the owner or occupier to be searched before they commence the search . . . .

The Honourable Sir Malcolm Hailey: May I interrupt the Honourable Member. I submit that it is not fair either to the House or ourselves to introduce at this stage without any notice of any kind whatever, an amendment of a substantive nature.

Mr. President: The Honourable the Home Member takes objection to the moving of the amendment, of which due notice has not been given. I think I must uphold the objection.

Clause 85, as amended, was added to the Bill.

Rao Bahadur T. Rangachariar: Sir, I have amended the printed amendment somewhat, in order to suit drafting requirements. The amendment which I move will run as follows:

"That in sub-clause (2) of clause 36, to the proposed new sub-section (4), the following be added, namely:

'and shall also send to the nearest Magistrate empowered to take cognisance of the offence copies of records referred to in section 165, sub-sections (1) and (3) '."

and

"That in sub-clause (2) of clause 36, after the proposed new sub-section (4) the following sub-section be added, namely:

'(5) The owner or occupier of the place searched shall on application be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost '."

This follows the previous amendment made in clause 35, and it is similar to it. I therefore, Sir, move it.

Mr. President: Amendment moved:

"That in sub-clause (2) of clause 36, to the proposed new sub-section (4), the following be added, namely:

'and shall also send to the nearest Magistrate empowered to take cognisance of the offence copies of records referred to in section 165, sub-sections (1) and (3) '."

Mr. H. Tonkinson: Sir, I accept that amendment.

The motion was adopted.

Mr. President: Further amendment moved:

"That in sub-clause (2) of clause 36, after the proposed new sub-section (4) the following sub-section be added, namely:

'(5) The owner or occupier of the place searched shall on application be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost '."

Mr. H. Tonkinson: Sir, I accept the amendment.

The motion was adopted.

Clause 36, as amended, was added to the Bill.

Mr. T. V. Seshagiri Ayyar: Sir, I move the amendment standing in my name, which is in these terms:

"In clause 37 (ii) insert at the beginning the following:—' in sub-section (2), after the words ' he may ' the words ' either release the accused after recording reasons for taking that step or forward him to a Magistrate having jurisdiction to try him with his reasons for recommending the release or ' shall be inserted and '."

Sir, in this section power is given to a Magistrate who has not himself got jurisdiction to try a case to order the detention of an accused in jail for a particular period. Sub-section (2) of section 167 runs as follows:

"The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction."

But, Sir, no power is given to the Magistrate himself to release the accused if he considers that no case has been made out for his detention.

[Mr. T. V. Seshagiri Ayyar.]

It may be said that as the Magistrate has got no jurisdiction to try, therefore, such a power should not be vested in him. But, if the House will turn to section 169, it will find that such powers are given to the police.

The police can have such powers under section 169, which runs:

"If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial."

If the police officer can be trusted to exercise his discretion as regards release, I submit that the Magistrate, who has been given power to order the detention of a man in jail, can be trusted to direct his release if he considers it desirable. It is for that reason that I have brought forward my amendment.

Sir Henry Moncrieff Smith: Sir, I think some distinction can be drawn between the police officer who has investigated the case and who is empowered to release an accused person on bail if he has not found sufficient evidence, and the Magistrate to whom the accused person is taken for the purpose of getting a remand. Mr. Seshagiri Ayyar's proposal, I would point out, is not on the same lines as section 169. He makes no provision for bail. It is absolute release he provides for. A murderer is taken before a third class Magistrate. The only reason he is taken there is that that Magistrate is the nearest one and the police have not been able to complete the investigation within 24 hours. The law lays down that nobody should be retained in custody for more than 24 hours without an order from a Magistrate. Therefore he comes before a Magistrate. Now that Magistrate has very little information before him with regard to the case at all. He has not got jurisdiction to try the case or to commit it for trial, and therefore, Sir, is it reasonable that that Magistrate should be able to release the murderer forthwith and send him away—not even to take bail? I think the only proper provision in a case like this is for the Magistrate to report what he has done to the Magistrate who has jurisdiction in the case and for that Magistrate, who has jurisdiction, then to take such steps as may seem to him proper—either to release the man or to detain him in custody.

Mr. Seshagiri Ayyar's amendment, I would point out, will read rather curiously in the section. As he would put it, it will run:

"If he has not jurisdiction to try the case or commit it for trial and considers further detention unnecessary he may either release the accused after recording reasons, for taking that step or forward him to a Magistrate having jurisdiction to try him with his reasons for recommending the release or order the accused to be forwarded to a Magistrate having jurisdiction."

What is the difference between forwarding a person to a Magistrate and ordering him to be forwarded to a Magistrate? It does not read very well in the section, and I think it is undesirable that a Magistrate who has not jurisdiction should be allowed to release without any security whatever serious offenders whom he has not power to try or commit for trial.

The motion was negatived.

Mr. J. Ramaya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, my amendment runs as follows:

"In clause 37, sub-clause (ii), omit the words 'and no Magistrate of the second class not specially empowered in this behalf by the Local Government'."

The present law is laid down in section 167, sub-section (1), which runs as follows:

"Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused (if any) to such Magistrate."

Then, the second sub-section empowers the Magistrate to order that the man be detained in such custody as he thinks fit, for a term not exceeding fifteen days in the whole. Well, under the law as it stands any Magistrate can order the detention of an accused person pending investigation by the police. The section as it is amended in the Bill takes away the power from a third class Magistrate and confines it to first class Magistrates. In the case of second class Magistrates, it says the power may be exercised by a second class Magistrate if he is specially empowered by the Local Government. My amendment would invest both first class and second class Magistrates with the power to detain in custody. I move this amendment in the interests both of the investigation by the police and of the accused himself. As a rule only Revenue Divisional officers are first class Magistrates, and they are in charge of large Divisions. Some of these Divisions are very large, being in some cases 100 miles from one end to the other; and if the accused, in the course of the investigation, has to be produced before a first class Magistrate for the purpose of obtaining an order of detention, it will take some time—a week or more to go and come back, and during all this time no investigation can be carried out. Now it is only an order for detention. After all, the case may go before a second class Magistrate, and a second class Magistrate has got the power of ordering detention in the course of the inquiry. So, two things will have to be done, if this section of the Bill stands as it is. Either there will be long delay caused in the investigation of cases by the police as the accused person will have to be taken long distances for the purposes of obtaining an order of detention; or the Government will have practically to empower all second class Magistrates to exercise the powers under this section. And if the Government invests all second class Magistrates, what is gained? Practically nothing is gained. I, therefore, think that in the interests of speedy administration of justice and in order to minimise the unnecessary detention of the accused himself in custody, my amendment should be accepted, so that all second class Magistrates can exercise the powers under this section.

The Honourable Sir Malcolm Hailey: Sir, Mr. Pantulu has explained the case clearly to the House. It is not a point on which we ourselves feel very deeply; but the Bill represents the views of the Joint Committee, and while naturally preferring their views, we are prepared to leave the decision to the House.

Rao Bahadur T. Rangachariar: Sir, I beg to oppose this amendment. This power of detention should be given only to experienced Magistrates.

[Rao Bahadur T. Rangachariar.]

I would not even empower Government to empower second class Ma trates to do this. However, we may trust to the discretion of the G ernment in this, but let us not extend it further. This period of det tion in police custody is just the time which is taken advantage of extorting confessions and other things. Therefore, we have to be careful that this power is given only to experienced Magistrates.

The motion was negatived.

Dr. H. S. Gour: Sir, the amendment I propose is to clause 37, clause (4), which Honourable Members will see, as at present drafted as follows:

"If such order is given by a Magistrate other than the District Magistrate Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons making it, to the Magistrate to whom he is immediately subordinate."

The amendment I propose runs as follows:

"To clause 37 add the following sub-clause:

(*iii*) To sub-section (4) after the word 'subordinate' the following shall be add namely:

'who may reverse it and order that a person ordered to be detained in the cust of the police shall be committed to jail custody or be released on bail or on his o recognizance as he may deem fit."

Honourable Members will see that this express power which I propose confer upon the magistrate to whom the proceedings of the police are repor is necessary and is not implied as might be suggested by the Honoural Members sitting on the Government benches. It might be argued th it is painting the lily and that magistrates do possess such power und section 496 of the Code of Criminal Procedure. But if Honoural Members will turn to section 496 they will find that the initial words that section are:

"When any person other than a person accused of a non-bailable offence is arrest or detained without warrant by an officer in charge of a police station, or appears is brought before a Court, and is prepared at any time while in the custody of su officer or at any stage of the proceedings before such Court to give bail, such pers shall be released on bail."

That is only in the case of a bailable offence where bail may be given a a matter of right. Then section 497 says:

"When any person accused of any non-bailable offence is arrested or detaine without warrant by an officer in charge of a police station, or appears or is brough before a Court, he may be released on bail, but he shall not be so released if ther appear reasonable grounds for believing that he has been guilty of the offence o which he is accused."

Now, neither of these sections answers the purpose I have in view. The object of my amendment is to arm the magistrate with jurisdiction not merely to release a person on bail, but as I have pointed out, also to order that a person ordered to be detained in the custody of the police shall be committed to jail custody or be released on bail or on his own recognizance as he may deem fit. Now what is the object of a police officer reporting the matter to the magistrate? The section provides that the magistrate authorising detention under this section in the custody of the police shall record his reasons for so doing. The magistrate passes a judicial order that the accused, whether guilty of a cognizable or non-cognizable, bailable or non-bailable offence, might be detained in police custody instead of being sent to jail custody which is the ordinary rule. A copy of his order

sent to the Magistrate superior to him in jurisdiction under sub-clause (4). What is the object of sending up a copy of his order to his superior officer? The object obviously is that he may satisfy himself as to the propriety of the action he has taken in the case; and if that is the object it follows as a matter of necessity that such Magistrate should be empowered to reverse that order or to modify it in the manner suggested in my amendment, I think, therefore, Sir, that this is a salutary amendment and should be accepted by the House.

Mr. H. Tonkinson: Sir, in section 167, in the circumstances in which we are now dealing with, a Magistrate must have recorded reasons in writing for the detention of this person. He must then send a copy of his order to the District Magistrate or the Sub-divisional Magistrate if he is not a district Magistrate or a Sub-divisional Magistrate. My Honourable friend likened this amendment to the painting of the lily; he did however admit that what he was doing was to affect another chapter altogether. He was affecting the chapter of the Code which deals with bail. Sir, when we were discussing an earlier clause on the motion, I think, on the suggestion of my Honourable friend, Mr. Seshagiri Ayyar, it was decided that we should postpone consideration until we came to consider the bail provisions. That, Sir, is exactly the position with regard to this present amendment. I would like, however, to draw the Honourable Member's attention to the fact that he was reading section 497 as it stands in the Code to-day and not as it will stand in the Code, if this Bill ever does become law. Let me read section 497 which deals with the release of persons accused of non-bailable offences. As it is proposed to be amended by this Bill:

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:

Provided that the Court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence (*i.e.*, an offence punishable with death or transportation for life) shall be released on bail."

Does, Sir, my Honourable friend intend by his amendment to modify these already very startling provisions as they stand in the Bill? Does he intend, Sir, to suggest that if a man is accused of an offence punishable with death or transportation for life and further if there are reasonable grounds for believing that he has been guilty of such an offence, that then it is necessary to give here, in another provision which deals with another subject altogether, power to the courts to release him? I think, Sir, the amendment is entirely unnecessary, quite misplaced, and I would suggest to my Honourable friend that he should withdraw it.

The motion was negatived.

Mr. President: The question is that clause 37 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 38 do stand part of the Bill.

The motion was adopted.

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

"That after clause 38 insert the following clause 39:

'39. In the proviso to section 171 of the said Code after the word and figures 'section 170' the words 'and declines to give his proper address' shall be inserted'."

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

Sir, section 171 was dealt in clause 39 of the Bill before it was sent to the Joint Committee but that clause 39 was omitted by the Joint Committee and I therefore propose that clause 39 be re-inserted and that the amendment which I beg to move be entered. Section 171 requires that a complainant or witness, refusing to attend or to execute a bond for appearance in court on the day on which the police case be put up, be taken into custody and sent to the court in custody. I beg to propose an amendment to the effect that the complainant or witness should not even though he refuses to execute a bond, be taken into custody but his name and address be taken and he may be asked to appear. If he declines to give his name and address, he may in that case be arrested and taken in custody. The practice in the mofussil is that a Government servant or a public officer is not required to execute a bond or is not required to attend on the date on which the police case be put up but is generally summoned by the court to appear when the case is taken up for consideration. That is when the police prepare their chalan, they take down the name of the witness if he happens to be a Government servant and instead of taking any bond from him or asking him to appear on the day on which the chalan is put up before the Magistrate, he is required to appear on receipt of summons from the court. Probably this is done to avoid interference in his duties and to provide that he should not be required to leave his work unless the head of the department is apprised of that fact. I suggest that a similar privilege or concession be extended to a person whose residence is known or who himself is known to the police or who gives his proper address to the police officer. It should not be necessary for him to appear in court along with the accused on the date on which the chalan is put up by the police. He may be summoned later on as is done in the case of the Government servant. Therefore I submit that though he refuses to execute a bond to appear on the day when the chalan be put up, he may not be taken into custody unless he declines to give his name and address. With these words I commend my amendment to the acceptance of the House.

Mr. H. Tonkinson: I do not know whether it is necessary for me to argue at length against this amendment. In section 170 of the Code it will be seen that the police officer has decided that there is sufficient evidence or reasonable grounds for sending the accused person up for trial. Then under sub-section (2) he sends to the Magistrate weapons, articles and so on and requires the complainant and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence as the case may be in the matter of the charge against the accused. Now, section 171 which my Honourable friend proposes to amend is a section designed in the interests of the complainant and the witnesses, designed to obviate subjecting them to unnecessary restraint. The proviso, however, goes on to say that if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer concerned is required to forward him in custody to the Magistrate. Now, will Honourable Members think of the stage we have reached. The final charge sheet of the police has been prepared. A list of witnesses is included in the charge sheet. That is laid before the Magistrate with the accused person and also the witnesses. That is the ordinary procedure for the beginning of a warrant trial. The Magistrate begins the trial at once. Now, according to the amendment moved by my Honourable friend witness A. B. is not there. He was

man who refused to attend who refused to execute a bond. He merely gave his name and proper address. What happens then? This witness may be one of the most important witnesses in the case. In that case all the witnesses are sent back to their homes and any person who has any experience of trying cases as a Magistrate will know how grievously witnesses object to being summoned again and again to appear to give evidence in Court. In that sense the amendment moved by my Honourable friend is very much against the interests of the class of persons in whose favour he proposes that it should be made. Take the case of the accused person. A number of Members of the House have objected very strongly to placing the accused person unnecessarily under restraint. The amendment that has now been moved would merely have the effect of lengthening the trial of every case in which a person has taken advantage of the privilege which my Honourable friend proposes to give to him and that must always be against the interests of the accused person. I will suggest also that the amendment is somewhat inconsistent with section 170, sub-section (2), which requires a police officer to call upon the witnesses to execute a bond. I do not think it is necessary to argue this amendment any further. There is I submit no doubt that it should not be made.

Dr. Nand Lal: I oppose this amendment . . .

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

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

The motion was adopted.

Mr. President: The question is:

"That a new clause 39 be added to the Bill, namely:

'39. In the proviso to section 171 of the said Code after the word and figures 'section 170' the words 'and declines to give his proper address' shall be inserted'."

The motion was negatived.

Rao Bahadur T. Rangachariar: I beg to move, Sir, amendment No. 154 in a slightly altered form:

"That clause 40 be renumbered 40 (1) and that to said clause the following sub-clause be added, namely:

'(2) After sub-section (3) of the same section the following sub-section shall be inserted, namely:

'(4) A copy of any report forwarded under this section shall on application be furnished to the accused before the commencement of the inquiry or trial;

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost'."

This amendment relates, Sir, to the supply to the accused person of a copy of the charge sheet in the case on which he is being prosecuted. There has been considerable difficulty in this matter on account of the rulings of various courts that copies of charge sheets should not be furnished to accused persons. Some courts went to the length of holding that till the accused begins his defence, a copy of the charge sheet should not be furnished to him. It has worked as a great hardship. The accused has to grope about in the dark as to what case he has to meet, who the prosecution witnesses are and what their evidence is going to be. This amendment is therefore very necessary. Before a case begins, or the inquiry or trial commences, an accused person ought to be furnished with a copy of the charge on which he is being prosecuted. Just as he is

[Rao Bahadur T. Rangachariar.]

furnished with a copy of the complaint on which he is being prosecuted, so also this charge sheet is the information on which the Magistrate takes cognizance, and it is but right therefore that the accused should be granted a copy of it.

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

The motion was adopted.

Clause 40, as amended, and clauses 41 and 42 were added to the Bill.

Mr. T. V. Seshagiri Ayyar: Sir, in moving my amendment, I wish to preface my remarks by saying that I have no doubt the Honourable Sir Henry Moncrieff Smith will be able to say that it is a very badly worded amendment. I move, Sir, that:

" In clause 43 for sub-section (2) of proposed section 185, substitute the following:

'(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence or of an offence which includes the one under the cognizance of the other Court, any of the High Courts which has jurisdiction over either of the subordinate Courts may direct the trial of such offender to be held in the Court subordinate to it, and on such decision proceedings against such person in the other Court shall be discontinued '."

In the section as introduced by the Government there are some very obvious defects, and it is desirable that those defects should be removed. It is practically a new section. Difficulty was felt both in Madras and in Calcutta with the section as it was originally worded, and it is apparently with the object of removing those difficulties that this section has been introduced in the form in which it has come before the House. I will mention one or two defects which are on the surface. Section 185 (2) as drafted says: " Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence . . . . " Now the Government would realize that two Courts in two different places may take cognizance upon the same facts of two different offences. No provision has been made for that. For example, upon the same set of facts, in one Court a man may be charged for breach of trust, in another jurisdiction he may be charged for cheating. If you leave the words " for the same offence " as they are, a man is likely to be tried twice upon the same facts for different offences.

Another matter is, there may be a minor offence and a major offence. A man may be charged for theft in one place, and in some other court for extortion. Suppose there is a charge of theft in one place and extortion in another, is he to be tried on two occasions for these offences in the two places? These are the defects which I notice in the section as it has been drafted.

Another difficulty which has been felt in Madras, and I think the same difficulty was felt in Calcutta, was this. A charge may be brought against a person in a particular Presidency where the accused does not reside, and the prosecution may not be diligently pressed; in another place where the accused resides and has facilities for defence, the charge may be pressed against him. Why should we restrict the power for ordering stay of proceedings to the place where the original suit was instituted? If any of the High Courts is moved, and if that High Court finds that it is desirable in the interests of the accused that the case should be tried within its jurisdiction, then all the proceedings in the other High Court should be stayed. If you make a provision for that, there will be no difficulty.

but if you leave the matter where it is, then the accused will be subjected to great inconvenience by compelling him to make the motion in the place where the charge was originally instituted. After all the convenience of the accused and the facilities he has for defending himself should be the guiding factor. Therefore, whichever High Court is moved for the purpose of stopping proceedings in another jurisdiction, the order passed in that High Court should be binding upon the other High Court. Those two factors should be taken into account; they must be provided for. It may be better to postpone the consideration of this section for the purpose of bringing in a section which will satisfy the two requirements which I have just now mentioned. Otherwise the section as it has been worded by the Government draftsman will not meet the cases. I move, Sir, the amendment standing in my name.

Sir Henry Moncrieff Smith: Sir, I admit that this is rather a difficult provision. It was drafted and re-drafted many times before it found its way into the Bill. My Honourable friend suspects me every time of distrusting his own drafting. I must admit, Sir, I found a little difficulty as to his intention in respect of those words—" an offence which includes the one under the cognizance of the other Court ". I understand now what he means by those words from the remarks which have fallen from him in moving his amendment. What we have aimed at is as far as possible to get a rule of thumb for these cases which will bring finality. That is why we have provided that the first High Court to take action in the matter should be the High Court within whose jurisdiction the proceedings were started. There is no particular reason why that High Court should come in; but we must start somewhere and that is why we have selected that High Court. Mr. Seshagiri Ayyar would leave it to any High Court to move, but I think that possibly he has not contemplated the case where both High Courts act simultaneously. It is not at all impossible. Both High Courts are moved and both give orders, each without the knowledge of the other; both give orders that the trial should continue in courts within their jurisdiction; what is the result? The two trials come on; there is no getting away from that. I think, Sir, the clause in the Bill will obviate that difficulty. At any rate we shall not get simultaneous orders from two High Courts. The High Courts will take it in rotation; if one won't move then the other will. Mr. Seshagiri Ayyar thinks there will be some difficulty about the words used at the beginning of the clause " take cognizance of the same offence ". It may be, Sir, that there are some cases which the clause in the Bill will probably not meet.

But it is impossible to draft this clause to make it comprehensive and to make it meet every possible case that will arise. We tried to do it, but we could not. The House must remember that until this clause was put into the Bill there was no provision whatever like this. We have gone as far as it is possible to go without unnecessary complications to remove this difficulty which has actually occurred in practice. I think the procedure which the clause lays down should be allowed to stand. Mr. Seshagiri Ayyar's proposal will leave us in a state of uncertainty in certain cases; there will be no finality at all.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): May I suggest for the consideration of the Honourable Sir Henry Moncrieff Smith the addition of the words " of the same offence or of different offences on the same facts ". That might probably obviate the difficulty.

Sir Henry Moncrieff Smith: It is not an expression which is used in the Code at all. Perhaps my Honourable friend has in his mind the words 'offences arising out of the same transaction'. But that is far too wide and I think my friend will agree with me.

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

The motion was negatived.

Mr. President: The question is that clause 43 do stand part of the Bill.

The motion was adopted.

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

"In clause 44 before the words 'In the first proviso' insert the following:

'In section 188 of the said Code for the words 'Her Majesty' the words 'His Majesty' and for the word 'Queen' the word 'Crown' shall be substituted'."

I move this amendment with some regret, Sir, in that I am moving that the words which are dear to us should be removed from the clause as it stands. I think it is an oversight. I do not know if these words 'Her Majesty' and 'servant of the Queen' occur in other places, but they are an anachronism now. I do not know when we are revising the Code why we should not put this right. The substitution of the words 'His Majesty' and 'servant of the Crown' will make it all right. I therefore move the amendment.

Sir Henry Moncrieff Smith: Sir, Mr. Rangachariar is perfectly correct in saying that the words 'Her Majesty' and 'Queen' in the Code are anachronisms now; but the unfortunate thing is that there are several similar anachronisms in the Code. It is not much use our putting it right in one place, unless we can put it right in every place. In section 4 in two places the words 'Her Majesty' occur, and also in sections 54, 128, 130 and 131, and in innumerable places in the schedules to the Code. It is our intention to put these right When this Bill is passed and one or two other Bills affecting the Code are passed, we shall introduce a consolidating Bill remedying these defects. It is not easy, I suggest, to tackle it in one particular place; we might leave it as it is for the present.

Rao Bahadur T. Rangachariar: I accept the suggestion, Sir.

Mr. President: Amendment moved:

"In clause 44 before the words 'In the first proviso' insert the following:

'In section 188 of the said Code for the words 'Her Majesty' the words 'His Majesty' and for the word 'Queen' the word 'Crown' shall be substituted'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clauses 44, 45 and 46 do stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: I do not know, Sir, if it will be convenient to adjourn the House now. There is a function to which all of us have been invited. The next amendments relating to sanction matters will take some time.

The Honourable Sir Malcolm Hailey: We are unwilling to put our old friend aside even for a short time, but we are prepared to agree in this case.

Mr. President: It suits my personal convenience to adjourn the House. But, on the other hand, I should like to say here that the business of this House—and particularly business of this character—ought in the minds of Honourable Members to take precedence over everything, even of their own personal convenience. However, I waive that to-day and adjourn till Eleven O'Clock to-morrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 1st February, 1923.