THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

VOL. III.

PART III.

(1st February, 1923 to 20th February, 1923.)

THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

SIMLA
GOVERNMENT CENTRAL PRESS
1923.

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LEGISLATIVE ASSEMBLY.

Thursday, 8th February, 1923.

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

QUESTIONS AND ANSWERS.

Indians in Railway Compartments Reserved for Europeans.

334. ***Rai Bahadur Lachmi Prasad Sinha:** With reference to the reply given by Mr. Hindley to my starred question No. 141, during this Session, will the Government be pleased to obtain the informations from different Railways on the subject and place them on the table?

Mr. C. D. M. Hindley: The Railway Board believe that in practice no objection is offered to Indians who have adopted European dress travelling in compartments reserved for Europeans on the different railways. Government do not propose to call for further information on this point from Railway Administrations at present.

Raisina Chummeries.

335. ***Rai Bahadur Lachmi Prasad Sinha:** With reference to reply given by Sir Sydney Crookshank to my question No. 137, during this Session, will the Government be pleased to lay on the table a copy of the circular, if any, issued inviting the non-orthodox Indian clerks to occupy the bachelors' chummeries already built at Raisina?

Colonel Sir Sydney Crookshank: No such circular has been issued for the bachelor chummeries or for any other quarters in Raisina. The Government quarters in Delhi have now been classed as "orthodox" and "unorthodox," and may be applied for as such by Europeans and Indians alike.

UNSTARRED QUESTION AND ANSWER.

Safeguarding of Titles of Nawab, Raja, etc.

153. **Lala Girdharilal Agarwala:** What safeguard if any is provided in India for protection of the position, prestige, dignity and paraphernalia of persons created or recognised as Rajas, Nawabs, etc., whether as personal distinction or hereditary, in the past or in future corresponding to the Peers in England with irreducible minimum income or ancient nobility of India with impartible estates?

Mr. Denys Bray: Government safeguard the higher titles of Nawab, Raja, etc., by ensuring that recommendations for such titles are only made in the case of persons of considerable position in their own provinces and possessed of sufficient landed property to enable them to support the title. The Honourable Member is perhaps unaware that in certain provinces steps have been taken to provide for the descent of jagirs by primogeniture and for the descent of estates to a single heir. He appears also to be under a misapprehension as regards the practice in respect of peerages in England.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I beg leave to move that Sir Campbell Rhodes be nominated to serve on the Select Committee to consider and report on the Bill further to amend the Code of Civil Procedure. Honourable Members will remember that on the last occasion I moved for the appointment of a Select Committee to amend certain sections of the Code of Civil Procedure, and that that Committee consisted of the Honourable the Law Member and certain other Members of this House. The Honourable the Law Member has ceased to be a Member of this Assembly, and it is necessary to obtain one of the panel of Chairmen in his place. I therefore move that Sir Campbell Rhodes be appointed a Member of this Committee.

Mr. President: I presume the Honourable Member from Bengal consents to his name appearing in this motion.

Sir Campbell Rhodes (Bengal: European): Yes, Sir.

Mr. President: The question is that Sir Campbell Rhodes be nominated to serve on the Select Committee on the Bill further to amend the Code of Civil Procedure, 1908.

The motion was adopted.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to present the Report of the Select Committee on the Bill to amend the Married Women's Property Act. The Report contains one or two changes which the Select Committee has made. The first is to omit Buddhists from the operation of the amending Bill on the ground that there are very few Buddhists in India, and secondly, the Local Government of Burma propose to introduce legislation to amend the Married Women's Property Act, if necessary, in their local Legislative Council. The second change introduced by the Select Committee is with reference to the original proposal to give retrospective effect to this Bill. The Select Committee thinks that it would be a hardship to give retrospective effect in the matter of insurance policies already effected. These are the only two principal changes. I beg to present the Report to the House.

RESOLUTION *RE* STATE MANAGEMENT OF RAILWAYS IN INDIA.

Mr. President: The Assembly will now resume consideration of the Resolution moved by Maulvi Miyan Asjad-ul-lah on the 7th September, 1922, in the Simla Session, in the following terms:

"That this Assembly recommends to the Governor General in Council that the Indian Railways Act of 1890 be so revised as to give India the full benefit of State ownership of Indian Railways as is done in other countries where the Railways are owned and managed by the State."

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, before the House proceeds to the business of the day, I have a statement to make which I fear may cause a considerable disappointment.

This House last September agreed at my request that the debate on this Resolution should be postponed in order that the Government might have time to formulate their views on the question, what form of management should be adopted on the exviry of the existing contracts with the East Indian and Great Indian Peninsula Railways. The Government of India have formulated their views, though perhaps they might have formulated them earlier. I am afraid that the delay is due to my fault and I can only plead that during the last two months I have been rather heavily pre-occupied with work. Our views were wired Home to the Secretary of State at once, but in the time allowed to him the Secretary of State has not yet been able to form his conclusions. Our latest advice received only last night is that he will require another eight or ten days. The position therefore is that if Mr. Samarth's amendment comes on for discussion it will be quite impossible for me to explain our view as to the right solution of this important question. It seems to me therefore that the debate will be an unsatisfactory one, for if it does come on the Government will be unable to take any effective part in it. If therefore Mr. Samarth's amendment does come on, I shall be compelled to move for an adjournment of the debate on that amendment. I have thought it right, Sir, to give the very earliest possible notice of the position. I may say that if the debate on the amendment is adjourned the Honourable the Leader of the House undertakes to give a Government day for the adjourned debate before the end of this month and before the debate on the separation of the Budgets. I quite recognize, Sir, that this statement of mine may cause justifiable disappointment to this House and I can only express on behalf of the Government of India and myself our very great regret. I think it only fair to say that we did not give the Secretary of State very much time for consideration of what is after all a very important question, and for that also the Government of India in general and myself in particular must accept responsibility.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, the Honourable the Commerce Member is right in saying that there will be a feeling of disappointment in the House owing to the suggestion made by him. The Secretary of State has had ample time since the Ackworth Committee's report was presented to make up his mind upon this matter, and it is to be regretted that he should not have come to a conclusion upon this important matter earlier. The country has been agitated upon this question for a considerable time and it is not desirable that the decision should be put off any longer. However, Sir, having regard to the statement made by the Honourable the Commerce Member I do not think that my friends in this part of the House would object to the adjournment which he seeks, but on the understanding that before the end of February there must be a Government day on which this matter could be fully discussed. On that condition, Sir, we agree to the adjournment.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I regretfully subscribe to the sentiments to which expression has just been given. If anything, it illustrates the difficulty of our position; but we must recognize it. Mr. Innes has our complete sympathy in the troublous times that he has had. He has done admirable work and it is not his fault but his misfortune that he was not able to cope with the question earlier. We do feel, Sir, that it would be serving no useful purpose to have only a partial debate. Those of my friends whom I have been able to consult, agree with me that it would be an advantage to let the whole

[Sir Deva Prasad Sarvadhikary.]

question stand over till the end of the month, when we may be able to get all the materials that Government might think fit to place before us. I myself had an intuition that this debate was not coming on to-day and I am glad to be confirmed in my intuition.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have no doubt everybody will sympathise with Mr. Innes's misfortunes, but I should like to know if the Honourable Member had instructions from the Secretary of State on the substantive motion which was moved during the September Session of this House and upon which surely the Government must have received instructions from the Secretary of State regarding the attitude they should adopt. The Honourable the Member for Commerce and Industry could not be unaware of the fact that that is a wide and sweeping Resolution and that both Mr. Samarth's and my own amendments are merely specific recommendations not confined to the general question but limited to the future management of the two Indian Railways. In discussing these specific questions raised by Mr. Samarth and myself, I have no doubt the Government of India must have adverted to them in connection with the general Resolution which was under discussion during the Simla Session and the postponed discussion of which is set down on the agenda paper to-day.

Another question I should like to address to the Honourable Member for Commerce and Industry is, when did he send up his recommendations to the Secretary of State? (*Cries of* "No, no.") It may be that delay in sending up these recommendations long after . . . . .

Mr. President: I think it my duty to warn the Honourable Member that if he continues on this line he will forfeit his right of speech on the main Resolution on the adjourned occasion.

Dr. H. S. Gour: I am only asking, Sir, for information to guide me as to the action the Government of India will take in future not only in connection with this Resolution of Mr. Asjad-ul-lah, but with reference to my own amendment to that Resolution. It is for that purpose, Sir, that I should like some further information upon the subjects I have adverted to.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, without making any of those remarks or endorsing them which have fallen from Dr. Gour, I fully recognize the difficulty under which the Honourable Mr. Innes labours at the present moment. Dr. Gour along with myself is a member of the Central Advisory Committee on Railways . . .

Mr. President: I must issue the same warning. There is no motion for the postponement of this debate before the House and therefore I must warn Honourable Members that they will exhaust their right to take part in the main debate on this Resolution if they continue to deliver speeches on the question which is not yet before the House, namely, the question that the debate be now adjourned.

Mr. N. M. Samarth: That is the question upon which I am addressing the House.

Mr. President: The Honourable Member has not moved that motion.

The Honourable Sir Malcolm Hailey (Home Member): As I am not afraid of exhausting any right of speech on this subject, perhaps you will permit me now, taking what I think is the obvious sense of the House, to move formally that this debate be adjourned.

I would only wish to add, in reply to an observation which fell from Dr. Gour that we have received no specific instructions—that was I think the word he used—from the Secretary of State on the general question raised in the debate of September last. I may also perhaps be permitted to add that I and my colleagues feel that though Mr. Innes has very handsomely taken on his own shoulders the blame, if I may use the word, for the disappointment which has been caused to the House, we all feel that we must share that amply and fully with him. The fact is, that for some months the Government of India has been working at very high pressure on a large number of questions of great importance; and it was for that reason and that reason alone, not from any desire to delay this important question, that we were forced into postponing our recommendations to the Secretary of State on the question of State *versus* Company management. We have as a matter of fact—I feel it also due to the Secretary of State to say this—allowed very little time indeed for consideration of a question which, I need not say, does vitally concern him also. That is, I think, enough to say on this particular question. If my motion is carried, it will, I hope, meet with the sense of the House if we proceed to business which is by this time somewhat familiar to the House, I mean the Criminal Procedure Code.

Mr. President: Amendment moved:

"That the further consideration of the Resolution be adjourned."

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the question, in connection with the State management of railways, is of the greatest and most vital importance, and I think sufficient time was not given to the Secretary of State. I share the view which has been put forward by the Honourable Mr. Innes and the Honourable Mover of this motion for adjournment; and I, therefore, am in favour of it and support it.

Mr. President: The question is that the further consideration of the Resolution be adjourned.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): It will perhaps be convenient to the House if I give some indication of the future course of business beginning with to-day. We have found it useful to meet with Members of the Assembly who have proposed various amendments and discuss with them some of these amendments in advance. This has led to great expedition in debate and I would ask you, if you would give us to-day, before we resume the formal consideration of this Bill, some further time to go through these amendments. I would suggest that if we could continue this process amongst ourselves this morning the House might meet somewhat early this afternoon and continue the formal discussion of the measure.

[Sir Malcolm Hailey.]

With regard to future business, there will be no meeting of the Assembly to-morrow. The list of business for Saturday will be in the hands of Honourable Members in the course of the day. The Malabar Completion of Trials Bill, the Paper Currency Consolidation Bill and the Indian Stamp Amendment Bill will be introduced and the Indian Factories Amendment Bill will be taken into consideration and passed if the Assembly agrees. After that we shall take Mr. Hullah's two Resolutions on Emigration. On Monday, the 12th of February, we propose to continue the consideration of the Code of Criminal Procedure. On Tuesday, the 13th, we propose further to consider the Code of Criminal Procedure, and I hope to finish it. That will, I am sure, be a source of regret to the whole of the Assembly. To me it will be a source of additional regret, as I am beginning to learn a good deal about the Code of Criminal Procedure. After that on Tuesday we shall take up the Official Secrets Bill which has of course passed through the stage of Select Committee. Wednesday is a public holiday. Thursday, the 15th, is a non-official day for Bills. On Friday and Saturday we propose to take up the Fiscal Commission's recommendations (beginning on Friday and continuing on Saturday), and if time is left on Saturday to continue the discussion on Mr. Yamin Khan's Resolution regarding the Indianization of the Army which would otherwise come up on the 22nd. On Monday, the 19th, we propose to put before the House the Racial Distinctions Bill. I may explain, that I have had many conversations with my friends here regarding the proper way in which this Bill should be put to the House; I found that some Honourable Members were in favour of putting it for a Select Committee; others thought that it should come before the whole House. Of course I cannot anticipate the decision of the House when I finally bring the matter up; but, for my own part, I have decided to put before the House on the 19th instant a motion that the Bill be taken into consideration. On Tuesday, the 20th of February, we have a non-official day for Bills. On Wednesday the 21st, we propose to continue the discussion of the Racial Distinctions Bill. Thursday, the 22nd, is a non-official day for Resolutions. On Friday, the 23rd, or Saturday, the 24th—we have not yet decided on which of these two days it is more suitable to sit—we shall continue, and I hope to conclude, the consideration of the Racial Distinctions Bill. On Monday, the 26th of February, we have put down the Indian Penal Code Amendment Bill, known as the White Slave Traffic Bill, for consideration. That, I hope, will not take us long, and it will then be possible to proceed with the consideration of the Resolution which we have postponed to-day and to continue that on the 28th, if necessary, leaving time before the end of the month for the consideration of the further matter in which the House is interested, namely, the separation of the Railway and the ordinary Budget.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): With your permission, Sir, may I ask the Honourable the Leader of the House if he is in a position to give information as to what Resolution will be taken on the recommendations of the Fiscal Commission? Will it be one of those non-official Resolutions of which notices have been given by myself and by my Honourable friend, Mr. Manmohandas Ramji?

The Honourable Sir Malcolm Hailey: I have consulted my Honourable friend, Mr. Innes, on the subject and he proposes to take up the discussion

on a Resolution put forward by Mr. Jamnadas Dwarkadas running as follows:

"This Assembly recommends to the Governor General in Council that a policy of protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

Mr. Jamnadas Dwarkadas: With your permission, Sir, I should like to hear further on the question. This is only the first of a series of Resolutions that I have given in on the recommendations of the Fiscal Commission. Will not all of them be taken up or will the question be discussed piecemeal? I thought all might be taken up together as was done in the case of the Esher Committee's report.

The Honourable Sir Malcolm Hailey: Mr. Jamnadas, Sir, must not, I think, take up too much the attitude of Oilver Twist. We are doing our best for him by putting forward his own particular Resolution, and we think that this itself, as a matter of fact, will open up the whole question for discussion.

Mr. President: In order to meet the proposal made by the Home Member, I propose to adjourn the House now and meet again at 15 minutes past 2 this afternoon.

The Assembly then adjourned till Fifteen Minutes Past Two of the Clock.

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

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to present the Report of the Select Committee on the Bill to amend the Indian Penal Code in order to give effect to certain articles of the International Convention for the suppression of the white slave traffic.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The House will now resume further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State. The amendment under consideration is that moved by Dr. Gour:

"That in clause 99, in proposed section 386 (1) (*b*) omit the words 'or immoveable' and the words 'or both'."

Mr. H. Tonkinson: (Home Department: Nominated Official): Sir, when my Honourable and learned friend moved this amendment in his well-known stentorian tones he referred to the proposal in the Bill as vicious and unprecedented. I regret, Sir, that I was unable to get down any more of the adjectives which he used, but I propose to show that the provisions in the Bill are essential and that they are not accompanied by any possibility of

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abuse. I want in the first place to refer to the position in England. I suppose, Sir, that all Honourable Members will agree that if I can show that exactly corresponding provisions exist in the English criminal law after all the efforts which have been made by the legislators of the Victorian era and later, then there can be no possibility of these provisions being abuses or that they are unprecedented as suggested by my Honourable and learned friend. Rather, Sir, I would suggest that if such provisions do prevail in England then that is a reason why we should introduce such provisions in India. Well, Sir, as regards the position in England: at common law a fine was rarely if ever imposed on a conviction for treason or felony; fines were imposed on a conviction for misdemeanour, and except for provisions in Magna Charta and the Bill of Rights there was no general restriction upon the maximum amount of fine. For felony the provisions usually resorted to were the provisions relating to forfeiture. It is interesting to observe that as my Honourable friend in his speech when moving his amendment yesterday referred to the history of the abolition of the forfeiture provisions in the Indian Penal Code, so the corresponding history in England is also relevant to this point. I should like to read to the Assembly section 4 of the English Act by which the forfeiture provisions were abolished in England. Section 4 runs:

"It shall be lawful for any such court as aforesaid, if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony to award any sum of money not exceeding one hundred pounds, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed to be a judgment-debt, due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the Court to be paid und r the last preceding section of this Act."

That last preceding section, Sir, was repealed by the Costs in Criminal Cases Act, to which I will refer later, but I will invite the attention of the House to the words "judgment debt" in that provision. Honourable Members may suggest that these are provisions relating to fines imposed with the object of awarding compensation to the persons aggrieved, but, Sir, in this matter we are in an exactly similar position in India. When serious crimes are committed, it is surely reasonable, and I think many Magistrates do as a matter of course follow that procedure, if they have any reason to think that the fine will be recovered, to impose a fine with the idea of compensating the person who has suffered under the provisions of section 545. Now, Sir, how are these costs recovered in England? They are recovered, under the provisions of sub-section (5) of section 6 of the Costs in Criminal Cases Act, 1908. That sub-section runs as follows:

"Any order under this section may be enforced, as to any costs primarily paid out of local funds, by the council of the country or borough out of the funds of which they have been so paid, and, as to any other costs, by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the Court so directs."

Honourable Members will see that that contains a very similar provision to the proposal in the Bill. We are dealing up to the present with fines inflicted with the object of paying compensation to the person who has suffered from the misdeeds. I will turn now, Sir, to the cases of fines imposed

with the idea that the proceeds will go to the Crown. I will merely read a part of a writ of *fierifacias* for a fine which may be issued in such a case:

"Edward the Seventh, by the Grace of God, etc., to the Sheriff of..., greeting:

We command you that of the goods and chattels, lands and tenements of A. B., you cause to be levied — pounds, imposed upon him in the King's Bench Division of our High Court of Justice before him for his fine..."

That, Sir, is a much more stringent provision than anything that has been put into this Bill.

Well, let us turn now to the position in India. I would like first to refer to the history as regards the abolition of sentences of forfeiture under the Indian Penal Code. It will be remembered that Government made proposals for a limited abolition of such sentences. Well, the Bill in that case, Sir, was referred to a Select Committee of this Assembly. I should like to read the recommendation contained in the Report of the Select Committee. They said:

"We consider that it is better to proceed against the property of an offender under these sections by the imposition of a fine rather than by forfeiture. At present the law does not provide for this, as section 386 of the Code of Criminal Procedure, 1898, does not permit of fines being levied on immoveable property. We, therefore, recommend that fines imposed as a result of a conviction under sections 121, 121A or 122 of the Indian Penal Code shall be recoverable from the immoveable property of the offender if they cannot be recovered from the moveable property, and that this be provided for in the Bill for the comprehensive amendment of the Code of Criminal Procedure, 1898, which is at present under consideration."

I admit, Sir, that that is only a limited recommendation. But, Sir, amongst the signatories to that recommendation was the Honourable Member who moved the amendment. When he was moving the amendment yesterday, he said, that provisions as regards forfeiture only applied in a few exceptional cases. It is better to have those back rather than to be able to recover the fine from immoveable property. But he recommended in an exactly contrary sense when he signed this Report of the Select Committee, and in addition, it is not really true to say that the provisions as regards forfeiture only applied in a few exceptional cases. They applied, Sir, to all those cases which come within the purview of section 62 of the Indian Penal Code which we then repealed, that is, to all cases of persons transported or sentenced to imprisonment for a term of seven years or upwards.

Now, let us turn to the merits of the proposal. Why, Sir, if a man has invested his income in jewellery or other moveable property, should that property be subject to attachment for a sentence of fine when, if he had invested his income in a house, that house would not be so liable to be proceeded against on a warrant for the attachment of property in execution of a fine. There is no reason whatsoever why there should be this difference. My Honourable friend, Sir, suggested that there was no reason for believing that the present provision had been ineffective in any way. That, I submit, is a statement made under an entire misapprehension of the existing difficulties. Any person who has had any experience as a Magistrate will know the difficulty—the enormous difficulty—in recovering a fine under the present provisions, and they will know that some further provision is essential. This was realised in the Bill of 1914. Sir George Lowndes' Committee decided that some provisions were required, but they introduced a large number of safeguards and said in these cases a Civil Court ought to take action. Those are practically, Sir, the provisions in the Bill. In this connection perhaps I should now refer to the red-herring

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of the Hindu joint family to which my Honourable friend referred. Let us see what are the proposed provisions of section 386.

Under sub-section (3):

"Where the Courts issue a warrant to the Collector under sub-section (1), clause (*b*), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court, by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to the execution of decrees shall apply accordingly."

Well, Sir, as regards the Hindu joint family, we have introduced all the precautions contained in the Civil Procedure Code. There is absolutely nothing at all in the danger to the property of the members of a joint Hindu family which was suggested by my Honourable friend. I would like, Sir, just to recapitulate my arguments very briefly. The proposal in the Bill was found to be necessary and was embodied in the Bill of 1914. It was continued in the Bill of Sir George Lowndes' Committee and they introduced provisions so as to secure that all questions as to title should be determined by a Civil Court. That is the present form of the proposal. There is no fear as to the property of a Hindu joint family as it is secured exactly to the same extent as it is secured in the case of the execution of a decree under the Civil Procedure Code. The rules regarding exemption from attachment in section 60 of the Code of Civil Procedure apply also to the execution of such a fine. There are similar provisions in the English law. A Select Committee of this Assembly definitely recommended that we should make such a provision although their recommendation was, I admit, only as regards a few sections. But, Sir, those few sections do not cover the whole scope of the old forfeiture provisions in the Indian Penal Code. Under these circumstances, Sir, I hope that my Honourable friend will not press his amendment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, my first impression on hearing Dr. Gour was to support him. But on further reflection I find there is really no substance in the amendment proposed by my Honourable friend. I was under the impression that the new section proposed a new liability on immoveable property which did not exist already. If that is the idea under which this amendment was moved, then I find it is a mistaken impression. Under section 70 of the Indian Penal Code all the property of the person against whom a sentence of fine has been imposed is liable for the payment of that fine. It does not make a distinction between moveable property and immoveable property. In fact, the liability lasts for a period of six years and even the death of the offender does not discharge from the liability any property which would after his death be legally liable for his debts. So that, a mere amendment of the procedure section will not remove the substantive law which is enacted in section 70 of the Penal Code. The only difference which is sought to be made by the proposed amendment by Government is this. Hitherto there was no process by which this liability could be enforced under the Criminal Procedure Code. Probably—I must speak with caution on this matter—the Crown would have to file a suit and get a decree in order to enforce this liability on immoveable property. As regards moveable property, under the Criminal Procedure Code as it was, it could be seized and sold. That was the procedure hitherto applied. As regards the liability of the immoveable property, the Crown

would have to figure as plaintiff in a suit and get a decree and then get the decree executed, under the ordinary process of a Civil Court. No doubt, that would lead to delay and if that would save the property from attachment, if that procedure would in any way benefit the accused, I can understand our standing up for omission of this proposed new section. I do not see what defence the accused is going to have when he is put up as a defendant in the Civil Court when the Crown sues him for a fine lawfully imposed by a Court under the law. So it would be a mere formality altogether. The Crown is bound to get a decree. After all, the Crown will have to pay the stamp duty and the defendant will have to engage a pleader and the decree would be a matter of course. I could not understand what defence he could have when such a suit is instituted. So that it will be a meaningless procedure for the man to adopt, it is a purposeless procedure for the accused. After all, the procedure prescribed is only to enforce this liability of treating this order for fine as a decree as it were of a Civil Court and the Civil Court proceeds to execute the decree by attaching and selling the immoveable property of the defaulter. There is a great deal of force in the argument which Mr. Tonkinson has given to-day. Why should persons who invest their savings in moveable property be any more liable than persons who invest their savings in immoveable property? For instance, a business man who believes in stocks and shares may invest his savings in shares and stocks which can be easily seized and sold for non-payment of fine, whereas the other man who invests his savings in immoveable property would escape this liability. It seems to be a meaningless distinction, an unnecessary distinction. After all, it is a debt. He has to pay the debt and his property will be liable for that debt, and this only indicates the procedure for enforcement of the payment of that debt, and I do not know anything harsh in the procedure proposed. The Civil Court will still have power to enquire into any claims with reference to immoveable property. No doubt, it is a complicated procedure. Hitherto the Code of Criminal Procedure did not contemplate such a procedure on account of the attachment, claim sections and further other proceedings which arise out of those claim proceedings. But all those things have to be gone through in case this man has no moveable property from which the fine could be recovered. I wish the Government amendment had provided as in the English Act that if the fine could not be recovered from the moveable property then only the immoveable property should be proceeded against. I mean, if it had been left like that, there would be no objection, that is to say, if the words " issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter," could be slightly modified in this way, " against the moveable, and on failure to recover the same, thereout the immoveable property of the defaulter." As it is, the option is left to the Magistrate to proceed either against the moveable property or against the immoveable property or both. Immoveable property should be the last resort. It is only in case the fine could not be recovered from the moveable property of the accused person, then only the immoveable property should be resorted to. If some such amendment could be made, then perhaps the amendment of the Government would not be open to objection. I merely throw it out as a suggestion. I am sorry I have not given notice of that, but I hope the Government would bring their amendment in conformity with the English procedure which my Honourable friend, Mr. Tonkinson, referred to just now. I therefore see no substance in the amendment proposed by Dr. Gour.

Mr. H. E. Holme (United Provinces: Nominated Official): With due respect to the opinion of the Honourable and learned Mover of the amendment I am bound to say that my own experience at any rate suggests that the present system of realising fines in criminal trials does not work in a satisfactory manner at all. The realisation of such fines even from wealthy offenders is often a most tedious and most difficult process. Many such offenders seem to make it a point of honour not to pay their fines, if they can evade doing so in any possible manner. They are often able to conceal or remove their moveable property or to make it over to their friends or relatives or to persuade the agency deputed to realise the fine to make a false report that no such property is forthcoming. So much so that personally I have had practically to give up the imposing of fines as being a useless waste of public time and money. I have hardly ever taken over charge of a judgeship without having to write off a large amount on account of irrecoverable fines imposed by my predecessors and I understand that the same is the case in Magistrates' courts. This state of things would be entirely altered by the simple expedient of making immoveable property also liable for the payment of fines. I cannot see any reason whatever why criminal fines should not be a source of legitimate revenue to the State. On the contrary, it seems to me eminently desirable that criminals should not only make some compensation to the State for the expense caused by their misbehaviour but should assist in relieving the burden of taxation which so heavily presses on law-abiding citizens. A money-lender who may perhaps be extortionate and grasping is allowed to realise his demands by the sale of the immoveable property of a person whose only crime may be his improvidence, and I fail to see why the State should not realise fines imposed by criminal courts as some inadequate compensation for the misdeeds of criminals. I accordingly oppose this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I am not one of those, who are opposed to the realisation of fines from immoveable property, but there are certain features in the proposed amendment which to my mind demand careful consideration of this House and of the Treasury Benches specially. I quite see that an offender should not escape payment of fine by investing his money in immoveable property but at the same time the difficulties which were pointed out by my Honourable friend, Dr. Gour, are not entirely obviated by considerations such as those which were referred to by the Honourable Mr. Tonkinson in explaining the situation. What I mean to say is this. Has the Government amendment provided for the exclusion of all moveable properties which are not liable to attachment under the Code of Criminal Procedure, but which may have been attached in execution of a decree for the realisation of fine? To my mind, Sir, there are certain difficulties in the Government proposal for amendment and the difficulty lies in clause (2). The Local Government may make rules regulating the manner in which warrants under sub-section (1), clause (*a*) are to be executed and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrants.

Mr. H. Tonkinson: May I explain, Sir, that my Honourable friend seems to be under a misapprehension. Clause (*a*) relates only to moveable property and it has nothing to do with the amendment under discussion.

Mr. J. N. Mukherjee: Yes, of course, strictly speaking, I am not correct. I should have put my reference to this point, last of all. But as regards

the words ' other than the offender,' the House will notice that there are, under the Civil Procedure Code, certain moveable properties which are not liable to attachment, and if those words are to be retained in the clause certain moveable properties belonging to the offender as judgment-debtor—a list of such properties is given in section 60 of the Code of Civil Procedure which are not liable to attachment and sale—will be sold. Is it intended that articles such as implements of husbandry, and other means of subsistence of an agriculturist, are to be attached and sold under the Criminal Procedure Code? If the man was simply fined, is it proper that he should be turned into a criminal by being deprived of all his means of livelihood by the sale of such articles of primary necessity? I would ask the Honourable Members on the Treasury Benches to consider whether the words ' other than the offender ' should remain where they are or should be dropped. These words go to exclude all objections that may be preferred by the judgment-debtor himself on the ground that the property attached is not liable to attachment and sale, when he does so as the man on whom the fine has been imposed.

Then as regards immoveable property, there can be no doubt that provision has been made in the clause in question by which the nearest Civil Court, by which any decree for the amount of the fine could be executed, shall be in a position to realize the fine by executing the suit as a decree, and such court shall be deemed to be the Court which passed the decree, and all the provisions of the Code of Civil Procedure as to execution of decrees shall apply. So, my submission on this matter is not so very pointed as that of my learned friend, the Mover of the amendment. I think all the provisions of the Civil Procedure Code relating to the execution of decrees have been made applicable to cases where immoveable property has been attached for the realization of fine. The judgment-debtor under section 47 of the Code of Civil Procedure, in case of a joint property, or any co-parcener in such property under some other appropriate section of that Code can come forward and say that such property is not liable to attachment, on the ground that according to the law prevalent in any part of India, joint property or any interest in such property is not liable to attachment. From that point of view my submission is that the learned Mover of the amendment would not be justified in pressing it. But there is that other aspect of the question to be considered to which I have invited the attention of the Honourable Mr. Tonkinson.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I agree with the Honourable Dr. Gour that the introduction of this new provision, that a man's immoveable property is also liable to attachment, is not a proper one. It would lead to endless complications, considering the state of society in this country. Things in England may be different, but here we are living under a society where the joint family system prevails, where among Muhammadans the system of dower prevails, where, when a criminal Court would impose a fine, in nine cases out of ten it would naturally follow that the matter would have to be taken to the Civil Court to decide as to whether there are any other owners of the property which is sought to be attached. The Criminal Court is not competent to go into the question, the matter will have to be gone into by the Civil Court. When the Civil Court considers that point, there will be any number of hearings, and the case will drag on its slow length and it will be very inconvenient, and in every district the work of the Criminal Courts and of the Civil Courts on this account will be very greatly increased.

[Mr. Pyari Lal.]

Every criminal file will be kept alive till the fine is realized and the case relating to the fine is decided. You will require a special Civil Court to always try such cases. It will of course represent a gain for the legal practitioners working on behalf of Government and those retained by the accused; but the ends of justice will not be very much furthered. The learned gentleman who spoke last said that these fines might be a source of revenue to Government. I am sorry, Sir, to say that the idea of making the imposition of fines a source of Government revenue is peculiar to himself. I do not think this Government or any other civilized Government can take such a suggestion seriously. It is within my experience that the imposition of fines is not a real punishment to the accused but it is so to the members of his family. This punishment is not visited on him but on his wife and children and those immediately dependent on him. I have known cases where after a man has been fined, his wife has been divested of all her ornaments, jewellery and cooking utensils and the poor little homestead that she occupied. What happens is that you inflict any amount of misery on these persons. There may be in cities persons, of whom Mr. Rangachariar spoke, who possess stocks and shares and immoveable property. But in the district a poor man owns perhaps a share in a single little house in a village, in which not only he but his brothers and children and all his collaterals live. If the Government attaches and sells his share of the house what will it amount to? Only a fraction of the house is his and by selling it Government practically gains nothing and the whole family is disturbed by the introduction of a stranger into it, namely, the purchaser of the share. In fact I think that it is a mistake to impose fines in a criminal case; because no sooner is a fine imposed in a criminal case the police pounce upon the house of the accused and cause any amount of inconvenience and trouble and harassment to the inmates of the house. The result is that not only that man but the whole neighbourhood suffers. Then again, if the Civil Court goes into the question there are always any number of claimants, his brothers and collaterals and, in the case of Muhammadans, the whole thing may be charged with the dower debt of his wife. To decide such a question will not be an easy thing.

With these observations, Sir, I support the amendment moved by my Honourable friend.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, in case the House should have been misled by any remarks from my friend, Mr. Mukherjee, I would merely emphasise what Mr. Tonkinson pointed out when he interrupted my friend, namely, that so far as clause (*a*) of the Bill is concerned, which deals with the attachment of moveable property, we are making no change whatever in the law, nor indeed has Dr. Gour's amendment anything whatever to do with it. As regards clause (*b*)—immoveable property—Mr. Mukherjee himself pointed out that the Bill lays down that all the provisions of the Code as to the execution of decrees shall apply. Therefore, if the Code exempts any property from sale and attachment in execution of a Civil Court decree, that same property will not be attachable or saleable in execution of a warrant for the levy of a fine. Sir, Mr. Pyari Lal has revived what I thought was a very dead red-herring, *viz.*, that complications will be dragged in in connection with the Hindu undivided joint family. Mr. Tonkinson's arguments on that point were, I think, quite conclusive.

We are introducing nothing new. The Code of Civil Procedure has to deal with these matters in exactly the same way as it will in its application for the levy of fines under the Code of Criminal Procedure. Mr. Pyari Lal thought it a most improper thing that Government should make any revenue out of the imposition of fines. Sir, I do not know whether Mr. Pyari Lal is a Municipal Commissioner in Meerut, but very probably he is. But whether he is or he is not, he is probably aware that all Municipalities make a very large income out of fines imposed in their Municipalities. He has even suggested that we should go so far as to abolish fines altogether—a most iniquitous form of punishment. He has not suggested what we should substitute for it. The only substitute of course is imprisonment; that is the next minor punishment. Sir, if he is not prepared to go as far as that, the only solution of the difficulty so far as I can see is that we should first make a start by abolishing crime.

Mr. B. N. Misra: (Orissa Division: Non-Muhammadan): Sir, I am sorry I have to differ from the learned Dr. Gour as regards his amendment that attachment of immoveable property should be omitted. Sir, the object of the Criminal Procedure Code will be frustrated if immoveable property is not reached in order to realise fines. (*Dr. H. S. Gour*: "What is the present law?") Of course, immoveable property is reached now. A man may cheat me Rs. 10,000, may commit breach of trust of Rs. 20,000 and invest it in immoveable property, and then the law will have no hand to touch such property. If that be the sense of this Honourable House, I think, then, Dr. Gour's amendment may prevail, but I do not think that any Honourable Member of this House will consent to such criminal robbing of a man and investing money in immoveable property so that the Court cannot attach the same. I submit, Sir, that generally in India, as Mr. Pyari Lal has said, people possess more immoveable property and only in a few cases have got enough of moveable property. In case immoveable property is absolutely excluded from the scope of the criminal courts, really it will be difficult to realise any fine. In some cases landlords rather feel it much beneath their dignity to go to jail; they would sometimes court a sentence of fine. I think they consider it to be a lenient sentence if they are let off with a fine. In such a case if they cannot pay money, the only course left to the Court is to realise the fine by attaching immoveable property. Sir, it has been said that there will be complications in the case of members of joint Mitakshara family. No doubt there may be difficulties but that will not justify the abolition altogether of the attachment of immoveable property. I think that would strictly speaking come under the amendment which I have proposed as an explanation and I think Honourable Members would do well to support my amendment, that is, to attach only the interest of the offender or of the criminal. Sir, I think it has been already supported by Honourable Members and the Honourable Mr. Tonkinson has already explained fully the position. I oppose the amendment of Dr. Gour.

3 P.M.

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

The motion was adopted.

The amendment was negatived.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, may I move an amendment with regard to what my Honourable friend, Mr. Rangachariar, has suggested with regard to this clause if I am in order? The practice has always been to . . . .

Mr. President: Order, order.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, the amendment that I am going to move is:

"That in clause 99 in the proviso to proposed section 386 (1) (*b*) for the words 'undergone the whole of such imprisonment' substitute the following: 'been sent to prison'."

Clause 99 runs as follows:

"For section 386 of the said Code, the following section shall be substituted, namely:

'386 (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, . . . '."

Mr. President: I think it is unnecessary to read the whole section.

Rai Sahib Lakshmi Narayan Lal: Sir, in the proviso it is said that:

"If the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so."

The present law is that even if the man who has been sent to imprisonment in lieu of fine, has undergone the whole period of imprisonment which he was ordered to undergo, he is not exonerated from his liability to pay the fine. This is very hard, and in many cases it may mean double punishment. There are many to whom an imprisonment in lieu of fine even for a day or even for a few hours means degradation for life in some shape or other, and this degradation is caused from the fact of the imprisonment itself apart from the period for which he underwent imprisonment. The effect of my amendment is that no sooner a man is sent to prison in lieu of fine, he is exonerated from his liability to pay the fine. This change is not likely to create any difficulty in the administration of justice, if steps are taken for the realisation of the fine from the moveable and immoveable properties before the man is sent to prison, especially when new provisions are now being introduced for creating facilities for the realisation of the fine from immoveable properties also. With these few remarks I commend this amendment to the House.

The motion was negatived.

Mr. K. B. L. Agnihotri: (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"In clause 99, in the proviso to sub-section (1) of proposed section 386, omit all words after the word 'warrant'."

The effect of my amendment will be, Sir, that the proviso will read as follows:

"Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant."

Sir, under this law, we provide that in case a fine is imposed on an offender, the Court may direct that in default of payment of fine, an offender may be sentenced to imprisonment for a particular period and that period has also been limited to one-fourth of imprisonment given or some

such period. The period also diminishes proportionately to the amount paid or recovered. Well, the Court has already ordered and directed that he is to be imprisoned in default of payment of the fine and now under the new clause 386 we also provide that the fine could also be realised as a decree. In that case, Sir, this provision of directing the realisation of fines by sentencing the man to imprisonment will become superfluous. This addition itself shows that it is only in rare cases that the imprisonment might be inflicted on the offender in case he fails to pay the fine. If this is the case, then why should that offender be held liable for an extra punishment after he had undergone the extra imprisonment which he had been ordered to undergo in default of payment of the fine. I, therefore, propose that when once a man has undergone the sentence in default of a fine, he should not be made to pay that amount subsequently. With these words, Sir, I commend my amendment to the House.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, this section has to be read with the sections of the Penal Code which provide the substantive punishment of fine and under the Penal Code, if a portion of the fine had been paid after the man had been sent to jail for not having paid the fine, a *pro rata* reduction of the term of imprisonment in default shall be made and if no part of the fine is paid it is also laid down that if he suffers the imprisonment which is provided in default (sections 67, 68, 69 and 70), then again the six years' liability to pay the fine remains. So, it seems to me doubtful how we can here in this clause say that the suffering of imprisonment in default of payment of a fine should absolve the man from being liable to the fine, if the fine could be recovered by other means than by sending him to jail. And, therefore, I think this amendment which my learned friend proposes cannot stand together with the sections of the Penal Code. And it must also be recognised that the fine may be evaded—assuming that the man must pay the fine—then a fine might be evaded by a contumacious person and he may suffer the imprisonment and yet, having the means to pay the fine, not pay the fine. Is that an advantage? Will it work justly? That is another point which has to be taken into consideration. I, therefore, think that this amendment that serving the period of imprisonment provided in default of payment of the fine should absolve the person from being liable to pay the fine—I do not think I can support this amendment.

Sir Henry Moncrieff Smith: Sir, Mr. Subrahmanayam has quite rightly pointed out here that we must be consistent with our Penal Code. It is no good moving an amendment here unless we look to the Penal Code. The chief point against the amendment has already been made. If the fine is realised, or a portion of the fine is realised after the man goes to jail, then there is a proportionate reduction in the term of the imprisonment and we get rid of the man. I ask the House whether it is reasonable that a man should be allowed to be a burden upon the State when he has property from which the fine can be realised. As long as there is property and the Court thinks that the amount of the fine can be realised, I see no reason why in the law of this country, at all events, we should allow the accused to go to jail to lead a comfortable life there, very possibly a life which he enjoys, and to call upon the taxpayer to maintain him there when he has property out of which the fine might be realised.

The motion was negatived.

Mr. B. N. Misra: Sir, I am rather encouraged to move my amendment* which is an explanation, seeing the attitude of many Honourable Members who do not want property to be attached at all. Sir, what I propose is an explanation, and it relates to the section which provides that the property belonging to the offender is liable for the fine. Sir, these words are liable to be interpreted differently by Magistrates and that is why I have proposed this explanation. I had originally put in the words "specific interest in the property," but, Sir, there may be some difficulty in using the word "specific." So, with your permission, Sir, I propose that the explanation should be:

"When the defaulter is a member of a joint family, property of the defaulter means the interest in the property."

I wish to cut out the word "specific," as was suggested by the Honourable Mr. Rangachariar. Sir, many Honourable Members have already described the difficulties of attaching moveable property when they happen to be members of a joint family, and the Honourable Mr. Tonkinson pointed out the safeguards in the case of members of joint Mitakshara Hindu families. But I do not think the Honourable Mr. Tonkinson has met the case of the members who live in Bengal under the Dayabhaga family, or the Muhammadan members or the Sikhs or Parsees or other communities who live jointly in India and also the case of partnership property. There may be some partners having property in common and one man may commit some offence and he may be punished. Of course the property belonging to the firm also belongs to any one of the partners and the Courts will be justified in issuing a warrant and attaching such property. There will thus be several difficulties and I do not think I need add to what I said on the last occasion. I shall only point out, Sir, that instead of the whole property being attached, it will be safeguarding everybody if the interest of the offender alone is attached. This will meet the objection not only of members of Mitakshara Hindu families but also other members such as Muhammadans, Parsees or Indian Christians who are living jointly. With these words, Sir, I propose my amendment which runs as follows:

"In clause 99, to sub-section (1) of proposed section 386 add the following:

'*Explanation*:—When the defaulter is a member of a joint family, property of the defaulter means the specific interest in the property'."

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): My amendment is:

"In clause 99 in the proviso to sub-section (3) of section 386 omit all the words after the word 'offender'."

The proviso in which I want this amendment to be made reads like this:

"Provided that no such warrant shall be executed by the arrest or detention in prison of the offender in any case in which the Court passing sentence upon him has directed his imprisonment in default of payment of the fine."

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

The motion was adopted.

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* "In clause 99, to sub-section (1) of proposed section 386 add the following:

'*Explanation*:—When the defaulter is a member of a joint family, property of the defaulter means the specific interest in the property'."

Mr. J. N. Mukherjee: I ask the permission of the Chair in respect of an amendment I propose, which unfortunately I overlooked before, and which is to the effect that the words in the new sub-section 386 (2) " other than the offender " may be omitted.

Sir Henry Moncrieff Smith: I am afraid I must object to this amendment. The Bill has been under the consideration of this Assembly for over three weeks, and it is rather hard on the Government that when the consideration of the clause is practically complete they should be asked to consider the effect of an amendment sprung upon them without notice.

Mr. President: I must uphold the objection on the ground of notice. The amendment was only handed to me three minutes ago.

Clauses 99 to 103 were added to the Bill.

Bhai Man Singh: My amendment is:

" Omit sub-clause (*v*) of clause 104."

Sub-clause (*v*) of clause 104 says . . . .

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

The motion was adopted.

Clause 104, as amended, and clause 105 were added to the Bill.

Dr. H. S. Gour: Sir, the amendment which I shall move presently is another important amendment and I would ask this Honourable House to indulge me for a few moments when I explain its provisions. The object of my amendment is that in all cases where the District Magistrate or the Presidency Magistrate or a Magistrate of the first class has passed an order for keeping the peace or giving security for good behaviour the appeal should lie to the Court of Session and not to the Court of the District Magistrate. Honourable Members will find that under the present constitution the District Magistrate is the head of the district police, the District Superintendent of Police being regarded as his police assistant. All cases in the district relating to the breach of the peace and good behaviour are therefore cases in which the District Magistrate is interested officially and it is only fair that any order passed by a Magistrate including himself should be revisable on appeal by an independent tribunal, such as the Sessions Judge. I am only arming the superior court with appellate authority in a matter in which there are obvious objections to the hearing of an appeal by a person interested in the maintenance of peace and order in the district. On *à priori* grounds I do not think there would be any objection. The only objection which is likely to be raised from the Government side would be that you will be crowding the Court of Sessions with additional work and thereby increasing the cost of criminal litigation. That is no doubt an argument which requires consideration, but on the other hand, I would ask Honourable Members to observe that if any justice is to be done to an offender or an applicant against whom an order has been passed for keeping peace or being of good behaviour, is he likely to get fair and even-handed justice at the hands of the District Magistrate or is it not likely that the District Magistrate who peruses case diaries and police reports and hears a good many things which undoubtedly he is bound to hear about the *budmashes* of his district and about people who are disturbers of public peace, is it not likely that

[Dr. H. S. Gour.]

justice will suffer and has suffered in the past by such cases being finally disposed of by him rather than by an independent tribunal such as the Sessions Judge is, who will hear these cases and dispose them off in accordance with law. If there is therefore the question of cost on the one side and the question of justice on the other, I have no doubt that this House will vote for justice and after all how much would be the additional cost. I do not think it would be considerable and even if it were considerable, we are now living in times when the nation demands more and more of justice, and justice which is not open to the objections to which I have adverted. On these grounds, Sir, I move my amendment which runs as follows:

"In clause 106 (1) after the words 'said Code' insert the following:

'the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted, for the words 'District Magistrate' the words 'Sessions Judge' shall be substituted and'."

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire to oppose this amendment. In the first place I must draw attention to a remark made by the Honourable and learned Member who moved the amendment in which he said that, if any justice is to be done, there should be an appeal in all cases from the sentence of a Magistrate to an independent tribunal and not to the Court of the Magistrate who is the head of the district police and who is interested in the maintenance of peace and order. Well, if this is really the opinion of the Honourable Member, I should like to ask him why he has not moved a far more sweeping amendment. How can he tolerate the provisions in the Code which lay down that appeals from Magistrates of the second and third classes should lie to the District Magistrate. It seems to me, Sir, that there is a fault in his logic: and that if he is really of opinion that in all cases there should be an appeal to what he calls an independent tribunal which has no interest in the maintenance of peace and order, then he ought to move a further amendment and provide for all appeals from all Magistrates of whatever grade to lie to the Court of the Sessions Judge.

It seems to me, Sir, that he has selected the weakest possible case in proposing that appeals under this section should go to the Sessions Judge and not to the District Magistrate, because he has overlooked the fact that proceedings under this Chapter VIII are only *quasi*-judicial,—they are of the nature of executive proceedings with the object of preventing breaches of the peace and for maintaining order. Now that is not a matter with which the Sessions Judge should be directly connected. The responsibility of seeing that breaches of the peace of the kind provided for in Chapter VIII do not occur lies upon the District Magistrate. Even if he is not primarily interested in the case, the ultimate responsibility in all these matters lies upon him, and it is therefore proper that an order made by subordinate Magistrates under this section should be referred to him in appeal, and that, I submit, is the logical basis on which this section rests. I trust, therefore, Sir, that the House will not support this amendment.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I support this amendment. The Honourable Mr. Haigh endeavoured to correct Dr. Gour, saying that since he has not moved another amendment and that since appeals from sentences passed by second or third class Magistrates lie in the Court of the District Magistrates and not in that of the

Sessions Judge, and that since he has moved no amendment as to those, therefore, this amendment should not be appreciated. That is the main argument which he has advanced, namely, because he has made an omission in one direction, therefore, he may not be allowed to correct a provision of law, which is defective on the very face of it. I may tell my learned friend that a District Magistrate is considered to be responsible for the peace and order of the district. As a matter of fact, in some cases, suggestions, as to security under section 110 emanate, in a way, from him, and consequently, on the information given by the Police in some cases, or on the receipt of information given by some other persons, criminal proceedings, under section 110, are commenced. Now, Sir, I place this point before the House. The very District Magistrate whose desire is that all *badmashes* who do not behave properly, may be bound over, that is may be called upon to give security, should be allowed to hear appeals against such order. Should a man, who has been dragged to the Court and has been bound down, file an appeal against the same order before the District Magistrate, when we see that one of the first class Magistrates, subordinate to him, has passed that order. Is there any logic in it? May I ask this of the Honourable Mr. Haig? There is no logic in it I may say; it is iniquitous. For all intents and purposes the object of the law of appeal will lose its force. Therefore, on that ground, I support this amendment.

There is another ground. The Honourable Mr. Haigh failed to see that an appeal to the District Magistrate is competent only from the sentence passed or conviction ordered by a third-class or second-class Magistrate, and not by a first class and besides that an appeal will be instituted in the court of the District Magistrate only in case of a conviction or sentence; but when an order is made by a first class Magistrate under section 118 that is not a sentence or a conviction. He will agree with me that the sentence is quite different from an order passed under section 118 of the Criminal Procedure Code. All these proceedings started under sections 110 are considered preventive measures. They are not part of the substantive law. Substantive law is incorporated and embodied in the Indian Penal Code. If a person commits an offence and he is prosecuted and convicted only by a third class or a second class Magistrate then and then alone, namely, only in those cases, appeals, as I have already submitted, from such sentences or convictions, will lie in the court of the District Magistrate. But here there is no question of a sentence or conviction, or third or second class Magistrates. Here is an order, which only a first class Magistrate can pass, enjoining upon a person, who has been brought before the court, to give security for a certain period, and the person who has been called upon to do so, files an appeal from that order. The recommendation, put forward by this amendment, is that it does not look proper that the same officer, who is in charge of law and order, should be entrusted with the power of adjudicating upon the fitness, or impropriety of the same order. Suppose, Sir, that A is in charge of a certain Department and A offers a suggestion that in a certain village or a certain *ilaqa* all *badmashes* may be called upon to give security, so that crime may be reduced. Now A passes an order like that, and then A's subordinate first class Magistrate, after having gone into the evidence which has been produced in that behalf, passes an order appeals against which lie before the same A. Can there be any guarantee that A, though he may be very honest and his intentions may be very good, will not be influenced by the fact that it was he himself who, in a way who was the author of

[Dr. Nand Lal.]

these proceedings upon which the orders for taking security were eventually passed. Is he barring some exceptional cases, likely to set aside those orders? On this ground also I support this amendment, which speaks for itself and deserves the sympathy of the whole House.

The third ground is that on the occasion of framing laws or devising rules we must bear two important points in mind. One is, how will the public take it? Our District Magistrates are honest officers no doubt. Dr. Gour has not attacked their honesty or impartiality. His suggestion is that the public will look down upon this provision with contempt, they will misconstrue it. The attempt which has been made through the medium of this very commendable amendment is that we should not leave any room for avoidable criticism. That is the honest desire and the intention of the Honourable Mover of this amendment. I trust that the Treasury Benches will kindly appreciate this amendment and accept it. I may repeat my suggestion that there is no insinuation against any District Magistrate. They are very capable and able men; but the desire is that they should not be entrusted with the decision of appeals against the very orders which in a way, and in some cases, may be traceable to their honest suggestion as executive officers of the District.

With these remarks I support this amendment.

Mr. C. A. H. Townsend (Punjab: Nominated Official): Sir, the last speaker said that all proceedings under section 110 of the Criminal Procedure Code are ordered by District Magistrates directly.

Dr. Nand Lal: I did not say that; I said that in some cases the suggestions in a way emanate from the District Magistrates or executive officers.

Mr. President: If the Honourable Member wishes to correct a statement he must at least have the courtesy to do it standing.

Mr. C. A. H. Townsend: I leave it at that as Dr. Nand Lal apparently does not adhere to what I thought he said. But in this connection I wish to bring one point before the House which bears, I consider, not only on this amendment but on many others that have been moved in this debate by my friends on the left. Years ago, Sir, I was a Settlement Officer (without any Magisterial powers) in a Punjab district not very far from Delhi. As such it was my duty to investigate the affairs of every individual village. It was a district in which, as is common in the Punjab generally, cattle stealing was a very popular form of crime. In one village, Sir,—the same indeed happened at many other villages, but I remember this one village particularly,—the outcry on the matter was very insistent, the assembled grey-beards of the village all said that they had a very strong complaint against the administration. I asked them what that was. They said: "We cannot keep out cattle, they are all stolen away from us at night and the thieves are never punished, and if any persons are by chance sent to prison, they are let out at once." I pointed out to them that nobody could possibly object to innocent men not being sent to prison. They said: "We are not talking of innocent men: we are talking of men who are known to be guilty in the village of these offences. You should lock them up, and what is more you ought to be able to send them to prison on suspicion." There are Sir, two sides to every story. I fully admit that much discontent can be caused by innocent men being

sent wrongfully to prison. But I do ask this House to realise that discontent which might in the long run be equally dangerous to the administration can be also caused by men who are really guilty not being sent to prison, and before this amendment or other similar amendments are finally disposed of, I would ask my friends on the left to carefully consider this point. I oppose the amendment, Sir.

Rao Bahadur T. Rangachariar: Sir, many of the remarks made by my Honourable friend who just now spoke are irrelevant to the present question we are considering. We are not now concerned with the order imposing security. That is already passed. We are not concerned with sending a man to prison in case he fails to give security, because the law takes its course after the order, if he fails to give security. I do not see what all these remarks which my Honourable friend just now made have got to do with this amendment. We are now concerned with an appeal against the order which has been passed. There are two questions involved in this amendment. Only one question has been dealt with hitherto. The first question is to whom should an appeal go in a case of this sort. The section provides that an appeal shall lie only in the case of orders by certain Magistrates. The section as it stands provides an appeal in the case of orders by certain Magistrates to the District Magistrates. In the case of the Presidency Magistrate and the District Magistrate the Code as it stands provides no appeal. It is rather a curious lapse. If Honourable Members will compare section 406A as now proposed by the Government with section 406, the Code provides an appeal in the case of a District Magistrate and a Presidency Magistrate where he refuses to accept a surety. If he passes an order for security either for peace or for good behaviour, there is no appeal provided. That is the more substantive order, the more essential order and no appeal is provided in the case of an order by the District Magistrate or Presidency Magistrate. In a purely small matter just as refusing to accept a surety, an appeal is provided. I take it it is an unintentional omission in the Code that no appeal should be provided in such serious orders, when the orders are passed by a District Magistrate or a Presidency Magistrate. Look at the consequence of an order passed by a District Magistrate or a Presidency Magistrate either for keeping the peace or for good behaviour. The man has to go to jail for one year or for three years as the case may be. Now, can such an order remain without an appeal? If a first class sub-divisional Magistrate passes an order, that order is open to appeal. But if it is passed by a District Magistrate it is not open to appeal at all. I do not think, Sir, it is right. Therefore one of the objects of this amendment is a very good and necessary object. As Honourable Members will see you should provide for an appeal in such cases also.

To whom should the appeal go is the next point. Should it go to the executive head of the district or should it go to a judicial officer? The proposal is that it should go to the judicial head of the district. What is the harm in that amendment? An appeal lies; why should not the appeal go to a judicial officer? You have passed an order; the urgency is all gone; an order has been passed; there is no question of any stay or any thing of that sort; peace is not threatened; the vagabond is already bound over; you only give him the chance of an appeal. Give him a fair hearing. What is the good of giving a right of appeal with the one hand and taking away with the other hand? What is this fear of Sessions Judges, I want to know? Here we are accused of distrust of the police; we are accused of distrusting our Magistrates. May I in turn accuse

[Rao Bahadur T. Rangachariar.]

those who oppose these amendments that they distrust the Sessions Judges? They have no confidence in their Sessions Judges. I return that compliment to those who attack us. I say, Sir, that the Sessions Judge is the proper authority to deal with this matter and he will bring a judicial mind to bear upon the case.

Sir, there is an omission in the amendment proposed by my Honourable friend, Dr. Gour, which with your permission, Sir, I propose to make up. Sir, I wish to add the words " in the case of an order by a Presidency Magistrate to the High Court;" because if the amendment proposed by my Honourable friend is left as it is, it would read that in the case of a Presidency Magistrate also the appeal should go to the Sessions Judge. Of course the obvious answer which the Honourable the Treasury Bench would at once come forward with is " Where is the Sessions Judge in a Presidency town?" It is a very legitimate question to put, no doubt; but it is an oversight on the part of my learned friend, Dr. Gour, and I therefore, Sir, say that the words " in the case of an order by a Presidency Magistrate to the High Court " should be inserted. It is admitted these are appealable orders, and therefore I say let us give a fair appeal; no party suffers. I support the amendment and I move this amendment to add the words " in the case of an order by a Presidency Magistrate to the High Court," at the end.

Dr. H. S. Gour: I accept the amendment suggested by my Honourable friend, Mr. Rangachariar.

Sir Henry Moncrieff Smith: Sir, Dr. Gour, with his usual optimism and foresight prophesied that we had only one possible argument against his amendment, and that was that it would add to the work of the Sessions Courts and therefore add to the expense. Sir, that is a very strong argument. I think the House has perhaps overlooked the fact that this House is not going to be called upon to provide money for this additional work that will be cast upon the Sessions Courts. This House is proposing to throw a very heavy burden on the already overburdened Local Governments' finances. But, Sir, that might have been the end of our argument . . . . .

Dr. Nand Lal: With the permission of the Chair, I submit there are if I mistake not very few cases.

Sir Henry Moncrieff Smith: They may be few, but this House is proposing to make them very many. Dr. Gour went on, and like other Members in this House, proceeded to level an attack against the impartiality of the District Magistrate. I do not think the Government of India can sit down and listen to these remarks without some protest. It is quite true that my friend, Dr. Nand Lal, has said that he intended nothing. He may have intended nothing, but he said a great deal. Dr. Gour, said, justice has got to be done in these cases and is the offender likely to get fair and even-handed treatment from the District Magistrate? Dr. Nand Lal said, that it is the District Magistrate who is responsible for the peace and order of the district and therefore you cannot expect him to be impartial in these matters . . . . .

Dr. Nand Lal: I did not say so, Sir.

Sir Henry Moncrieff Smith: I have not got a short-hand report. I have got down as much as I could.

Dr. Nand Lal: On a point of personal explanation, Sir. What I said so far as I can recollect was that our District Magistrates are competent, impartial and experienced, but at the same time we ought to be very careful to see that the appeal is not instituted in the Court of the District Magistrate, because it will be more desirable. This is what I had submitted.

Sir Henry Moncrieff Smith: Sir, it is by no means the case that the District Magistrate always institutes the proceedings in these cases. Far from it. I have been a Magistrate myself for years, and I know it is, as a matter of fact, in most cases the Superintendent of Police who eggs on his Sub-Inspectors to help to preserve the peace of the district by using the powers that they have got to bring offenders of this kind before the Courts. I would suggest, Sir, with reference to this point that a District Magistrate can barely be trusted because he is likely to listen to everything that the police say to him, I would suggest to the House that the District Magistrate who sits at his headquarters and swallows everything that is put before him by the police would find something very different from peace and good Government in his district; he will find most hopeless confusion and unrest in his district in a very short time. The District Magistrate, Sir, I think, must be trusted to keep the reins in his own hands and not to allow himself to be used as a tool by the police.

Mr. Rangachariar, Sir, has introduced his new amendment about the Presidency Magistrates. Mr. Rangachariar has given notice of an amendment himself, No. 298, and since he drafted that amendment he has apparently changed his mind, because if Mr. Rangachariar's amendment No. 298 is applied to the Bill it will have the result of providing no appeal whatever against any order of a Presidency Magistrate. Mr. Rangachariar now is proceeding to assist Dr. Gour to correct his mistake and at the same time to get out of his own. Sir, it has been suggested by Dr. Gour that you must not leave the final word in this matter with the District Magistrate, and Mr. Rangachariar would no doubt add now 'with the Presidency Magistrate.' But there is no question—let not the House be deceived by this argument—there is no question of the final word being with either of these Magistrates. There is revision in these cases. My Honourable friend says: "Ah! revision." I hope he remembers that, Sir, when he comes to move some of his later amendments. Revision, Sir, is regarded by many Members of this House as a most essential safeguard. They are pressing for it here, there and everywhere. But when I point out that this safeguard does exist in this particular case, Dr. Gour says "Ah! revision." There is the safeguard, Sir, and I consider that that is quite enough in the case of the Presidency Magistrate and the District Magistrate. There is a good deal of loose talk in regard to this amendment. It has been assumed that first and second class Magistrates are in the habit of passing orders to secure good behaviour and keep the peace. If Honourable Members will look at sections 107, 108, 109 and 110, they will find that it is only a very limited class of Magistrates who have power to pass orders at all.

Mr. F. E. Percival (Bombay: Nominated Official): Sir, I only wish to point out one additional fact, not mentioned by my Honourable friend, with reference to section 125. Section 125 runs:

"The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter, etc."

[Mr. P. E. Percival.]

Now, Sir, if we transfer the appellate power from District Magistrates to Sessions Judges, it seems to me that we shall be putting in a provision contradictory to section 125; for you give the power in one section to the District Magistrate to cancel the bond, and in the other section to the Sessions Judge. If the Sessions Judge rejects the appeal, all the same the District Magistrate can cancel the bond under section 125. The District Magistrate is the sole Appellate Authority dealing with security cases (*Dr. H. S. Gour*: "Prestige"); and that is the reason of the provision in section 125, Chapter VIII, to that effect.

There is one other point. With reference to my Honourable friend, Dr. Nand Lal's remarks regarding the orders given by the District Magistrate, it has been laid down that:

"Where a District Magistrate is executive head of a District and is actively concerned in the institution of proceedings against a person under Chapter VIII, he is debarred from hearing an appeal under section 406 without the permission of the Sessions Judge."

So that the case of the District Magistrate himself being concerned in the case has already been met.

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

The motion was adopted.

Mr. President: Before I put the question I want to ask the Honourable Mr. Rangachariar whether the amendment he proposes should not be inserted after the words "Sessions Judge" rather than at the end of the amendment.

Rao Bahadur T. Rangachariar: Yes, Sir, after the words "Sessions Judge."

Mr. President: The original amendment was:

"In clause 106 (1) after the words 'said Code' insert the following:

'the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted, for the words 'District Magistrate' the words 'Sessions Judge' shall be substituted and."

Since which a further amendment has been moved:

"To insert after the word 'Judge' the words 'and in the case of an order by the Presidency Magistrate to the High Court'."

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

The motion was adopted.

Mr. President: The question is that the amendment, as amended, be made.

4 P.M. The Assembly then divided as follows:

AYES—35.

Abdullah, Mr. S. M.	Lakshmi Narayan Lal, Mr.
Agnihotri, Mr. K. B. L.	Mahadeo Prasad, Munshi.
Ahmed, Mr. K.	Man Singh, Bhai.
Ayyar, Mr. T. V. Seshagiri.	Misra, Mr. B. N.
Bagde, Mr. K. G.	Mukherjee, Mr. J. N.
Barua, Mr. D. C.	Mukherjee, Mr. T. P.
Bhargava, Pandit J. L.	Nag, Mr. G. C.
Chaudhuri, Mr. J.	Nand Lal, Dr.
Dalal, Sardar B. A.	Neogy, Mr. K. C.
Dass, Pandit R. K.	Pyari Lal, Mr.
Girdhardas, Mr. N.	Ramayya Pantulu, Mr. J.
Gour, Dr. H. S.	Rangachariar, Mr. T.
Gulab Singh, Sardar.	Reddi, Mr. M. K.
Hussanally, Mr. W. M.	Singh, Raja K. P.
Jamnadas Dwarkadas, Mr.	Srinivasa Rao, Mr. P. V.
Jatkar, Mr. B. H. R.	Venkatapatiraju, Mr. B.
Joshi, Mr. N. M.	Wajihuddin, Haji.
Kamat, Mr. B. S.	

NOES—30.

Allen, Mr. B. C.	Hullah, Mr. J.
Blackett, Sir Basil.	Innes, the Honourable Mr. C. A.
Bradley-Birt, Mr. F. B.	Ley, Mr. A. H.
Bray, Mr. Denys.	Moncrieff Smith, Sir Henry.
Burdon, Mr. E.	Muhammad Hussain, Mr. T.
Cabell, Mr. W. H. L.	Muhammad Ismail, Mr. S.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Clow, Mr. A. G.	Sassoon, Capt. E. V.
Crookshank, Sir Sydney.	Singh, Mr. S. N.
Davies, Mr. R. W.	Tonkinson, Mr. H.
Faridoonji, Mr. R.	Townsend, Mr. C. A. H.
Haig, Mr. P. B.	Tulshan, Mr. Sheopershad.
Hailey, the Honourable Sir Malcolm.	Webb, Sir Montagu.
Hindley, Mr. C. D. M.	Willson, Mr. W. S. J.
Holme, Mr. H. E.	Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. President: The question is that clause 106, as amended, stand part of the Bill.

Rao Bahadur T. Rangachariar : I move:

"In clause 107, in proposed section 406-A substitute the following as clause (*b*) in the places of clauses (*b*) and (*c*):

'(*b*) If made by any other Magistrate to the Court of Sessions."

The clause is:

"Any person aggrieved by an order refusing to accept or rejecting a security under section 122 may appeal against such order:

(*a*) if made by a Presidency Magistrate, to the High Court;

(*b*) if made by the District Magistrate, to the Court of Session; or

(*c*) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

My proposal is that in place of clauses (*b*) and (*c*) we should have the following:

"If made by any other Magistrate, to the Court of Session",

[Rao Bahadur T. Rangachariar.]

that is to say, that if it is made by any other Magistrate than a Presidency Magistrate it will go to the Court of Session. It follows the previous section and I hope there will be no difficulty in accepting it.

Mr. H. Tonkinson: I oppose the amendment. My Honourable friend perhaps consider that his present proposal is consequential upon the previous proposal. I submit that it is nothing of the kind. In section 406A we are providing for an appeal in cases in which there has been no appeal before and I submit that we provide quite sufficiently when we allow these appeals to the District Magistrate, if the order is passed by a Magistrate other than the District Magistrate. In fact, there is not the least doubt that the last amendment that was carried against us and the present amendment are entirely inconsistent with Chapter VIII of the Code. Chapter VIII of the Code gives the full control in these proceedings to the District Magistrate and there is no doubt whatsoever that he should be the person . . .

Rao Bahadur T. Rangachariar: I do not press my amendment.

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

Dr. H. S. Gour: This amendment which I move is consequential. It runs as follows:

"In clause 107 for clause (*b*) of proposed section 406A, substitute the following:

'(*b*) if made by the District Magistrate or a Magistrate of the first class to the Court of Session; or'."

I shall explain to the Honourable Members why it is consequential. In the proposed section 406A it is provided:

"Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

(*a*) if made by a Presidency Magistrate, to the High Court;

(*b*) if made by the District Magistrate, to the Court of Session; or

(*c*) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

Honourable Members will see that such an order may be passed by a first class Magistrate, as Sir Henry Moncrieff Smith has pointed out that first class Magistrates are empowered to deal with these cases of security. Now, Honourable Members know that in ordinary cases the District Magistrate has no jurisdiction whatever over a sentence or conviction of a first class Magistrate and the only Court which is empowered to hear appeals from a conviction by a first class Magistrate is the Court of Sessions. I see no distinction in principle between a conviction and an order refusing to take security and I do not see why if in the one case the Sessions Court is the right Court, in the other case the Sessions Court is the wrong Court and why an appeal should lie to the Court of the District Magistrate. That is, I submit, an anomaly which my amendment seeks to remove. I do not think that the Government should oppose this amendment. It will make the Code more logical and more consistent. It will show that the Sessions Court being the ordinary appellate tribunal for dealing with cases disposed of by a first class Magistrate that Court will also hear all cases in which the first class Magistrate passes an order under the preventive sections and, Sir, the objections which I have raised and which the House has just now endorsed by their vote apply equally to this amendment and I trust that the House will support me.

Sir Henry Moncrieff Smith: I must protest against Dr. Gour's assertion to the House that if the Sessions Judge is the right person to hear appeals against orders requiring security, he is therefore obviously the right person to hear appeals against an order refusing to accept a surety because that surety is not a fit person. The two matters are on an entirely different footing. In the one case you are passing an order definitely that may have the effect of interfering with a man's liberty for a long time. It is quite true that by refusing to accept a surety you may thereby interfere with a man's liberty for a short time. But all he has to do is to find another surety. The man whom he has put up in the first instance has been definitely found after a magisterial inquiry on oath not to be a fit person to stand surety—and I would ask the House to remember that this magisterial inquiry on oath is quite a new thing in the Code. We have provided a safeguard here against improper rejection of sureties and in this inquiry on oath, the Magistrate has to find on definite grounds, which the High Courts have laid down for the guidance of subordinate Courts, that the person offered is not a fit person. He has no money. He lives at a distance or he is a bad character himself. Sir, in that case, does Dr. Gour require the Sessions Judge to decide whether the Magistrate's order was a proper one or not. That is a matter that is well within the competence of the District Magistrate. Dr. Gour has not reminded us again this time of our argument regarding expense. But here again the question of expense comes in very seriously. It is not a laughing matter at all. Local Governments will probably find themselves in the position of having to increase the number of Sessions Courts very considerably. They are always having to put on additional Sessions Judges simply because arrears accumulate and the arrears will accumulate to a far greater extent, if it provides, as the House has already done, that all appeals in security proceedings are to go to the Sessions Judge, and also now by this amendment that further appeals are to go to him when a Magistrate passes a preliminary and unimportant order declaring a surety to be unfit to stand security for a person who has already been found to be either a person likely to create a breach of the peace or likely to be of bad behaviour.

Mr. Pyari Lal: Sir, the Honourable Sir Henry Moncrieff Smith has not met Dr. Gour's arguments. What Dr. Gour says is that you must be consistent. When you provide that all appeals from first class Magistrates should go to the Sessions Judge and not to the District Magistrate, why should you make an exception in this particular case? We must be consistent. That is the first thing that we must preserve and in that view I think he is perfectly right. As to the matter of costs, I do not know how the Honourable the last speaker has run away with the idea that the work of the Sessions Judge will be over-burdened because a few more appeals under these preventive sections will go to his Court. I know it for a fact that security cases for bad behaviour you can count on your finger's ends in the whole year. As regards security cases for keeping the peace, their number may be a little more, but they are not half so important as the security cases for bad behaviour. There might be a dozen cases in a year, and these dozen cases surely will not make any difference in the amount of work the Sessions Judges have to do.

Mr. H. Tonkinson: Sir, I would just like to make one remark as regards a question of fact. The Honourable Member who has just sat down stated that there were only half a dozen cases a year of proceedings under this Chapter. I take the statistics for Madras for the year 1921. There were 1,221 persons ordered to give security to keep the peace—I give

[Mr. H. Tonkinson.]

the figures for persons convicted, Sir,—and as regards " security for good behaviour " 1,781, in the same year.

(*Voices*: " They were non-co-operation cases.")

Dr. H. S. Gour: May I ask how many cases were there in which a first class Magistrate has refused a surety? That is the only point we are now discussing.

Mr. H. Tonkinson: We have no record, Sir, of these separate cases; I only got up to refer to a point of fact, as my Honourable friend said that there are only half a dozen cases for security under this Chapter in the year.

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

" In clause 107 for clause (*b*) of proposed section 406-A, substitute the following:

' (*b*) if made by the District Magistrate or a Magistrate of the first class to the Court of Session; or '."

The Assembly then divided as folows:

AYES—25.

Abdullah, Mr. S. M.	Mahadeo Prasad, Munshi.
Agnihotri, Mr. K. B. L.	Man Singh, Bhai.
Ahmed, Mr. K.	Mukherjee, Mr. T. P.
Ayyar, Mr. T. V. Seshagiri.	Nag, Mr. G. C.
Bagde, Mr. K. G.	Nand Lal, Dr.
Bhargava, Pandit J. L.	Neogy, Mr. K. C.
Dass, Pandit R. K.	Pyari Lal, Mr.
Girdhardas, Mr. N.	Reddi, Mr. M. K.
Gour, Dr. H. S.	Singh, Raja K. P.
Gulab Singh, Sardar.	Srinivasa Rao, Mr. P. V.
Hussanally, Mr. W. M.	Tulshan, Mr. Sheopershad.
Jatkar, Mr. B. H. R.	Venkatapatiraju, Mr. B.
Lakshmi Narayan Lal, Mr.	

NOES—34.

Allen, Mr. B. C.	Holme, Mr. H E.
Barua, Mr. D. C.	Hullah, Mr. J.
Blackett, Sir Basil.	Innes, the Honourable Mr. C. A.
Bradley-Birt, Mr. F. B.	Jamnadas Dwarkadas, Mr.
Bray, Mr. Denys.	Ley, Mr. A. H.
Burdon, Mr. E.	Misra, Mr. B. N.
Cabell, Mr. W. H. L.	Moncrieff Smith, Sir Henry.
Chatterjee, Mr. A. C.	Muhammad Hussain, Mr. T.
Clow, Mr. A. G.	Muhammad Ismail, Mr. S.
Cotelingam, Mr. J. P.	Percival, Mr. P. E.
Crookshank, Sir Sydney.	Ramayya Pantulu, Mr. J.
Dalal, Sardar B. A.	Singh, Mr. S. N.
Davis, Mr. R. W.	Tonkinson, Mr. H.
Faridoonji, Mr. R.	Townsend, Mr. C. A. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Willson, Mr. W. S. J.
Hindley, Mr. C. D. M.	Zahiruddin Ahmed, Mr.

The motion was negatived.

Clause 107 was added to the Bill.

Mr. President: The amendment* standing in the name of Bhai Man Singh is outside the scope of the Bill.

Bhai Man Singh: I should like to draw the attention of the Chair to the question whether this amendment is relevant to the subject-matter of the Bill or not. There are some 3 or 4 sections wherein after orders are passed I want the right of appeal. One section is 133. We have, Sir, practically remodelled section 133 in the Bill. If Honourable Members will look at clause 24, they will see that we have practically remodelled the whole section 133 of the Code. The other sections are 137 and 139; they are consequential. If we provide any appeal in section 133, we shall have to provide for appeals in sections 137 and 139 also. Then, my case about 144 is still stronger, because if you look at clause 26 of the Bill, you will find that we provide in sub-section (*iii*) a new sub-section (5) as follows:

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

Mr. President: The Honourable Member has not shown me in the least how his amendment is in order in this place. This clause refers to acceptance of, or objection to, surety under section 122, and as far as I am able to read, it refers to nothing else. The Honourable Member proposes to make it refer to a great many other matters which are not in the clause at all.

Bhai Man Singh: We are now discussing section 406 which refers to appeals from Magistrates to the District Magistrate. Clause 406 refers to appeals. 406-A also refers to appeals. Whether I put my amendment as 406A or B it would not make any difference. We have only to see whether it is relevant to the question of appeal we are now discussing. When we have made important changes in section 144 by providing the right to a man to go and put in his objections and when we have also required the Magistrate to record his reasons in writing for rejecting his application and . . . .

Mr. President: Order, order. That is quite good reason for arguing on the merits of the clause itself, but it does not help me to see that it is in order. I think I must rule the Honourable Member out of order.

Clauses 108, 109 and 110 were added to the Bill.

Mr. President: The two new clauses standing in the name of Mr. K. Ahmed (Amendment† No. 313) are also outside the scope of the Bill.

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* "After clause 107 insert the following new clause:

'107-A. After section 406-A, the following section shall be inserted, namely:

'406-B. Any person aggrieved by an order passed by a Magistrate other than a District Magistrate or a Presidency Magistrate under section 137, section 139, section 141, section 143, section 144 (7) or section 145 may appeal to a District Magistrate'."

† "After clause 110 insert the following clauses:

'110-A. To section 411 of the said Code the following proviso shall be added, namely:

'Provided that any person so convicted by a Presidency Magistrate, other than the Chief Presidency Magistrate may appeal to the latter if he has been sentenced to imprisonment for a term not exceeding 6 months or to fine not exceeding two hundred rupees.'

'110-B. In section 413 of the said code the words 'or of whipping only' shall be omitted'."

Mr. T. V. Seshagiri Ayyar: Sir, the amendment which stands in my name wants to make this provision in the Code, namely, that where there are two or three persons jointly tried, and against one of them there is an appealable sentence and against the others non-appealable sentences, every one who has been jointly tried should have the right of appeal. I worded my amendment in a particular manner; the Government would like to have it in some other manner; and I am willing, Sir, to move it as it is worded by the Government. It is in these terms:

"In clause 111, in the proposed new section 415-A, for the words 'any of such persons in respect of whom an appealable judgment or order has been passed appeals' the following be substituted, namely:

'an appealable judgment or order has been passed in respect of any of such persons'; and all words after the words 'shall have a right of appeal' be omitted'."

Sir, I move the amendment.

The amendment was adopted.

Clause 111, as amended, was added to the Bill.

Clauses 112 and 113 were added to the Bill.

Rai Sahib Lakshmi Narayan Lal: Sir, the amendment which I move is:

"That in clause 114 after the words 'said Code' insert the following:
"In sub-section (1) the words 'empowered by the Local Government in this behalf' shall be omitted'."

Under section 435 of the Code only such Sub-divisional Magistrates as are empowered by the Local Government in this behalf have got the power to call for the record of the lower Court. It is only Honorary Magistrates and sometimes Sub-Deputy Magistrates who are subordinate to Sub-divisional Officers, and it is very inconvenient and expensive for people of a sub-division to go to the district headquarters to have a relief like this. It is only Magistrates of mature experience who are placed in charge of sub-divisions and it will be rather lightening the work of the superior officers to empower the Sub-divisional Officers to call for the record of their subordinate Courts. I move this amendment.

The amendment was negatived.

Dr. H. S. Gour: Sir, the intention of this amendment* is to preserve to the High Courts revisional jurisdiction in cases disposed of under sections 144 and 145. Honourable Members will remember that incidentally this question was raised at the earlier part of the debate and the Honourable Mr. Tonkinson pointed out that not only the chartered High Courts but all the non-chartered High Courts, such as the Chief Courts and the Courts of the Judicial Commissioner do, under various local Acts, possess a Statutory power of revision in such cases. It was then pointed out by the Honourable Mr. Tonkinson that those cases were not properly argued. That may be a question of opinion. It may be that those cases were not properly decided. Now, Sir, I ask the House a simple question. If it is a fact, as we have been assured by the Honourable Mr. Tonkinson, that all the High Courts, chartered and non-chartered, possess this power, then I say this clause is superfluous, nay misleading. If it is a fact that they do not possess the power, in that case I ask this House to endorse my opinion that this power is both salutary and necessary. It will not be denied, it has not been denied, by the occupants of the Treasury Benches that this power has in fact been exercised under section 107 of the Government

* "For sub-clause (*iii*) of clause 114 substitute the following:
'(*iii*) Sub-section (3) shall be omitted'."

of India Act and other local Acts. If so, so far as this clause is concerned, it conflicts with the express provisions of section 107 of the Government of India Act. It creates utter confusion. If the High Courts have power under section 107 of the Government of India Act to exercise the general power of superintendence over the subordinate Courts, what object is served by inserting this clause that orders under these Chapters 143, 144 and 145 shall not be open to revision under section 435? It might be said that though under the Code of Criminal Procedure the High Courts have not been given that power, still that power is exercised otherwise by the High Courts. I have already replied to this argument. I have, therefore, Sir, confidence that this House will vote for my amendment and place the powers of all the High Courts beyond any shadow of doubt, and I hope, as one Honourable Member suggests, that the Government, out of sheer consistency and due regard being had to what they said on the last occasion, will accept my amendment. I move it.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. My Honourable friend has referred to the powers exercised by Chartered High Courts in connection with the orders dealt with in this section. I submit, Sir, that all the rulings of the High Courts go to show that if a Magistrate has exercised jurisdiction or purports to have exercised jurisdiction under these Chapters or sections which he did not possess then the High Court may interfere. That, Sir, is quite a different thing from giving a general power of revision as the Mover of the amendment proposes to give. He, Sir, is confusing the general power of superintendence under section 15 of the old Charter Act (section 107 of the Government of India Act at present) with powers of revision. It is an entirely different question. These proceedings under section 144, Sir, are really of an executive order and the same applies to proceedings under Chapter XII. Take the case of section 176. I really do not understand why my Honourable friend suggests that there should be a revision of inquest proceedings. We have had similar provisions in the Code all along restricting the rights of revision in these cases, a revision going into the facts of the case and I therefore oppose the amendment.

Mr. President: Amendment moved:

"For sub-clause (*iii*) of clause 114 substitute the following:

'(*iii*) Sub-section (3) shall be omitted'."

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

The Assembly then divided as follows:

AYES—36.

Abdulla, Mr. S. M.	Lakshmi Narayan Lal, Mr.
Agnihotri, Mr. K. B. L.	Mahadeo Prasad, Munshi.
Ahmed, Mr. K.	Man Singh, Bhai.
Ayyar, Mr. T. V. Seshagiri.	Misra, Mr. B. N.
Bagde, Mr. K. G.	Mukherjee, Mr. J. N.
Barua, Mr. D. C.	Mukherjee, Mr. T. P.
Bhargava, Pandit J. L.	Nag, Mr. G. C.
Chaudhuri, Mr. J.	Nand Lal, Dr.
Cotelingam, Mr. J. P.	Neogy, Mr. K. C.
Dass, Pandit R. K.	Pyari Lal, Mr.
Girdhardas, Mr. N.	Ramayya Pantulu, Mr. J.
Gour, Dr. H. S.	Rangachariar, Mr. T.
Gulab Singh, Sardar.	Reddi, Mr. M. K.
Ikramullah Khan, Raja Mohd.	Singh, Raja K. P.
Jamnadas Dwarkadas, Mr.	Srinivasa Rao, Mr. P. V.
Jatkar, Mr. B. H. R.	Subrahmanayam Mr. C. S.
Joshi, Mr. N. M.	Tulshan, Mr. Sheopershad.
Kamat, Mr. B. S.	Venkatapatiraju, Mr. B.

NOES—29.

Allen, Mr. B. C.	Hullah, Mr. J.
Blackett, Sir Basil.	Innes, the Honourable Mr. C. A.
Bradley-Birt, Mr. F. B.	Ley, Mr. A. H.
Bray, Mr. Denys.	Moncrieff Smith, Sir Henry.
Burdon, Mr. E.	Muhammad Hussain, Mr. T.
Cabell, Mr. W. H. L.	Muhammad Ismail, Mr. S.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Clow, Mr. A. G.	Sassoon, Capt. E. V.
Crookshank, Sir Sydney.	Singh, Mr. S. N.
Davies, Mr. R. W.	Tonkinson, Mr. H.
Faridoonji, Mr. R.	Townsend, Mr. C. A. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Willson, Mr. W. S. J.
Hirdley, Mr. C. D. M.	Zahiruddin Ahmed, Mr.
Holme, Mr. H. E.	

The motion was adopted.

Mr. President: The question is that clauses 114, as amended, and 115 stand part of the Bill.

The motion was adopted.

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

" To clause 116 add the following:

' In section 437 as re-numbered the words ' or District Magistrate ' wherever they occur in the said section shall be omitted '."

Now, the present section 437 is the old section 436, and section 436 of the Code provides that in cases which are triable exclusively by the Sessions Judge, if there is a discharge, the Sessions Judge or the District Magistrate, on examining the record, may order a commitment. Sir, by my amendment I wish to take away the power of the District Magistrate in this matter and give this power only to the Sessions Judge. The Sessions Judge is the only competent authority to find out whether the case, after discharge, was such that it should have been committed to the Sessions Court, and my amendment will put this right. (*An Honourable Member*: " Old section 437 is now section 436.") Yes, the old section 437 which is now section 436. What I provide by my amendment is that such powers should only be vested in the Sessions Judge and not in the District Magistrate. With these few words, Sir, I move my amendment.

Mr. President: Amendment moved:

" To clause 116 add the following:

' In section 437, now section 436, the words ' or District Magistrate ' wherever they occur in the said section shall be omitted '."

Sir Henry Moncrieff Smith: Sir, I see no reason why this power, which has been with the District Magistrate so long, should be taken away from him now. The District Magistrate has always had this power to cause the person to be arrested and to be committed for trial if in his opinion the person has been improperly discharged. There is this safeguard in the section that no person can be ordered to be committed for trial until he has been given an opportunity to show cause why such an order should not be made. This is only a preliminary matter. A Magistrate who may only be a second class Magistrate is specially empowered to decide whether a person ought to be discharged or not. Surely, if we allow a subordinate Magistrate to form an opinion on this matter, there is no reason why we should not allow the District Magistrate himself to do it.

Rao Bahadur T. Rangachariar: It is not merely the second class Magistrate that comes within the scope of the section. Under section 437—Honourable Members will remember I am speaking of the old section 437, now re-numbered 436—an inquiry is held by a competent Magistrate, may be a second class Magistrate, may be a Sub-divisional Magistrate, may be a Magistrate of the first class. These people after hearing the whole evidence come to the conclusion that no case is made out for the prosecution and discharge the accused. On the same evidence as held by the different High Courts the District Magistrate says:

"I will come to a different conclusion on the evidence. Not having seen a single witness in the box, on the same evidence I take a different view and I will order a further trial before a Magistrate subordinate to me."

Here the District Magistrate of the District on the same evidence comes to the conclusion saying "I differ from the Magistrate who tried the case. Now I order a further trial." What does it mean? It really means a direction to the subordinate Magistrate, "Now take a different view and come to a contrary conclusion." Therefore, it is not right that such a power should be with the District Magistrate. It should rest only with the Sessions Judge. The object of this amendment is that the Sessions Judge should direct a re-trial and not the District Magistrate. That is the object of this amendment and I support it.

The Honourable Sir Malcolm Hailey: May I ask the Honourable Member (Mr. Rangachariar) whether he is arguing on the present section 436?

Rao Bahadur T. Rangachariar: Yes.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri's amendment refers to clause 437.

Rao Bahadur T. Rangachariar: He corrected it, Sir.

Sir Henry Moncrieff Smith: Mr. Agnihotri's amendment cannot apply to the old section 437. Apparently he proposes to omit the words "or District Magistrate" wherever they occur. I do not find the words "or District Magistrate" in section 437.

Mr. President: May I draw the attention of the Honourable Member that the words "or District Magistrate" occur twice in the old section 436.

Mr. H. Tonkinson: Sir, I should merely like to point out that Mr. Agnihotri was arguing definitely for the amendment of new section 437. He referred entirely to the power of ordering committal. My Honourable friend, Mr. Rangachariar, comes forward with an entirely different argument, an argument applicable to an entirely different section, a section to which the amendment as moved cannot apply in actual words.

Mr. President: Amendment moved:

"To clause 116 add the following:

'In section 437 the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Dr. H. S. Gour: May I suggest a verbal correction with the permission of the Honourable Mover of the amendment? What his intention was, was to take away the power of ordering further inquiry by the District Magistrate under the old section 437.

Sir Henry Moncrieff Smith: It could not have been the Honourable Member's intention for he has moved for the deletion of the words " or District Magistrate " wherever they occur. The words " or District Magistrate " do not occur at all in the old section 437.

Dr. H. S. Gour: I am surprised that the Honourable Members, being deprived of good arguments have taken to quibbling. Everybody knows what the object of the Honourable Mover of the amendment was. In the old section 437, now section 436, the object, as he has explained, was to take away the power of revising an order of discharge or dismissal of a complaint under section 203 from the District Magistrate and transfer it to the Court of Sessions. That is the sole object.

The Honourable Sir Malcolm Hailey: If that was his object, his speech was curiously silent on the point. If I am right, he referred to commitment, and I would appeal to him to tell us whether he was not arguing on a question of commitment. I refuse to accept Dr. Gour's version of what the Honourable Member said and I believe the Honourable Member himself will refuse it.

Mr. President: The Honourable Member has himself disappeared. The question is that that amendment be made.

Dr. H. S. Gour: There is a clerical mistake. That mistake has arisen owing to misapprehension and the Honourable Member just now asked me to correct that mistake. I am told he has gone to refer to some books.

Mr. President: As has been pointed out by Sir Henry Moncrieff Smith. the section, as re-numbered, will be 436 if you leave out the word ' or.'

Dr. H. S. Gour: We are prepared to drop out the word ' or.'

Sir Henry Moncrieff Smith: Otherwise the whole section 437 become nonsense.

Mr. K. B. L. Agnihotri: There is no doubt that a confusion has been created and the word ' or ' is confusing enough but my meaning was the old section 436, which is now 437, though it is not clear in the amendment as it is. There is no doubt about it.

Rao Bahadur T. Rangachariar: The words to be omitted will be " and the District Magistrate may himself make or direct any subordinate court to make."

Mr. President: That is a different amendment at all events in form. Will the Honourable Member tell us what his intention was. If the Honourable Member will take the Code as it stands, which clause does he wish to refer to.

(Mr. Agnihotri stood up but did not speak.)

Mr. President: If the Honourable Member does not know, I must rule the whole discussion out of order.

The question is that clause 116 do stand part of the Bill.

The motion was adopted.

Clause 117 was added to the Bill.

1 P.M. **Rao Bahadur T. Rangachariar:** Sir, I move the following amendment:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely: 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

What happens, Sir, is this. Under the Code as it stands the High Court have been given the power to enhance the sentence in the case of persons who have been convicted by lower Courts. Now, Sir, the accused person takes the conviction, and he does not care to appeal. Rather than undergo the expense of going to the High Court and appealing against the sentence, he rather suffers the sentence and keeps quiet. But the police are not satisfied with the sentence imposed by the Magistrate or Sessions Judge who tried the case. They say, he should have been given a longer sentence or a larger punishment, and therefore, they drag the poor man to the High Court. When he appears before the High Court, it stands to reason that he should be able to say, "Well, I have been wrongly convicted, but you want to impose a heavier penalty now. I was content to let things alone, but here the police won't leave me alone, they have dragged me to the High Court, now let me establish my innocence, the case is not proved against me, the evidence is false, I want to establish that." Sir, there are Judges and Judges. Here unfortunately the luck of the accused comes into play. It depends upon the particular Judge— as we all know, the High Court contains 5, 6, 8, 9, 12 or 15 Judges. It all depends upon the particular Judge who hears the particular case or the particular Bench which hears the case. If he is a Judge who is leniently disposed, who is merciful, combines justice with mercy in the discharge of his functions, he will say, "if you are not guilty, I am prepared to hear it", but there are other Judges—I have been frequently told, when I had to defend cases, I have been told, "no, no, the conviction stands, you have not appealed, or the time is up, you have got 30 or 60 days for you to appeal, you have allowed the conviction to stand, show cause why I should not inflict the heavier penalty which the police want. I have to ask you to show cause against enhancement." Sir, I have been told so dozens of times; it is an injustice to do that. We must not leave it to the sweet will and discretion of particular Judges to say, whether they will hear that point or not. If the man is able to satisfy the revising authority, if the man is entitled to acquittal, it is only right that the High Court should do so. I understand the Government Benches might say, "who ever said no." As I stated, there are Judges who have said that, in my own experience. Therefore, the principle is accepted, and all that they say is that it is unnecessary to provide it. I say it is necessary not only in my experience but in the experience of other friends who have practised in the High Courts, and I therefore think, Sir, it is a just provision, it is a necessary provision, we should make, and I hope the Government will not oppose it. I move it.

Mr. President: Amendment moved:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely: 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

Sir Henry Moncrieff Smith: Sir, I must oppose this amendment, because I consider it to be entirely superfluous and an attempt to introduce

[Sir Henry Moncrieff Smith.]

an excrescence into the Code. Mr. Rangachariar spoke of accused persons, convicted persons, who themselves did not want to appeal being dragged before the High Court by the Police. I ask whether any Member of this House has known of an accused person being dragged before the High Court by the police.

Rao Bahadur T. Rangachariar: I said so metaphorically.

Sir Henry Moncrieff Smith: The police never go to the High Court and ask for enhancement of a sentence. Occasionally, very occasionally, the Local Government may move the High Court to enhance sentences, but what happens in 90 per cent of cases, or even more than that, is that the High Court, in examining the statements that come up from the Sessions Courts, see what they consider to be an inadequate sentence, and they send for the record themselves, and then they cause a notice to be issued. There is no question of the police in this matter whatever.

Rao Bahadur T. Rangachariar: It does not matter who does it.

Sir Henry Moncrieff Smith: Now, Sir, I say this amendment is quite unnecessary for the following reason. Under section 439, it is definitely laid down that the High Court may in its discretion exercise any of the powers conferred on a Court of Appeal by section 423—I only refer to section 423, that is the only one that is relevant here—and in section 423, sub-section (1), clause (*b*), you find that one of the powers the High Court can exercise on appeal—and therefore can exercise in any case of revision when it sends for the record itself—is the power to reverse the finding and the sentence and acquit or discharge the accused or order him to be retired, and so on. When the High Courts have there got that power distinctly thrown at their heads in the Code, I do not see any necessity for the Legislature to throw it at their heads again.

Dr. Nand Lal: Sir, I support this amendment which commends itself. It happens in many cases, Sir, that the accused is a poor man who has been wrongly convicted. He has no money, in his pocket, to engage a good Counsel, who in some cases charge somewhat heavy fees. Therefore justice is denied to him on account of poverty. He does not go to the appellate court. To illustrate what I mean, let us take a hypothetical case. An accused is prosecuted and convicted under section 325 by a first-class Magistrate and is sentenced to three months imprisonment. He is sent to jail and undergoes the imprisonment. After that he returns to his village and accosts his accuser: "I was innocent indeed; you put me in jail; however I am out now." That opponent feels jealous of the poor man's freedom and is annoyed. He approaches the police or some executive officer and then a petition for revision is filed in the High Court and notice is issued calling upon the man to shew cause why the sentence should not be enhanced. The man is very much surprised when that notice is served upon him, and he regrets that he has not filed any appeal. He, however, in obedience to the notice, appears, and explains that there is no evidence against him at all, that the conviction is altogether illegal and that the very section 325 does not embrace the injury which he is alleged to have caused to the complainant. The High Court Judge is convinced of the force of his arguments and finds that a real injustice has been

done. What should he do in such a case? Should the High Court Judge, custodian of the justice of the province, not interfere? That is the recommendation, Sir, which has been made in this amendment, a very wholesome amendment, in the interests of justice, namely, that where there has been a miscarriage of justice and an unfortunate man, on no evidence at all, has been convicted but has not appealed against his sentence, that man may be helped by the High Court. Of course only the High Court has got the power of enhancing a sentence, not the Sessions Judge or other court. I think Sir Henry knows that, I think moreover that the Mover of this amendment should be thanked for trying to assist Government in seeing that injustice may not be done. I very strongly support this amendment and I hope the Government Benches will accept it.

Dr. H. S. Gour: Sir, the Honourable Sir Henry Moncrieff Smith has opined that the amendment of my Honourable friend, Mr. Rangachariar, is superfluous. There is no opposition to it on principle. I have only to dispel the doubt which lingers in the minds of the gentlemen on the Treasury Benches and if I can convince them that the amendment is not superfluous, I hope they will then see their way to support this amendment. This appeal against an acquittal is made under section 417 of the Code of Criminal Procedure and the High Court sits as an appellate Court and the sole question which arises is as to whether the sentence passed upon a person should not be enhanced or an acquittal for a graver offence should not be converted into a verdict of guilty and conviction. The provisions of section 439 to which Sir Henry Moncrieff Smith referred are provisions embodied in Chapter XXXII which relates to reference and revision, and section 439 to which my friend referred is a section relating to revision. His argument is that a Court under section 439 is empowered to acquit a person if it comes to its knowledge that the accused is not guilty. Now, let us examine this statement. I have no doubt that my Honourable friend will admit that it is the established practice of all the High Courts formulated in a series of cases that the High Court will not interfere on a question of fact. Consequently, acting under section 439 the High Court cannot revise a finding of fact, or rather it refuses to do so. Therefore, I submit, that when the Court is examining the proceedings under section 439 it will not go into a question of fact. Whereas, assume the case of an appeal against an acquittal or for the enhancement of a sentence already passed. There the Court exercises larger jurisdiction and examines the whole record and can revise both findings of fact and law. That is a distinction between my Honourable friend's amendment and the explanation given by the Honourable Sir Henry Moncrieff Smith. His explanation, I submit, opens an extremely narrow door through which many an accused has failed to get through. It is for the purpose of giving a person who has been brought to the bar of the High Court to answer why a sentence passed upon him should not be enhanced the right of showing by arguments *a fortiori* not only that the sentence should not be enhanced but the whole conviction is wrong and should be set aside. Should he be prevented from doing so? My learned friend says that no Court will ever prevent an accused appearing before the bar of the Court from showing this. He has testified to his own experience; and I regret to say, Sir, that in my long practice at the bar I have known Judges who are blood-suckers and who will strain every point against the accused and who will say surely . . . . .

Mr. President: Order, order. I do not think I can allow that phrase to pass.

Dr. H. S. Gour: I withdraw it, Sir. I have known judges who are of a convicting predisposition and who will not allow the accused to show that the conviction should be set aside unless they are expressly given the power under the Statute to interfere with a conviction. My friend, Mr. Rangachariar, has referred to the case of a person who did not appeal after his conviction. May I point out to the House that there are cases in which an appeal might have been dismissed against the conviction and the Judge concerned might have reported the case for the enhancement of sentence. And when that case comes up before the High Court the High Court may find that not only the enhancement is unjustifiable but the conviction is equally unjustifiable. In that case what is the High Court to do? There is a conviction, a wrong conviction; there is a motion for enhancement and that enhancement is under trial when the Court comes to the conclusion that both the enhancement and conviction are unjustifiable. Mr. Rangachariar's amendment enables the Court not only to refuse an enhancement but also to set aside a conviction. That, I submit, is a case which is not met by any express provision of the Code of Criminal Procedure, and I therefore submit that this House should support the amendment. One word more, Sir; the circuitous provisions to which Sir Henry Moncrieff Smith has drawn the attention of the House, may I point out, have not been usually used for the purpose of acquitting people in cases covered by Mr. Rangachariar's amendment; and in defining a criminal procedure I would rather err on the side of superfluity and make a matter clear upon which any doubt existed than let matters remain in doubt and suspense and trust the Judges to read section 439 more liberally and use these provisions for a purpose for which they are not normally used and intended to be used. I support the amendment.

Mr. H. Tonkinson: Sir, I rise to offer a few remarks with reference to those words which have just fallen from my Honourable and learned friend, Dr. Gour. It is very difficult, Sir, to follow that portion of his argument which related to appeals from acquittals. That, Sir, has nothing to do with the present question. We are dealing with an application for revision for enhancement of sentence. My Honourable friend suggests that in such cases the High Courts hold that they should not go into questions of fact. That may be true, Sir, about general revision proceedings; but is it true, I ask my Honourable friend, as regards proceedings for enhancement of sentence?

Rao Bahadur T. Rangachariar: Sometimes.

Mr. H. Tonkinson: Most certainly not, as my Honourable friend knows.

Rao Bahadur T. Rangachariar: I know the High Court much more than you do.

Mr. H. Tonkinson: When going into the question of enhancement of sentence you must clearly go into the facts.

Dr. Nand Lal: I think in some fit and deserving cases they go into the question of facts too.

Mr. H. Tonkinson: My Honourable friend, Sir, suggests that there is no express provision enabling the High Court to take this action. Well, Sir, he certainly cannot, I should imagine, have read section 439 with section 423. If he does so he will find that there is a definite express provision of the law enabling the High Court to take the action which is proposed by the amendment of my Honourable friend. I oppose the amendment.

Mr. T. V. Seshagiri Ayyar: Sir, you have very rightly called to order Dr. Gour for the very unparliamentary language he has used regarding High Court Judges. As one, Sir, who has been connected with the High Court, I think it my duty to resent the language which has been used; I believe, in the heat of the moment he allowed himself to be . . . . .

Dr. H. S. Gour: Is my Honourable friend in order in referring to an expression which I have already withdrawn? It is as good as if I never used it.

Mr. President: If an Honourable Member withdraws an expression and the Chair accepts his withdrawal, the incident is usually regarded as closed; but the Chair has no power to prevent any other Member from referring to it.

Mr. T. V. Seshagiri Ayyar: I only wanted to say further as one who has been connected with the High Court, I am glad that you asked this expression to be withdrawn and I am glad that my Honourable friend has done so.

With regard to the matter which has just been referred to by Mr. Tonkinson, I would like to say a word. When a case comes up by way of revision before the High Court, the Judges consider that in disposing of that matter they are bound by what are called findings of fact. For example, a matter may have been before a second class Magistrate, then on appeal before a District Magistrate or a Sessions Judge; and it would come by way of revision to the High Court. What the High Court Judges do say often is that they will not interfere. But supposing on the findings of fact on examining the records the Judges think it necessary to call upon the accused to show cause why his sentence should not be enhanced; then the High Court Judges may very well say ' we are only giving you notice to show cause why the sentence should not be enhanced and we shall not allow the whole inquiry to be re-opened. That very often happens. I have argued cases, and I have been told by Judges that this is practically what is known as second appeal, that it is not open to the Court to go into questions of fact; and that they must take the findings as they are and pass a sentence which is adequate to the findings which have been recorded. That is what has been said very often, and it is against that Dr. Gour has raised his voice and it is against that the amendment of Mr. Rangachariar is directed. There is nothing wrong in the High Court Judges doing it, because the general power in regard to revision is after accepting the findings of fact to come to a decision on law or on the question of sentence; and very often Judges refuse to re-open the case. But where an accused is called upon to show cause why his sentence should not be enhanced, we want powers to be reserved to the High Courts to enable them to exercise powers of re-opening questions of fact and to find whether there has been a proper conviction or not. It is for that purpose this amendment has been brought in, and I think the Government ought to accept it.

Rai Bahadur D. C. Barua (Assam Valley: Non-Muhammadan): Sir, I beg to support this amendment. I do so among other grounds on the question of economy also. Sir, if a person is really innocent, why should the tax-payer be compelled to pay his expense in the gaol? From the point of view of economy also, I should think that it should be open to an accused person called upon to say why his sentence should not be enhanced to show that he was innocent. Sir, I can imagine cases in which no appeals are allowed. Appeals are not allowed ordinarily in those cases in which a person is sentenced to a month's imprisonment by a Magistrate of the

[Rai Bahadur D. C. Barua.]

first-class, or in the case of a person who is sentenced to undergo three months' imprisonment when he is tried summarily or six months by a Presidency Magistrate. Sir, if a person is really innocent why should the tax-payer be compelled to pay expenses for the maintenance of that person in the gaol? Of course, when the High Court or any Court whatsoever revises a case and attempts to find out whether the accused was guilty in a certain manner, it is certainly in a position to find out that he was not guilty also. If the Court really comes to this conclusion, that he was not guilty, then in all fairness he should be acquitted, although a subordinate Court came to the conclusion that he should be convicted. Sir, for these two reasons generally I beg to support the amendment, because in those cases in which the case is not appealable and the accused could not appeal and consequently suffered imprisonment, and if that case goes for revision before a higher tribunal, then it is clearly the duty of that higher tribunal to act in this way or that way—if he is really innocent to acquit him or if he is really guilty or deserves a severer sentence, then to enhance the sentence. Under these circumstances, Sir, I beg to support the motion.

Mr. President: Amendment moved:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

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

The Assembly then divided as follows:

AYES—30.

Abdulla, Mr. S. M.	Lakshmi Narayan Lal, Mr.
Agnihotri, Mr. K. B. L.	Mahadeo Prasad, Munshi.
Ahmed, Mr. K.	Man Singh, Bhai.
Ayyar, Mr. T. V. Seshagiri.	Misra, Mr. B. N.
Barua, Mr. D. C.	Mukherjee, Mr. J. N.
Bhargava, Pandit J. L.	Mukherjee, Mr. T. P.
Chaudhuri, Mr J.	Nag, Mr. G. C.
Cotelingam, Mr. J. P.	Nand Lal, Dr.
Dass, Pandit R. K.	Neogy, Mr. K. C.
Gour, Dr. H. S.	Pyari Lal, Mr.
Gulab Singh, Sardar.	Ramayya Pantulu, Mr. J.
Ikramullah Khan, Raja Mohd.	Rangachariar, Mr. T.
Jatkar, Mr. B H. R.	Srinivasa Rao, Mr. P. V.
Joshi, Mr. N. M.	Subrahmanayam, Mr. C. S.
Kamat, Mr. B. S.	Venkatapatiraju, Mr. B.

NOES—27.

Allen, Mr. B. C.	Holme, Mr. H. E.
Blackett, Sir Basil.	Hullah, Mr. J.
Bradley-Birt, Mr. F. B.	Innes, the Honourable Mr. C. A.
Bray, Mr. Denys.	Ley, Mr. A. H.
Burdon, Mr. E.	Moncrieff Smith, Sir Henry.
Cabell, Mr. W. H. L.	Muhammad Ismail, Mr. S.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Clow, Mr. A. G.	Rhodes, Sir Campbell.
Crookshank, Sir Sydney.	Singh, Mr. S. N.
Davies, Mr. R. W.	Tonkinson, Mr. H.
Faridoonji, Mr. R.	Townsend, Mr. C. A. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Willson, Mr. W. S. J.
Hindley, Mr. C. D. M.	

The motion was adopted.

Mr. President: The question is that clause 117-A, as amended, stand part of the Bill.

The motion was adopted.

Clauses 118, 119, 120, 121, 122, 123, 124 and 125 were added to the Bill.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, with your permission, I wish to move the following amendment in lieu of the one which stands in my name on the printed list:

"That in clause 126, in sub-section (1) of proposed new section 476, for the words 'order the offence to be inquired into' the words 'record a finding to that effect' be substituted."

This amendment is made in the interests of improved drafting and I leave it for the acceptance of the House.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, in lieu of the printed amendment, in order to make the matter clear, I move, Sir, that:

"In clause 126, in sub-section (1) of proposed new section 476, for the words 'and may, if the alleged offence is non-bailable, send the accused in custody to or in any other case may take sufficient security for his appearance before such Magistrate' the following be substituted, namely:

'and may take sufficient security for the appearance of the accused before such Magistrate, or, if the alleged offence is non-bailable, may, if it thinks it necessary so to do, send the accused in custody to such Magistrate'."

(At this stage Mr. President vacated and Sir Campbell Rhodes took the Chair.)

The object of this is not to make it compulsory on the Magistrate to send the accused in custody even in non-bailable cases. I want to leave a discretion to the Magistrate to come to a conclusion that it is necessary for him to do so. Otherwise he may take security for his appearance. This is a section dealing with complaints made by Courts. With these words I move the amendment.

The amendment was adopted.

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

"In clause 126, in sub-clause (3) of section 476, substitute 'shall' for 'may if he thinks fit'."

Under the clause as it has been provided in the Bill, if a civil, revenue or criminal court files a complaint under section 195, sub-section (1) clause (*b*) or clause (*c*), the Magistrate has been given discretion to proceed with the case even if the accused has filed an appeal against the decree or order of such Court. This by itself seems an anomalous procedure. If we refer to section 195 (1) (*b*) and (*c*) we find that the offences for which such complaints could be filed are such as giving false evidence, producing false or forged documents in evidence, or using false documents as genuine, or filing false complaints, or cases of perjury,—and these are the offences which come under section 195. If the man is to be prosecuted before the appeal in the original case is decided, there will be much injustice done to that man, as the appellate court may afterwards find the very documents to be true and genuine and which the lower Court found to be

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

forged or false. The very evidence which the original Court found to be false or a perjury, the appellate Court may find to be true and genuine; and on that very evidence the appellate Court may set aside the order or the decree of the Lower Court. What will then be the position of such a person who on the basis of the original Court's order had been prosecuted under section 195 or against whom a complaint had been filed? What will be his fate? He would not suffer if the Court was reasonable enough to have adjourned the case when the appeal was filed and had not proceeded with it. At the same time if the Court had proceeded with the case and perchance convicted him, the result would be that the accused might have suffered the penalty before the decision of the appeal in the original case. There will be many cases of such injustice and hardship. It may be questioned that the appeal might take a year or two and should those cases be kept pending so long? I would say that there should be no objection even if the appeal were to take one or two years. Suppose a case is filed before a Magistrate and the Magistrate were to convict the accused and sentence him with imprisonment which may range from one or two to six months, and the appeal is decided after a year, and the appellate court finds that the alleged forged document on which the original complaint was based was a genuine one. What is the fate of this poor accused who was not only convicted but has also served the full sentence passed on him for that offence which subsequently has been found to be no offence at all. It is a very salutary rule that until the appeal is decided the Magistrates should not proceed with the trial of such persons against whom complaints have been filed. I may give a concrete instance. Under the old section 195, a document was found to be forged by the civil court and on that basis that court ordered the prosecution of a person under section 195. The case was prosecuted before a first class Magistrate. I happened to appear for the complainant in that case, who had obtained the sanction, from the Additional District Judge to prosecute that man. The accused put in an application in revision before the Judicial Commissioner's Court; and the accused applied for the postponement of that case, but the learned Magistrate was not pleased to postpone it. He proceeded with the trial of the case. Fortunately for the accused in the revision court the application was soon decided and the revision court, that is the Judicial Commissioner's Court held that the sanction was improper and that the document was not forged. Now, the House can realise what would the fate of the accused have been if the revision court had not passed an early order in that case. This Magistrate may have considered that a District Judge or Additional District Judge who has given such a sanction must have given it on proper and reasonable grounds and may have himself come to the same conclusion as that of the Additional District Judge and may have convicted that man before that revision petition was decided and the accused may even have suffered the punishment. Such a case would have been very hard for that poor accused. In order to safeguard such cases I submit that the amendment which I propose will be a salutary one. I do not mean to say that ordinarily the Magistrates do not allow time. They do allow time but as in the case I have mentioned there are also cases in which the postponement is not allowed. The Magistrates have to explain to the Sessions Judge and the District Magistrate in their calendar statements the reason of the delay in trial. They are anxious to avoid increase of the average duration of trial in their Courts. I submit that if my amendment is accepted it will not hamper justice in any way. I therefore put forward my amendment for the consideration of the House.

Mr. Chairman: The question is:

"That in clause 126, in sub-section (3) of section 476, substitute 'shall' for 'may if he thinks fit'."

Dr. H. S. Gour: The question may be put.

Mr. P. E. Percival: I do not know what the attitude of the Government will be in regard to this amendment, but I prefer Mr. Seshagiri Ayyar's amendment. It is better worded.

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

The motion was negatived.

Clause 126 was added to the Bill.

Mr. K. B. L. Agnihotri: I propose, Sir, that this section 127 may be taken up later, because at the informal meeting which we had this morning I was told that the Government was prepared to accept the principle and would give us a redraft. The redraft has just been handed to me, but I am not in a position to go through it properly, therefore I request that the consideration of this clause may be taken later.

Dr. H. S. Gour: In view of the lateness of the hour, I move the adjournment of the House; I also have a motion, No. 342,* which will require discussion.

Mr. Chairman: Is it the decision of the House that Amendment* No. 339 should not be taken up but deferred? (Voices: "Yes".)

Mr. K. Ahmed: Sir, I was thinking that this section, amendment No. 341* covers one of those matters in which the racial distinctions question is involved in the Bill which was placed before us the other day and Government, I understand, is going to put it up again, and to see whether they can revise it. If so, I do not like, Sir, to press the amendment, but if that is not so, I suppose there will be a clear understanding from the Government Bench that the matter will come up; if not, Sir, I am afraid I shall have to move it in the ordinary course.

The Honourable Sir Malcolm Hailey: It will come up in the course of the discussion on the Bill referred to.

Mr. K. Ahmed: On that understanding I do not move it, Sir, at present.

Mr. Chairman: The question is that the consideration of clauses 127A and 127B be deferred.

The motion was adopted.

Dr. H. S. Gour: I have already moved, Sir, for the adjournment of the House; I have said that this clause requires discussion, and perhaps it will take some time; I therefore move that the House be now adjourned.

Mr. Chairman: In the temporary absence of the President, I am not prepared to adjourn the House. The motion can be renewed on his return.

Dr. H. S. Gour: Sir, I was given an assurance by the President that this clause would not be taken up to-day, but if you, Sir, insist upon my moving it, I shall do so.

* In the List of Amendments.

Mr. Chairman: If it is the wish of the House that it should be taken up later, I am willing to pass on to the next amendment.

(*An Honourable Member*: "It follows the other.")

Mr. T. V. Seshagiri Ayyar: I may mention, Sir, that the President told us that he would not take up any case after 5-30, that as far as possible he won't take up any case, that unless it was absolutely necessary to continue the discussion, he won't do so—that is what he told me.

Dr. H. S. Gour: If it is the desire of yourself, Sir, that we should continue the discussion, you must allow us to go home and take our supper, and we shall return.

The Honourable Sir Malcolm Hailey: I was not prepared to hear, that any Member of the House should give directions to you, Sir, as to what you should do or think proper. As far as the adjournment is concerned, we are entirely in your hands. If Honourable Members opposite think that they are not able to continue this discussion, and if you are persuaded that their case is reasonable we shall not oppose it. I prefer that these proposals should come entirely from the opposite side of the House. We do not get tired of the good work.

Mr. Chairman: Do I understand that Dr. Gour does not wish to go on with this amendment?

Dr. H. S. Gour: No, Sir. I wish to go on with the amendment but not at the present moment. But if it is the desire of the occupants of the Treasury Benches that the discussion should continue I only wanted a few minutes respite for the reason I have already given. The Honourable the Home Member thought that my suggestion was improper, but I have no doubt that he also occasionally indulges in that impropriety himself.

The Honourable Sir Malcolm Hailey: I said, Sir, that I left it entirely in your hands. The suggestion which I said was improper was that you would have to allow the House to go away to supper.

Mr. K. Ahmed: Sir, only yesterday there was no reason why the House should be adjourned after four o'clock. It was neither left to the discretion of the Honourable the President of the Assembly nor to the discretion of the Honourable Members who wanted . . . .

Mr. Chairman: The Assembly now stands adjourned till Eleven of the Clock on Saturday, the 10th February, 1923.