Wednesday, 13th September, 1922

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COUNCIL OF STATE.

Wednesday, the 13th September, 1922.

The Council met in the Council Chamber at Eleven of the Clock. The Honourable the President was in the Chair.

QUESTIONS AND ANSWERS.

BOMBAY UNIVERSITY TRAINING CORPS.

99. The HONOURABLE MR. V. G. KALE : (*a*) Will Government be pleased to state what kinds of ranks have been assigned to those officers of the Bombay University Training Corps who were declared to be Platoon Commanders in the Orders of the Southern Command, Poona ?

(*b*) Are these officers declared to be Commissioned Officers ?

(*c*) If so, what kinds of Commissions, the King's or the Viceroy's, have been granted to them ?

(*d*) If they are declared to be Commissioned Officers, why is it that they have not been given the outfit allowance of Rs. 300 on their first appointment, as sanctioned by the Provisional Regulations relating to University Training Corps, published by Government ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (*a*) The question of the form of commission to be granted to, and the designation of the ranks to be held by, officers of the Indian Territorial Force at present forms the subject of correspondence between the Government of India and the Secretary of State.

(*b*) Yes.

(*c*) As explained in the reply to part (*a*) of the Honourable Member's question, certain new proposals are under consideration ; but for the moment the only form of commission that can be granted under the Indian Territorial Force Act, 1920, is a commission under the Indian Army Act to which officers of the Indian Territorial Force are by Statute subject.

(*d*) The outfit allowance of Rs. 300 is admissible to such officers as apply for it after their appointment has been notified in the Gazette of India.

PAY AND ALLOWANCE OF BOMBAY UNIVERSITY TRAINING CORPS.

100. The HONOURABLE MR. V. G. KALE : Is Government aware that two different scales of pay and allowance are sanctioned for Europeans and Indians who hold commissioned ranks in the Bombay University Training Corps ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : The allowances admissible to the two classes of commissioned officers referred to are the same. These officers receive no pay, as the Corps is not liable to embodiment.

REGULATIONS OF UNIVERSITY TRAINING CORPS.

101. The HONOURABLE MR. V. G. KALE : When are the definite regulations of the University Training Corps as regards the outfit, pay and allowances of officers and men in ordinary training and in camps of exercise to be published ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : A number of regulations have been drawn up on the subject from time to time ; they have either been published in the Army Instructions (India), or notified to Commands or formations. As the Honourable Member will understand, some time must elapse before a comprehensive set of regulations can be published, as the Force is not yet fully organized.

STATUS OF UNIVERSITY TRAINING CORPS.

102. The HONOURABLE MR. V. G. KALE : (*a*) Is it a fact that Rules under the Indian Territorial Force Act, 1921, lay down that officers and men of the University Training Corps are to be given better status than that of the officers and men of the Indian Army of the general sections of the Indian Territorial Force ?

(*b*) If that is a fact, why is it that the lump-sum grant, which was given last year for the camp expenses of the Bombay University Training Corps, was only equivalent to the pay and allowances of the officers and men of the Indian Army ?

(*c*) Is it not proposed to give to the University Training Corps the same status as the Auxiliary Force as regards ranks, outfit, pay and allowanees ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (*a*) The reply is in the negative.

(*b*) The question does not arise.

(*c*) The question of ranks is still under consideration. Members of the University Training Corps receive the same outfit allowance and other allowances as members of the Auxiliary Force. Members of the University Training Corps do not earn pay as the Corps is not liable to embodiment and the question of comparison of rates of pay consequently does not arise.

INSTRUCTION TO UNIVERSITY TRAINING CORPS.

103. The HONOURABLE MR. V. G. KALE : Will Government be pleased to state whether some actual provision has been made this year for attaching officers of the University Training Corps to regular units for short periods of continuous instruction, as was promised a few months ago ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Provision has been made for such attachment for the purpose of instruction. The posting of officers to such courses rests with the District Commanders.

TERRITORIAL FORCE ADVISORY COMMITTEES.

104. The HONOURABLE MR. V. G. KALE : (*a*) Will Government be pleased to state whether advisory committees in connection with the Indian Territorial Force, as provided by rules 12 and 29 of the Rules under the Indian Territorial Force Act, 1921, have been formed in the different provinces ?

(*b*) Will Government be pleased to state the names of the members of the Committee for Bombay ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (*a*) The answer is in the affirmative.

(*b*) The appointment of members of the Advisory Committee rests with the Local Governments, who have not, so far, reported the names of the members who have been nominated.

The SECRETARY OF THE COUNCIL : Sir, there is a message from the Legislative Assembly.

The HONOURABLE THE PRESIDENT : The message may be read.

RE-COMMITTAL OF CANTONMENTS (HOUSE-ACCOMMODATION) AMENDMENT BILL TO JOINT COMMITTEE.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

The SECRETARY of the COUNCIL : " Sir, I am directed to inform the Council of State that the following motion was carried in the Legislative Assembly at their meeting on the 11th September 1922, and to request the concurrence of the Council of State in the recommendation contained therein, namely :—

That the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, be recommitted to the Joint Committee with instructions to prepare a Bill consolidating, with amendments, the existing law."

The HONOURABLE MR. H. MONCRIEFF SMITH (Legislative Secretary) : Sir, I am not altogether sure of the reasons which led the Assembly to ask the concurrence of the Council of State in this motion. In the first place, this Chamber concurred in the recommendation from the Assembly that this particular Bill should be referred to a Joint Committee. Thereafter, as I understand the procedure, the Council of State did not come into the matter at all until the Joint Committee had reported to the Assembly and the Assembly had dealt with the Bill and passed it in some form or another. We have not yet reached that stage. The Bill, I understand, went to the Joint Committee, and they found great difficulties in amending the Amending Bill in view of the opinions received on it. In fact, the Amending Bill will be in such form that it will be impossible to understand the law, that is to say, the Act *plus* the amendments proposed. Therefore, the Joint Committee considered that the best course was to get instructions from the Assembly to prepare a Consolidating Bill to repeal the present law and to re-enact it embodying the amendments proposed since the Bill was introduced. I do not think that the Council of State need have been asked for its concurrence in this matter. Possibly it was thought that it was somewhat unusual for a Joint Committee to be appointed to prepare a Consolidating Bill, but this is not pure consolidation, as there are amendments to be made also. But as we have been asked for our concurrence, I do not think there is any reason why we should not inform the Assembly that we have no objection to their recommendation. I do not know as to whether I am in order in making a motion on the subject now ; it is not on the list of business, and I was not prepared to make a motion as I am not in charge of the Bill at this stage. As a pure Consolidation Bill I should be in charge of it, but as I said, it is not pure consolidation.

[The President.]

The HONOURABLE THE PRESIDENT : I think this raises a question of procedure, and perhaps the Council would like to have my views on the matter. I do not entirely agree with the Honourable Mr. Moncrieff Smith. The position, as I understand it, is this. The Assembly asked and obtained the concurrence of this Chamber that the Bill should be referred to a Joint Committee. That obviously was essential. The Joint Committee apparently did not report, or rather did not report finally, to the Assembly. They really submitted an *ad interim* Report. They desired further instructions, rightly or wrongly, in my opinion rightly, as they thought that the course they wished to adopt would be going beyond the scope of their original reference. The proposal to incorporate their own amendments in the law can hardly be called a Consolidating Bill.

In those circumstances, it does seem to me that, if not essential, it is at any rate very courteous on the part of the Assembly to desire our concurrence to recommitting the Bill to the Joint Committee which had been appointed with the concurrence of this House. I think myself that, when instructions are to be given to a Joint Committee, it would be advisable for this House to adopt the procedure which has in this case been followed by the Assembly. So far from objecting to that procedure, I think it is calculated to prevent friction between the two Houses, and is in itself appropriate and in every way desirable. On the question of the motion, it is of very little importance, and, unless objection is taken on the ground of want of notice, Mr. Moncrieff Smith is at liberty to move his motion.

The HONOURABLE MR. H. MONCRIEFF SMITH (Legislative Secretary) : Sir I beg to move :

"That this Council do agree to the recommendation of the Assembly that the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, be re-committed to the Joint Committee with instructions to prepare a Bill consolidating, with amendments, the existing law."

The HONOURABLE THE PRESIDENT : I take it no Honourable Member objects to this on the ground of want of notice.

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE MR. H. MONCRIEFF SMITH (Legislative Secretary) : Sir, I beg to move :

"That the Report of the Joint Committee on the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-Fees Act, 1870, be taken into consideration."

The Report, Sir, was presented to this House a week ago to-day and on the same day the Report, together with the Bill proposed by the Joint Committee, was circulated to Honourable Members. Up till 4 O'clock yesterday afternoon, I had received notice of no amendments at all, and at that hour I received only those on the list which I believe

is on the table before Honourable Members. It emanated, Sir, from a single Member. So far as I am aware, my Honourable friend, Mr. Khaparde, does not pose as the representative of any particular party in this House ; and I think we may assume, from the fact that he is the only Honourable Member who has found it necesary to give notice of amendments, that the Council as a whole is prepared to accept the Bill proposed by the Joint Committee. Indeed, in the absence of amendments, or, at all events, with so few amendments proposed and those from one Member only, there are only two courses open to the Council. The first is to accept the Bill more or less as it stands, and the second is to throw it out altogether. I may be unduly optimistic, but I hardly anticipate that the Council intends to take the latter course.

I think, Sir, I may assume that, during the week in which the Bill has been in Honourable Members' hands, they have studied it carefully. A casual reader, noting the very numerous clauses or portions of clauses which appear in italics, might be led to the hasty conclusion that the Joint Committee has turned the Bill inside out. But a careful study of the Bill and of the explanatory Notes on Clauses contained in the Report show that this is really very far from being the case. There are few, if any, radical changes made in the Bill by the Joint Committee, and, as a matter of fact, I think I may say that the important changes are very, very few indeed. Many of the amendments made were not regarded by the Joint Committee as of sufficient importance to mention in their Report at all. I think I may venture to say, Sir, that you yourself know only too well the difficulties of drafting that arise in connection with a Bill of this magnitude. Suppose we take just one clause of the Bill, amending one section of the Code. A small amendment is proposed in that clause. Thereupon, the draftsman has to consider not only the effect of that small amendment upon that clause and upon the section which is being amended, but also the effect of the small amendment on the other 150 odd clauses of the Bill and, further than that, the effect of the amendment on the remaining 550 odd clauses of the Code. In these circumstances, Sir, and also having regard to the fact that the Bill is now of very mature age and that it has passed through many hands during its career, it is a matter of no surprise, I think, that the Joint Committee found very numerous slight defects in the Bill which they thought it was their duty to put right. I am sure no one will feel that there is anything derogatory of the work done by the Committee presided over by Sir George Lowndes, who were really the authors of the Bill introduced in this Council, in the fact that the Joint Committee found it necessary to do a good deal of re-drafting.

I might mention one other matter in connection with these amendments. The matter that I have just mentioned is responsible for a very large proportion of the italicised matter appearing in the Bill. There was one other point. The Joint Committee thought that they ought not to encroach upon the functions of the Committee appointed to consider the matter of Racial Distinctions in the Criminal Law. That Committee had been sitting and was nearing the end of its labours at the time when the Joint Committee was convened. This consideration also involved a few amendments in the Bill which, I think, the Council will treat as more or less formal. They will come up at another time.

[Mr. H. Moncrieff Smith.]

Sir, we do not maintain that the Code of Criminal Procedure amended in the manner proposed by the Bill will be at all a perfect measure. But I think we may claim with some confidence that the Bill will effect a great improvement in the law. It is more than ten years ago since the Government of India decided that a general overhaul of the Code was necessary, and the Council is aware of the various reasons which have led to the long delay in bringing an amending measure on the Statute-book. The main reason probably was the Great War, and, following that, there was a general feeling that a Bill of this importance and magnitude ought not to be rushed through in the last days of the moribund Legislative Council of the Governor General. As soon as the reformed Legislature was inaugurated—in fact within three weeks—this Bill was introduced in this Chamber. It was delayed again by certain action taken in another place ; but, now, I think we may say that we are within sight of the end and I hope that, within a very short period, we shall have really passed this Bill which has been occupying the attention of this Legislature and of its predecessor for so long.

Sir, I think it is a matter of great satisfaction that the Report of the Joint Committee is, except in a few minor respects, unanimous. And I hope I shall not hurt the feelings of any of my non-official colleagues when I suggest that the matters in which we were unable to achieve unanimity were matters of minor importance. The Bill, Sir, is a very long one indeed,—probably one of the longest we have had before us for many years, and it amends one of the longest enactments on our Statute-book. Moreover, the subject is one which is full of controversy ; and I think it is really a matter for congratulation that there are no dissentient or minority reports attached to the Joint Committee's Report. There are, Sir, always two attitudes adopted towards a Bill dealing with the criminal law of the land. There is, of course, first of all, the point of view of those whose chief interest is the maintenance of law and order ; and, on the other hand, we have the point of view of those who look at the other side,—I won't call them the friends of the criminal,—but those who think it their duty, and rightly so, to safeguard, and jealously safeguard, the interest of the criminal or the accused person, when he is on trial before the Criminal Courts of the country. I think I may say, Sir, that the Joint Committee kept these points of view very carefully before them throughout their deliberations, and that for the most part they have arrived at a happy compromise in the Bill that they have proposed.

I do not think I need say more as to the changes made by the Joint Committee or the work which they have done. I should like to take this opportunity, Sir, on behalf of the Government, of expressing their gratitude to those non-official Members who gave much of their time, possibly much of their leisure, to come to Simla in June to further the passage of the Bill, and I hope they may shortly see the fruits of their labours in the inclusion in the Statute-book of this most important measure.

Before sitting down, Sir, I should like to refer very briefly to a few of the important changes that will be introduced in the criminal law of

British India by this Bill, and I might remind the Council that the effect of this Bill will be felt beyond the limits of British India because our Code of Criminal Procedure, as amended from time to time, applies automatically in certain administered areas in Indian States—areas that are administered by the Governor General in Council and for which he makes laws in exercise of his powers, under the Indian (Foreign Jurisdiction) Order in Council. Moreover, our Code of Criminal Procedure, as amended from time to time, is also taken as a model by many Indian States which make their own laws and do not necessarily slavishly follow the law as it is in force in British India.

One of the most important changes which will be brought about by the Bill is in connection with the procedure in respect of prosecutions for offences which are committed in or in relation to the proceedings before the Courts. I am referring to sections 195 and 476. A glance at any commentary on the Code of Criminal Procedure will, I think, indicate what great difficulties have arisen in the past in putting these two sections into operation. The comments of the High Courts on the defects of these two sections, the correspondence between the Central Government and the Local Governments and the opinions and suggestions received by those Governments from official and non-official sources would fill volumes. The law as it stands at present provides an alternative procedure for the Courts. We have the sanction proceedings under section 195 or direct action by the Courts under section 476. The Government, after very careful study of the question and of the opinions and suggestions which they have received from time to time, decided on the course of action which is now embodied in the Bill. The two sections will now supplement one another.

Section 195 will merely contain the prohibition ; section 476 will lay down the procedure to be followed ; and it is supplemented by two more sections, 476-A. and 476-B. which provide for appeals against orders making a complaint or refusing to make a complaint. This proposal has been before the country now for a very considerable period, and I think I may safely say, judging by the tenor of the opinions that have been received, that it has met with general approval.

Clause 6 of the Bill introduces a new departure in providing for the establishment of special juvenile Courts. This, I think, is a provision which will be universally welcomed throughout the country.

Clause 14 introduces important amendments in section 88 to provide for the disposal of claims to property which has been attached under that section.

Clause 20 introduces an amendment in section 117. At present, if a Magistrate who has taken proceedings under the preventive sections is of opinion that a breach of the peace is imminent, all he can do is to issue a warrant for arrest. What the Bill proposes to allow him to do is to take an *interim* security from him and to say that, until the proceedings are concluded, he shall give security for keeping the peace or for the maintenance of good behaviour.

There has always been some difficulty in the Courts with regard to the procedure to be adopted by Magistrates in rejecting sureties offered

[Mr. H. Moncrieff Smith.]

under that particular Chapter containing the preventive sections of the Code. Clause 21 of the Bill now lays down a definite procedure which the Magistrate is to follow if he proposes to reject a surety offered or to reject a surety that has been accepted previously by him or by his predecessor. A later clause of the Bill provides for an appeal against these orders.

The sections which deal with the tender of a pardon to an accused person—section 337 and the sections that follow—have been very considerably revised by the Bill, and also the section which lays down the circumstances in which an accused person who has accepted a pardon and who has forfeited that pardon is liable to prosecution, and the procedure which is to be followed when he is prosecuted for the original offence for which he has been pardoned.

Clause 99 amends section 386 so as to enable fines to be recovered by procedure by the Collector against the immoveable property of the offender.

As the House will see, considerable changes have been made in Chapter XXXIV of the Code which deals with lunatics. For the most part the amendments are devised to meet difficulties that have been felt since the Code was amended in 1912 on the passing of the Lunacy Act in that year.

I think I may say, Sir, without breach of confidence that section 526, which deals with the transfer of cases by the High Courts, is a section which gave the Joint Committee a very great deal of trouble, particularly that part of it which requires the Court to postpone the hearing of a case when notice is given of an intention to move the High Court for transfer. What the Bill proposes is that the Courts may—the discretion is with them—postpone a case if notice is given of an intention to apply to the High Court for transfer ; and if the person applying gives security that he will within a specified period make that application, then the Courts, with one exception, are bound to adjourn the case in order to give a reasonable opportunity for making the application. The exception is in the case of a Sessions Court which, if it is of opinion that the accused has had a reasonable opportunity of making such an application and has not taken advantage of that opportunity, can refuse to adjourn the case.

The provisions of section 562, which provides for the release of first offenders on probation, have been very considerably liberalised. The Courts have always found the restrictions on their powers in this section very harassing, and I think there is a general feeling too that there was scope in this section for liberalisation. The Bill has effected this.

Sir, I do not think I need refer in detail or labour to explain—I have already spoken longer than I intended—the further changes which the Bill will make in the law of the land. I beg to move, Sir, that the Bill be taken into consideration.

The HONOURABLE SIR **BENODE CHANDRA MITTER (West Bengal : Non-Muhammadan)** : Sir, I wish to say a few words on the present occasion.

The revision of certain sections of the Criminal Procedure Code has been engaging the attention of the Government for the last ten years or more. A Committee consisting of Sir George Lowndes, Lord Sinha, the Honourable Mr. Justice Pigott and Mr. Justice Kumaraswamy Sastri and Mr. Walker considered the matter carefully and made their report on the 23rd of December 1916.

The report of this Committee was submitted to the various High Courts, Local Governments and important public bodies and associations. The opinions of these various bodies, together with a very carefully prepared precis of the same, were supplied to the members of the Joint Committee and we carefully considered and discussed these and came to certain conclusions which have been embodied in our report.

I would draw your attention to the fact that we only considered some specific sections of the Criminal Procedure Code which were embodied in the proposed Bill. Apart from the question whether it was at all open to us to consider other sections of the Code, it would have been obviously impracticable to consider the Code as a whole, for that would have necessitated a delay of several years. Such a course most of us thought would be exceedingly impolitic, and we have confined our attention to the sections which have been embodied in the Amending Bill. I would like to say that the official members of the Committee readily accepted most of our suggestions and, in a very few instances where they did not accept our suggestions, they gave reasons for their decisions which we found to be satisfactory, so that in almost all important matters, after full discussion, we were able to arrive at unanimous decisions.

I shall, with the leave of the House, now mention a few instances where, from the popular point of view, the Code can distinctly be said to have been liberalised by the Bill under consideration. If I were to attempt to draw your attention to the various alterations that have been made, it would take considerable time. I will therefore content myself by referring to a few instances only. One of the earlier sections that we have considered in this connection is dealt with in clause 25A of the Bill. That clause refers to the removal of obstructions to public rights. Now, one of the questions that constantly used to arise was where a person who has been proceeded against raised the question that the public has no right to a right of way which was claimed on its behalf and on the proof of which the validity of the proceedings rested. We have altered the section to the effect that, where it appears to the Magistrate that there is any reliable evidence in support of the denial of the public right, the Magistrate shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court. Therefore, that section has been altered in a way which would meet with the public approval.

Then another section which used to be constantly discussed was the section which gave a right of reply to the accused. We have now made it clear by our alterations that the accused will always have his right of reply unless, shortly speaking, he gives substantive evidence himself. That again gives him greater facilities for defending himself. There used to be conflicting decisions upon that question, and that has been set at rest by the amendments which we have introduced. Another thing that has

[Sir Benode Chandra Mitter.]

been done by the Joint Committee is that in dealing with clause 88 they have enlarged the list of compoundable offences. There are various offences which although they are triable in a Criminal Court, still, if both the parties agree to compound, there is no reason why the sanction of the Court should not be given. We have therefore added to that list of compoundable offences.

Then, there is another section, namely, section 195, as also sections 476 and 476A to which Mr. Moncrieff Smith has drawn our attention, which also we have taken into consideration. The alterations proposed in the Amending Code, if accepted, will prevent sanctions being given to private prosecutors to prosecute offences against public justice and offences committed in relation to documents given in evidence during the course of judicial proceedings. Sanctions given to private prosecutors with reference to these offences have often led to interminable delay and to oppression, and such prosecutions were often conducted not with a view to vindicate the cause of justice, but merely with a view to extort money. That will now be effectually prevented. We have also given a right of revision in connection with these offences and there again. I am glad to say, our views were accepted by the official members. With your leave, Sir, I will just read five or six lines here :

"The non-official members of the Committee who were present when this clause came under discussion were unanimously of opinion that a revision should be allowed in respect of proceedings under sections 476-A. and 476-B. The official members, on the other hand, thought that this was unnecessary in view of the facts that a right of appeal is allowed under section 476-B. and that there are no revision proceedings in connection with a complaint filed by a private individual. In this connection, however, it was pointed out by non-official members that a Court making a complaint cannot be held directly responsible and cannot be prosecuted under section 211 of the Indian Penal Code ; whereas this possibility in the case of a private complainant acts as a safeguard against the indiscriminate filing of complaints. We have amended the Bill in accordance with the opinion of the majority."

After these alterations of sections 195 and 476A and 476B it will be impossible for anybody to suggest that we have allowed prosecutions to be undertaken hastily with regard to offences of this character.

Then, Sir, there is one clause to which I would like to draw the attention of the House specifically, and that is clause 92 which deals with sections 497 and 498, I refer to the sections that deal with the granting of bail. Now, I think Honourable Members who have studied these sections will come to the conclusion that the alterations suggested by the Joint Committee constitute a distinct improvement. Under the existing sections in some cases it has happened that persons have been kept as under-trial prisoners for several months and in the end were acquitted. Such cases naturally cause a great deal of feeling against the prosecution, a notable instance of which in Bengal is the Midnapore Bomb Case : a very large number of well-known citizens of Midnapore consisting of persons on whom Government had conferred high dignities, many of them Zemindars and leading pleaders, were kept in jail as under-trial prisoners and after some weeks they were released on bail by the High Court. The real inquiry into their cases began some months after and the Government of Bengal then sent Sir Satyendra Sinha, the then Advocate-General, to conduct the prosecution. The Advocate-General on

a careful perusal of the papers withdrew from the prosecution of all except three and in the High Court these three were ultimately acquitted. In many cases persons accused of non-bailable offences find great difficulty in obtaining bail from the trying Magistrate on account of the wording of the present section 497, and they have to apply for bail to the Court of Session which often means considerable delay and expense. Until such order is obtained such persons have to remain in prison. Now, the changes we have introduced with regard to section 497 will once for all do away with this inconvenience, and speaking for myself and, I think, for most of my colleagues in the committee, we felt that the Honourable the Home Member met our wishes in this matter very liberally. Those of us who have actual experience of the working of the bail sections know that in practice section 497 has often caused a great deal of harassment to accused persons. The suggested alterations will remove all just grievances in the matter of bails in the future, and I venture to assert that it will no longer be possible to say that our bail provisions, if these alterations are accepted, will be more stringent in any way whatever than similar provisions in England.

There is another clause, the transfer clause, namely, clause 141. Mr. Moncrieff Smith has dealt with that very shortly and succinctly, if I may say so without impertinence, and I cannot add anything to what he has said ; but I will say this, that this is a section which has given rise to a great deal of trouble. On the one hand, it is highly desirable that accused persons should not merely in fact be tried by a Court that has no bias in favour of the prosecution but that they should feel that they had been tried by an impartial Court ; that is to say, not merely that the trial in fact should be fair, but that the accused should have no reasonable ground for suspecting that the tribunal was not fair or impartial. Now, that no doubt is the right standpoint from which to approach the section. On the other hand, in actual practice we know that that section was very often abused.

With a view to gain time applications are often put in under section 526 and the opinions that were obtained from the Local Governments and the High Courts certainly went to show that this provision was often abused. The result was that the Committee of 1916 made certain suggestions with a view to stop these abuses, but as we thought that such suggestions if accepted in their entirety, may operate harshly against the accused we have made certain material alterations, and I think we have now been able to arrive at a happy solution so far as section 526 is concerned.

Then, Sir, section 562 has been referred to by the Honourable Mr. Moncrieff Smith. That section I shortly refer to as the first offender's section. The offences as dealt with under section 562 as it stands, now are few in number. We have extended that section very widely; in fact to most offences, excepting very serious offences, and discretion is proposed to be given to the trying Court to deal with the first offenders under this section, and the Court will have the power to defer passing sentences on such offenders indefinitely. Speaking from my own personal experience I can say how beneficial such a provision is. During the 7 or 8 years that I had the honour of holding the office of Standing Counsel, I very often had cases where young boys of 17 or 18 years of age were prosecuted on

[Sir Benode Chandra Mitter.]

charges of having committed offences which did not come under section 562. Everybody felt that it would serve no useful purpose to convict such young boys who probably had committed an offence without fully understanding its nature and very often were led to do so by sudden temptation and without realizing that they were liable to heavy punishment. The mofussil Courts had no option but to convict them and to sentence them to imprisonment. The result was that these boys were sentenced and they had to associate with criminals of the worst character and their career once for all was blasted. They did not come out as better citizens from the jails after they had served out their terms. Now in the High Court, Jenkins C. J. claimed that the High Court had inherited the jurisdiction of the King's Courts in England, and in the well known Khulna Gang Case he gave them a warning and, on their signing certain bonds, the passing of a sentence was deferred. The other Judges of the High Court in trying cases in their original criminal jurisdiction followed that procedure, but some lawyers entertained doubts as to the correctness of the procedure. In any event this procedure was only confined to trials in the sessions of the High Court of Calcutta. Now by this section we are extending the beneficial provisions of section 562 to many other offences, and I must, speaking for myself, say that it is a very great improvement and in many cases Courts will now be able to take sufficient securities and bonds from young people or from their guardians and pass an order that they may come up for sentence if any future occasion arises. I congratulate the Home Member of the Government on his readily agreeing to our suggestions to extend the provisions of section 562.

Sir, there are one or two points which we did not go into in the Joint Committee at all because we all felt that it was very necessary that we should deal with the provisions actually submitted to us, and that it would be highly impolitic to delay the passing of this Bill any further, but I will take the opportunity of drawing the attention of the House so that we may consider the desirability of going into the matter on some future occasion. I did express my views as to what I thought with regard to the powers of the Presidency Magistrates in the Joint Committee. Now it is an anomaly that whereas if a person commits an offence say in Calcutta and gets a sentence of five months, a sentence which involves moral turpitude, a sentence which for ever puts him out of the pale of decent society, he has no right of appeal. This very same person, if he had committed that very same offence in Alipore, at a distance of a mile from Calcutta and sentenced to more than a month he would have a right of appeal. I am not talking of summary cases, but I am talking of the generality of cases. I did broach that subject, and it was pointed out to me, and I think very forcibly, that this committee could not possibly go into a question of that character without obtaining the views of the Local Governments and of the different High Courts. We at once saw the reasonableness of the objection on the part of the official members to go into this question, but I take the opportunity of drawing the attention of Honourable Members of this House to this question.

There is another question that does often strike me, and that is, in many cases the accused comes before the High Court and asks for a transfer of the case from one Magistrate to another, and in the alternative, asks to have his case tried by a Court of Session—I am referring to these

cases which are concurrently triable by a Magistrate as also by a Court of Session. Well, he either succeeds or does not, but to me it seems that we might well bring the law into line with the English law, namely, that where the offence is of a sufficiently heinous character so that the case is triable by the Magistrate as also by a Court of Session, it should be open to the accused to take the risk of trial by the higher Court and get a longer sentence ; but as I said, I merely draw the attention of this House to these two matters though they do not come within the purview of the present Amending Bill, and I hope that the Government may see its way to inquire into the matter because I am sure that, if this further right is conceded to the accused, many grievances with regard to section 526 will disappear.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI (Education Member) : Sir, before this debate proceeds further, there is one little misapprehension which might possibly have been caused in the minds of Honourable Members as a result of the Honourable Mr. Moncrieff Smith's statement with regard to the nature of the amendments which this Bill proposes to make in section 526 of the Code of Criminal Procedure, a misapprehension which, I am afraid, even the speech of my Honourable and learned friend Sir Benode Mitter has not removed. Section 526 of the Code of Criminal Procedure, as the Honourable Mr. Moncrieff Smith informed the Council, deals with the power of the High Court to transfer criminal cases from one Court subordinate to it to another Court having jurisdiction to try the case. The Honourable Mr. Moncrieff Smith, in referring to the amendment which this Bill seeks to make in the law as it stands at present, mentioned that, according to a sub-clause of that clause, when a Court is notified of the intention to submit an application to the High Court for the transfer of a case, a discretion is given to the Court to postpone or adjourn the hearing of that case in order to enable the party giving any such notification opportunity to apply to the High Court, and that in one case it is made obligatory on the Court to adjourn the hearing.

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Now, when I look at clause 141 of the present Bill, which is the clause proposing the amendment mentioned by the Honourable Mr. Moncrieff Smith, I find that this clause divides the hearing of a criminal case into two stages. As every Honourable Member must be aware, the hearing of every criminal case is naturally divided into those two stages. The first stage is before the framing of the charge, that is to say before the accused is called upon to enter on his defence ; and the second stage is after he has entered on his defence. Now, you will find that the first portion of this sub-clause (8) makes it obligatory on the part of the Court to adjourn the hearing of a criminal case in order to enable the Public Prosecutor, the complainant or the accused person, if he notifies to the Court his intention of applying to the High Court for transfer of that case. There is no discretion given to the Court to grant an adjournment or refuse it. It is absolutely obligatory on the part of the Court to adjourn the case. Then comes the second part of the proposed enactment. That is to say, if application is made to the Court to adjourn the hearing with a view to enable the complainant, the Public Prosecutor, or the accused, to apply to the High Court, after the charge has been framed, it is then and then only that there is any discretion vested in the Court to refuse such an

[Mian Sir Muhammad Shafi.]
adjournment. I do not say complete discretion. For, according to the terms of the section, even then it is obligatory to the Court to adjourn if the accused enters into a bond, making it essential for him to prefer his application to the High Court within a certain period specified. So that there is no discretion in the case of an application being made before the framing of the charge, and, if there is any discretion at all in the case of an application made after the framing of the charge, it is only when the accused does not express his readiness to enter into the bond specified therein. It was necessary, if I may venture to say so, to remove this misapprehension lest the point might trouble the minds of any Honourable Member during the course of the debate on this question.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, as one who has taken a minor part in the shaping of this Report, I feel I should not allow this opportunity to pass without giving my blessings to this Bill before it becomes the law of the land. Sir, of all the Indian laws that are on the Statute-book, the one of vast importance to the country—one of great magnitude, one which has unceasingly given trouble to our Judges and to the barristers and lawyers practising before the Courts, is the Criminal Procedure Code. For years past, the Code of Criminal Procedure, in view of the various conflicting decisions of the several High Courts in some of its most important sections, has been, I may say, in a state of uncertainty and chaos, and the amendment of the law was loudly required not only by Judges but by lawers and by the general public. The present Bill supplies the much-needed reform in the Code of Criminal Procedure. For nearly ten years this Bill has been hanging before the Council. It was first introduced in 1914 and, on account of the preoccupations of the war, the further consideration of the Bill was suspended. In 1916, a committee of eminent lawyers was appointed with instructions to consider the Bill and to revise the various sections and to report their recommendations. Unfortunately, the deliberations of that committee were again suspended, and not till a later stage, when the new reformed Council came into existence, was this Code seriously taken in hand. The second committee was then appointed, and on which there were distinguished lawyers like Sir Benode Mitter and Dr. Tej Bahadur Sapru, our present eminent Law Member,—who have contributed to our deliberations, and we are now in a position to submit to the country and to the Council a Bill which I may say will be acceptable to all. I fully acknowledge and recognise that the various problems that were presented to this committee were of such an eminently difficult nature that, after all, this Bill cannot possibly be regarded as a perfect piece of legislation. But I assure the Council that the committee have done its level best to bring the measure, as far as it is possible, in conformity with English law, with the principles of justice, equity and fairness and will ensure a safer and judicious administration of the Criminal laws. We have endeavoured as far as possible to simplify the procedure, remove all ambiguities, and present the Code in an intelligible form.

My Honourable friend, Mr. Moncrieff Smith, was right in stating that we have made no radical changes. If any radical changes have been made, those changes have been necessitated by the exigencies of the

situation and by the plainer interpretation required by various legal authorities and by the eminent Judges who adorn our High Courts. My friend, Sir Benode Mitter, has relieved me of the task of examining in detail some of the most important provisions of this Bill, but what has fallen from him and from Mr. Moncrieff Smith has made it abundantly clear that the law as contained in the present Bill embodies the cream of recommendations of the various High Courts and the recommendations of the various Local Governments who were pleased to report on this Bill. The provisions regarding the taking of interim security and the power of rejecting sureties at any stage of the trial are suitable provisions. Section 337, which relates to the grant of pardons, has given considerable trouble and difficulty in its administration during all these years, has now been modified in a manner to meet the modern requirements and to ensure the dispensation of justice and also protects the accused person against any undue severity. The provisions regarding the realisation of fines have been placed on a more equitable basis, and the law regarding lunatics has been summarised and codified in a manner that will ensure the interests of that unfortunate demented class. The most important provision in the Code relates to the transfer of cases which has given no amount of trouble and difficulty to Judges has been codified and amended in a manner that will now meet with universal acceptance. My friend, Mian Sir Muhammad Shafi, has already explained that the power to adjourn a case on presentation of an application has now been made obligatory. When an application is made to the Court that there is an intention on the part of the accused to move the High Court, the right to obtain the adjournment of the case is made obligatory. In the case of applications after the charge has been framed, as Mian Sir Muhammad Shafi has pointed out, there is an implied discretion to grant the adjournment. On the whole the powers which are given are ample and sufficient to safeguard all legitimate interests of the accused.

Sir, the various sections of the Code have been brought up to the requirements of the time. The wording of many sections in the old Act are unsatisfactory. It is a matter of pity that the Joint Select Committee was restricted to certain amendments that were placed before it and were not permitted to go beyond the Bill that was before them. My Honourable friend, Sir Benode Mitter, has made that matter abundantly clear, and I hope that at some later stage some of the provisions to which he referred and pressed upon the attention of the Council will be incorporated into the law of the land. Sir, on the whole, I have no doubt, that this Bill will meet with general acceptance, not only in this Council, but outside in the country. There is one more word, Sir, which I wish to say in this connection. Our Honourable friend, Mr. Moncrieff Smith, has referred to the services which the non-official members have rendered in connection with this Bill. Let me reciprocate and say that, but for the valuable assistance of Mr. Moncrieff Smith, his masterly knowledge of the Criminal Procedure Code, his assiduity, his devoted industry, and the untiring patience with which he has tackled many difficult and intricate points and readjusted them, the Joint Committee would not have been in a position to present such a satisfactory report. I therefore say that the grateful acknowledgments of this Council are due to our Honourable friend Mr. Moncrieff Smith.

[Mian Sir Muhammad Shafi.]

The HONOURABLE MIAN SIR MUHAMMAD SHAFI : Sir, there is one point ....

The HONOURABLE THE PRESIDENT : I understand the Honourable Member merely wishes to make an explanation to correct his former speech and not to speak again.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI : Yes, Sir. When I dealt with section 526 in my former remarks, I read the provisions of the section from the original Bill printed on blue paper and therefore it is necessary for me to correct one little error. Originally it was proposed to divide the proceedings in a criminal case into two stages, (1) before the framing of the charge, and (2) after the framing of the charge. It was intended to make the adjournment obligatory only in the case of applications made before the framing of the charge ; in the case of application made after the framing of the charge, it was intended to make it obligatory only if the accused furnished the required bond. The Joint Committee have gone a little further and they have made it obligatory on the part of a Court to adjourn the case, no matter at what stage the application is made either by the complainant, the Public Prosecutor or the accused. So that the distinction originally sought to be maintained with regard to the two stages of the case has been removed, and adjournment has been made obligatory no matter at what stage during the course of the proceedings such an application is made.

The HONOURABLE SIR LESLIE MILLER (Madras : Nominated Non-official) : Sir, as one who has had nothing whatever to do with the preparation of this Bill in any capacity, minor or major, but as one who has for nearly 40 years been charged with the duty of administering the Code of Criminal Procedure in different capacities from that of a Third Class Magistrate to that of a Judge of a High Court, I thought that possibly it might interest the House to know that I also can pronounce a blessing on the Committee which has devised and perfected this measure of revision. I am far from saying that it is a perfect measure. I could probably put my finger upon points here and there in which the Bill might be improved. But as I do not harbour any intention of endeavouring to throw it out altogether, and as I have not considered it necessary to table any amendment, it seems to me hardly worth while that I should point out to the House any of those little defects. On the whole I am of opinion that the measure as it stands is a great improvement on the law of 1898. But in one point I see a good deal to regret, and that is, in the presence of section 476-B. I believe in that view I may not have the sympathy of anybody in this House, but it has always been to me one of the principal troubles connected with sections 195 and 496, especially the former, that special facilities should be given by the law to forgers and perjurors to evade trial and impede the administration of justice. I had hoped, years ago when this Bill was first brought out, that we should now have nothing more to do with those vexatious impediments, appeals not by persons who have been tried and convicted but merely to decide the question whether a person should take his trial or not. If you, Sir, or I, stand charged with murder or rape or riot or dacoity, and a complaint is made to a Magistrate we have no right to appeal

to anybody to direct that complaint to be withdrawn. But if a person is charged, not by some irresponsible private party but by a Court of Justice, if the presiding officer of a Court of Justice makes a complaint to a Magistrate that somebody in his opinion has committed perjury and desires that person to be tried, the accused can say "Oh, no, wait a little ; let me appeal if necessary as far as the High Court and see whether I am guilty or not, but whether I am to be tried or not." It amounts to this, that in cases of alleged perjury, we may have two or three half trials, for no particular purpose unless it be when the case comes up to the High Courts to enable an Honourable Judge who finds nothing wrong to come to the conclusion that on the evidence there is not likely to be a conviction. I am sorry to say that this state of things, which has always given me much trouble, is perpetuated or rather continued in this Bill. As I have said before, I do not suppose that anybody in this House will sympathise with me in my sorrow. On the whole, the provisions of this Bill are a considerable improvement, though I am certainly not prepared to agree with my Honourable friend Sir Maneckji Dadabhoy that the Judges who have had to administer the criminal law hitherto have found nothing but chaos in the Procedure Codes to be administered. In fact, it is clear that this new Bill does not touch any of the great old principles which we had been accustomed to apply. But what it has touched are certain minor matters, and in these it has effected improvement.

The HONOURABLE MR. PHIROZE SETHNA (Bombay : Non-Muhammadan) : Sir, speaking as a layman, I would like to lend my very strong support to the two suggestions with which the Honourable Sir Benode Mitter wound up his speech. But before doing so I may be permitted to express my great regret at not having been able to attend one single meeting of this Committee on which I was asked and had expressed my willingness to serve. The reason was that the meetings were called in June and long before that date I had to attend to some other important work during that month. Had I known in advance that the meetings would be held at that time of the year, I should certainly have so informed the Honourable Member who thereby would have had a chance of substituting some one else in my stead.

Now, Sir, the Honourable Sir Benode Mitter drew the attention of the House to the anomaly which exists and according to which an accused, if he is sentenced to less than six months by a Presidency Magistrate cannot appeal to the High Court, whereas an accused who is sentenced by a mufassal Magistrate can do so if he is sentenced for a period of one month or more. This state of things might have been alright years ago when perhaps Magistrates were not drawn from the same class as they are to-day, and when Presidency Magistrates were mostly barristers-at-law. Conditions have greatly changed and we find that mufassal Magistrates to-day are very capable men, drawn perhaps from the same class of lawyers and having perhaps an equal education in law as the Presidency Magistrates themselves. That being so, I entirely agree with the Honourable Sir Benode Mitter that Government should consider the question and try to remove the anomaly. I understand that objection could be raised against the

[Mr. Phiroze Sethna.]

suggestion on the ground that the work of the High Court would be very considerably increased by appeals from the Courts of the Presidency Magistrates. At the same time the liberty of the subject has also to be considered, and there is no reason why an accused in a presidency-town should be denied a privilege which is extended to accused in the mufassal.

The second point is also one in which the public take very great interest and from the public point of view I would appeal to Government to give due consideration to it. There are offences for which an accused might be tried before a Magistrate or before the High Court. If an accused wants to be tried in the High Court he has got to make an application to that effect, whereas in England the right rests with the accused himself. Now, Sir, as Sir Benode Mitter explained, it very often happens that the accused prefers to go to the High Court, and why does he do so? Ordinarily the accused is of opinion that in the lower Court, if the police are insistent, they can more easily get a conviction than they might in the Sessions Court. That is what induces the accused to risk a trial before a Court of Session and a jury. But even if he is prepared to take the risk he is not sure whether his application will be successful or not. He should therefore be put in the same position as the accused in England for similar offences who can decide for himself, if he will be tried by a Magistrate or by a Sessions Court. Sir, I hope that both these suggestions will be duly considered by Government and that they will think it fit to bring forward these amendments at a later date.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I merely rise to take this opportunity of thanking the Honourable Sir Muhammad Shafi for having attempted to correct certain misapprehensions that may have been caused by a slip in my speech. After listening to the Honourable Member's remarks, I thought I was going to get an opportunity of returning the compliment ; but the further explanation that he has given has cut the ground from under my feet. My learned friend, Sir Benode Mitter, supported by the Honourable Mr. Sethna, has made a few suggestions for the consideration of Government. I may assure him that those suggestions will receive due consideration. But as I said in my opening remarks we do not consider the Bill a perfect Bill, and we do not consider that the Code as amended will be perfect. There must, however, be some finality. This question of amending the Code has been going on for years, and each time we thought we had a Bill ready another batch of suggestions came along and we had to get another Bill ready, and in consequence nothing could be done finally all these years. As Sir Benode Mitter pointed out it was explained in the Joint Committee that Government desired some finality now ; we thought we must achieve something, and even if we succeed in removing some of the defects that have been pointed out by High Courts and others, we shall have achieved something when we pass this Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That the Report of the Joint Committee on the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-Fees Act, 1870, be taken into consideration."

The motion was adopted.

The HONOURABLE THE PRESIDENT : We shall now proceed to the detailed consideration of the Bill, clause by clause. Honourable Members will find the Bill on white paper printed after the report of the Joint Committee. I shall call each clause by its number and on that I want Honourable Members to make any remarks they have to make. I shall thereafter put the question that the clause in question do stand part of the Bill. We will, as usual, reserve the preamble till the end.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 1, 2, 3, 4, 5, 6, 7 and 8 stand part of the Bill."

The motion was adopted.

Clauses 1, 2, 3, 4, 5, 6, 7 and 8 were added to the Bill.

The HONOURABLE THE PRESIDENT : I should like to be informed why clause 9 is cut out.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, clause 9 of the Bill as introduced was cut out by the Joint Committee. The Joint Committee thought that if we re-numbered the whole of the clauses of the Bill, it would be extremely confusing for this Council to follow the Bill. There has been a series of Bills culminating in the Bill of Sir George Lowndes, and Sir George Lowndes' Bill was supplemented by certain clauses. If the Joint Committee had proceeded to re-number at this stage, Honourable Members would have had four or five numbers by which to refer to any particular clause. Therefore, it seemed advisable that we should leave the numbering at this stage and correct it when the form of the Bill was finally settled by a formal motion at a later stage.

The HONOURABLE THE PRESIDENT : A third reading in the other House ?

The HONOURABLE MR. H. MONCRIEFF SMITH : Yes.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 10, 11, 12, 13 and 14 stand part of the Bill."

The motion was adopted.

Clauses 10, 11, 12, 13 and 14 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE (Berar : Nominated Non-Official) : *Clause 15.*—Sir, I propose that in section 103 of the Criminal Procedure Code, sub-section (*1*) for the words "locality in" substitute the words "immediate vicinity of." It looks like a verbal change, but it has an importance of its own. Section 103 directs that when a search is made it should be conducted in the presence of two respectable persons of the locality. The word "locality" has given trouble in interpretation. In some cases it was found that the Station House Officer going to the place to search generally took some people with himself from the place where he started, and these two persons acted as the Panch. I objected and said to them, 'You don't belong to the locality'. They replied, 'No, locality means the whole taluka in one locality, the whole of the police range is one locality', and thus these people who happened to be the informers and assistants of the police became the Panch. That threw a great deal of doubt on the property actually found in the search and there was trouble. I thought that the Honourable Sir Benode Mitter also referred to a similar case at Midnapore, in which the High Court ultimately found that it was a very doubtful case, that the police them-

[Mr. G. S. Khaparde.]

selves had put things which they wanted or something of that kind happened. Therefore, in order to remove this ambiguity, I propose that the word " locality " be replaced by the words " in the immediate vicinity of " and that will cause no difficulty so far as I can see.

The HONOURABLE MR. C. M. BAKER (Bombay : Nominated Official) : Sir, I should like to point out to my Honourable friend that in considering questions of this kind, it is necessary to think in the vernacular ; and that in my Honourable friend's native language there is no difference whatever between the word " locality " and the word " vicinity ", and how he proposes to translate the word " immediate " I really do not know. Perhaps I shall not be in order in asking him this.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I have another objection to the proposal of my Honourable friend, Mr. Khaparde. I think " locality " is a much wider term than the words " in the immediate vicinity of ". My experience has been that at times it is found extremely difficult in the immediate vicinity to get people to come forward to form a panch or to do anything, and if you adopt my Honourable friend's proposal it will cause a failure of justice. I have found from experience that in these matters it is much better to leave a much wider latitude and allow people of the locality to be selected.

The HONOURABLE LALA SUKHBIR SINHA (United Provinces Northern : Non-Muhammadan) : Sir, I am quite in agreement with the proposal made by my Honourable friend, Mr. Khaparde, because the word ' locality ' is much wider and it is proposed to replace it by the words ' in the immediate vicinity of '. If you do not remove this word, then the police can take people of their own liking to the place of search, who may be living at a distant place from where the search is to take place actually. Therefore I support the amendment of my Honourable friend, Mr. Khaparde.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, there would be no particular harm in Mr. Khaparde's amendment if we could be sure that it would always leave it possible to secure search witnesses. If we make a hard and fast rule and introduce the words proposed by the Honourable Mr. Khaparde, it will result in hampering the police in certain cases and making it impossible for them to perform their work. That is the real reason why the Joint Committee did not give effect to the suggestion contained in the various opinions. If Mr. Khaparde will refer to the Report of Sir George Lowndes' Committee, he will see that they also considered the point. They realised that it might be better to substitute the words ' in the immediate vicinity of.' They suggested, however, that executive instructions should be issued that whenever possible persons from the vicinity should be taken. It is not merely witnesses who have to be obtained, but " the law requires that they should be respectable persons " also. Some of these searches take place in isolated houses or hamlets, and it is doubtful whether there will be any respectable persons in the immediate vicinity. I have no doubt that the suggestion of Sir George Lowndes' Committee that further executive instructions should be issued will be considered by Government and something may be done.

The HONOURABLE MR. E. L. L. HAMMOND (Bihar and Orissa : Nominated-Official) : Sir, I think sometimes in cases of this kind perhaps a concrete instance is a better illustration of what is wanted than arguments *a priori*. I remember a case which happened only a year and half ago. It was a case of criminal restraint. The father wished to get his daughter, a widow, back from a respectable family in which she had been unhappily married. He only wanted to get a search warrant for the return of his daughter and grandchildren who were being detained against their will. If it had been a question of the " immediate vicinity," the witnesses who were available would have been entirely under the influence of the accused persons. The parties in the proceedings came forward and asked that the search witnesses might be taken from among the pleaders at the headquarters. That would not be within the immediate vicinity, but it was at the request of the parties themselves that it was granted. Two pleaders from the town, leading gentlemen, went with the Magistrate, the warrant was executed and a search properly made. Had it been limited as proposed by my Honourable friend, Mr. Khaparde, to the immediate vicinity, they would have had to get anybody they could from the people of the neighbourhood, who probably would not have understood what the proceedings were.

The HONOURABLE THE PRESIDENT : The question is :

" That in section 103 of the Criminal Procedure Code, sub-clause (*1*), for the words ' locality in ' the words ' immediate vicinity of ' be substituted."

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

" That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

" That clauses 16, 17, 18 and 19 stand part of the Bill."

The motion was adopted.

Clauses 16, 17, 18 and 19 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I propose that the expression " general repute " used in section 117 be defined. These words " general repute " have given rise to a great deal of discussion. I will not quote the cases but the principle of the law is that hearsay evidence is never to be admitted, but many Magistrates have been found, who say, " How is general repute to be proved except by what people say about that particular man ? " I submit that these words " general repute " do not mean that any action should be taken by Courts on what people have heard from others, and those people heard from others again, none of whom have actually seen anything or heard anything personally. So I propose that the words " general repute " be defined as the opinion of the deponent or deponents based either on personal knowledge or concrete instances, and that this definition be introduced as an Explanation at the end of the clause.

The HONOURABLE MR. C. M. BAKER : Sir, I should like to point out to my Honourable friend that his amendment consists of a definition of a phrase which is not in the section at all. It is not in the Criminal Procedure Code—it is in the Evidence Act. No doubt, the clause about

[Mr. C. M. Baker.]

" general repute " in the Evidence Act refers to the section of the Criminal Procedure Code, but it is not in it.

The HONOURABLE THE PRESIDENT : The Honourable Member states that the words " general repute " do not occur in the section ?

The HONOURABLE MR. C. M. BAKER : Not as far as I can see, Sir.

The HONOURABLE THE PRESIDENT : The copy I have here certainly, in sub-section (3), contains those words.

The HONOURABLE MR. C. M. BAKER : I was looking at the copy on the table.

The HONOURABLE THE PRESIDENT : Section 117, sub-section (3).

The HONOURABLE MR. C. M. BAKER : I thought this amendment was proposed to section 108.

The HONOURABLE THE PRESIDENT : Does the Honourable Member wish to continue ? I think he is wrong on the question of the occurrence in the section of the words " general repute."

The HONOURABLE MR. C. M. BAKER : Yes, Sir, I wish to say something about the amendment itself.

The HONOURABLE THE PRESIDENT : The Honourable Member can continue.

The HONOURABLE MR. C. M. BAKER : I don't think my Honourable friend's definition adds very much to the intelligibility of the section. The expression " general repute " is fairly intelligible in itself. I think almost everybody has a pretty good idea of what is meant by it. But, when you introduce expressions like " personal knowledge " and " concrete instances," you open a field of psychological discussion which is very much beyond the sphere of the ordinary district pleader and of most Sub-divisional Magistrates. I certainly do not understand the definition myself. Personal knowledge of what ? And concrete instances of what ? And why the antithesis between personal knowledge and concrete instances ? Is the personal always abstract and the concrete always impersonal ? I think there is certainly a good deal to be guessed at in the definition as it now stands. I imagine that the Honourable Mover's real object was to get rid of hearsay evidence altogether. But his amendment does not effect that object and, if it did, I maintain that it would be wrong. Hearsay evidence has been expressly admitted by the Legislature in cases of this kind and, I think, it has been rightly admitted. For, if you take it away, there is nothing left. If you can prove personal knowledge that a man is a thief or a concrete instance of his committing a theft, then you can convict him under the ordinary section 379 of the Indian Penal Code, and there is no occasion for this security clause at all—it might just as well be abolished.

I expect my Honourable friend wants to make things easier for the accused. I doubt if he really does so. Evidence of general repute must at least be general. It must be the joint opinion of a large number of persons. The opinion of one deponent on the other hand is a very small thing to convict a man on. Besides, the definition really states what is not true. To say that " general repute " means " the opinion of the deponent " is simply incorrect. It does not mean that at all.

When a deponent is giving evidence of general repute, he does not say "I think so." He says "Everybody says so," which is a very different thing indeed. It has been my unfortunate fate to try some thousands of cases under this Chapter, and I admit that a great many wrong decisions have been given. But that was not the fault of the law. The law is clear enough. The reason why wrong decisions are given is because Magistrates are apt to be careless in weighing evidence. To be perfectly plain, it very frequently arises from the fact that they believe the evidence of people who by their position ought to be men of honour but are, as a matter of fact, incorrigible liars. Well, Sir, that is simply the frailty of human nature, and cannot be corrected by amendments of this law. They can neither improve the credibility of witnesses nor remove the credulity of Magistrates. No, Sir, I think we had better leave the old law alone. It does pretty well and we do not know how to make it any better.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I also oppose this amendment. It is already very difficult to obtain convictions under this section. The provision made in this section makes it at times very difficult for Courts of justice to come to any definite conclusion. If you add the words which my Honourable friend proposes by way of amendment, you will absolutely emasculate the section, and you will never be able to get a single conviction under the section. The other absurdity is that, if there are concrete cases and if there is evidence of actual personal knowledge, then the man ought to be tried under the substantive law, the Penal Code, and it is not necessary to proceed under this section. This section is meant to apply to that class of cases where there is no concrete evidence to convict under the substantive law, and the police are obliged to resort to this section and the evidence of general repute is tendered for the purpose of obtaining security for good behaviour. For these reasons, I entirely agree with my Honourable friend, Mr. Baker, and oppose the amendment.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I hope my Honourable friend, Mr. Khaparde, will realise that his laudable attempt to provide a definition of the words "general repute" is not a success. He is not the first person, Sir, to attempt to define these words. The attempt has been made over and over again and it has always led to a decision that it is a hopeless task. We now have a well-established series of rulings as to the meaning of the words and, if we now put in a definition—certainly not Mr. Khaparde's, though we might devise something else—then all these rulings are so much waste paper. The Courts will have to start all over again, and will not know where they are. At present, they have the guidance of many High Courts in interpreting these words. I suggest that Mr. Khaparde should withdraw his motion.

The HONOURABLE SIR BENODE CHANDRA MITTER : Sir, I also oppose this amendment. Evidence of rumour is no doubt mere hearsay evidence and, hearsay evidence of a particular fact. Evidence of repute, on the other hand, is a totally different thing. A man's general reputation is the reputation which he bears in the place where he ordinarily resides, and, if it is proved that a man who lives in a particular place is looked upon as a dangerous character by the respectable people generally, that is good evidence of his character,—and good

[Sir Benode Chandra Mitter.]

evidence that he is a man of bad habits and he will then bring himself under this particular section.

Of course we all know that in actual practice, where there is nothing else beyond a mere allegation of general repute, the evidence must be of a strong and overwhelming character. That being so, as the Honourable Mr. Moncrieff Smith has pointed out, we have now a series of authorities which give us a guidance. Mr. Khaparde's amendment will cause more confusion than good. He says :—" The expression ' general repute ' is the opinion of the deponent or deponents based either on personal knowledge or concrete instances." That certainly is not the definition of " general repute." You acquire a general repute with your neighbours by your conduct, and if you now seek to define " general repute " to be limited merely to instances based on personal knowledge, you confine the evidence to specific cases of offence, and surely that cannot be the meaning of the words " general repute." Does my learned friend wish to go back upon the series of authorities or does he wish merely to explain ? If his object is simply to explain, then his explanation contradicts those cases directly. For these reasons I think we might leave the words " general repute " where they were originally. The Magistrate and the profession at large understand what the meaning of the words now is. This explanation, instead of explaining it, will create more difficulty.

The HONOURABLE MR. G. S. KHAPARDE : Is it permissible to say a few words ?

The HONOURABLE THE PRESIDENT : There is no right of reply on an amendment.

Before I put the amendment to the Council I should like to say one word on the practice of sending in amendments to Bills with insufficient notice. I intended to have mentioned this matter before we proceeded to the detailed consideration of the Bill. The difficulty created is at once seen from what has just happened. The amendments before us are very imperfectly drawn, so much so that one speaker has been misled already and doubted whether the words occurred in the section. Had the amendments been handed in in time, the table would have put them in order, and the Council would have been in a better position to appreciate them. And if this discussion, as I think it will, runs on to-morrow, I should desire that the table will see that the amendments are put in proper order, that is to say, in such a manner that Honourable Members will be able to see at a glance where they are intended to come in in the clause affected.

Now, this amendment put to the Council properly would be :

" That in section 117, sub-section (*3*), at the end, the following explanation shall be added, namely :

' The expression ' general repute ' is the opinion of the deponent or deponents based either on personal knowledge or concrete instances '."

The Question is that that amendment be made.

The motion was negatived.

The HONOURABLE THE PRESIDENT : Before I put the Question that clause 20 stand part of the Bill, I should like an explanation of the blank in this clause.

The HONOURABLE MR. H. MONCRIEFF SMITH : The explanation, Sir, is the same that I gave just now. The first amendment proposed by the Bill was to introduce the words in sub-section (2) "nor shall any witness be recalled for cross-examination except with the permission of the Court."

The Joint Committee decided that that amendment should not be made. To avoid re-numbering the sub-clauses, it was decided to leave that sub-clause blank for the time being. The Bill, as you have explained, Sir, will be put into proper shape by formal amendments moved in the Legislative Assembly.

The HONOURABLE THE PRESIDENT : The Question is :

"That clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, there is one proviso in this section to which I wish to add a further proviso :

"Provided also that orders passed under this and section 117, sub-section (3), shall be appealable."

The reason for this is as follows. What actually happens is that when persons are called upon to give security, they produce two persons. When they produce the two persons it happens sometimes that the Magistrate knows the two persons, and then, if they are respectable, he accepts them, and if they are not respectable, he says : "I know these people ; they are not good enough" and then they go away. But in the other case what happens is that they actually send out the two persons to the Tahsildar or some other authority in the place where they live to find out who they are. Under the provisions as at present made, there is no provision as to what is to be done to the men in the meantime. Supposing 'A' is ordered to furnish security and to produce two people. These two people have to be sent by the Magistrate to a subordinate to make inquiries about them. In the meantime is this man to be let out or to be detained ? So far as I can see, there is no provision about that matter in this section. Then again, these people may be respectable people, but as it often happens, there may be a conspiracy round about,—to give a dog a bad name is the surest way of killing it,—and people may say that the sureties are bad men, and the whole thing goes out. Local prejudice may work in that way against the person who has been called upon to furnish security. So, I propose that if you provide an appeal, at any rate in the higher Court and in a calmer atmosphere, there would be a chance of these things being looked into. Otherwise the man would be at the mercy of his neighbours. If he is locally an unpopular man—an unpopular man is not always a very bad man—he will be unable to get sureties and will be simply sent off, as has been done before. So, I propose that there should be a remedy for this man to approach the higher Court and explain the circumstances.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I must confess that I found a little difficulty in following the Honourable Member's amendment. But I take it that what he wants is an appeal against an order refusing to accept a surety, and if he will look at clause 107 of the Bill, he will find that it provides for one.

[Mr. H. Moncrieff Smith.]

The Amendment was negatived.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 21, 22, 23, 23-A., 24, 25, 25-A., 26, 27, 28, 29, 30, 31, 32, and 33 stand part of the Bill."

The motion was adopted.

Clauses 21, 22, 23, 23-A., 24, 25, 25-A., 26, 27, 28, 29, 30, 31, 32 and 33 were added to the Bill.

1 P.M.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I propose that in clause (a) of this clause between the words "a Magistrate shall" and the words "before recording" the following shall be inserted, namely : "if satisfied that the deponent has been free from police influence for at least a day."

The reason for this will be found in I. L. R. 6 All. p. 106, in Mr. Justice Straight's judgment ; it is a long judgment and in the course of it it is made out that a Magistrate recording a confession or statement should be satisfied that what the man is deposing to has not been put into his mouth, or that he has not been asked to state it in the hope of an acquittal or anything of that kind owing to the influence of the police. Of course the accused is in the custody of the police ; and the witnesses that are brought in under this section—I do not like to characterise them very harshly—are very much amenable to police influence ; and once the Magistrate records that statement it becomes a judicial record and is always produced against the person. So, I submit there should be an opportunity given to the person to be free from police influence as far as possible, and that is why I propose this amendment.

The HONOURABLE SIR MANECKJI DADABHOY : I oppose this amendment. The words which my Honourable friend wishes to incorporate in the section are of a very wide character and will cause a lot of complication in the administration of the law. Now, the words which he wants to be inserted are "if satisfied that the deponent has been free from police influence......" Pray, what is the definition of "police influence" ? The accused must come up before the Magistrate for trial in the custody of the police ; and from the mere fact that he is in the custody of the police, can it be inferred that he is under police influence ? It would raise questions of great complexity, and it will be absolutely impossible for any Magistrate to define or find out the character of police influence in any particular case. On the contrary, I can speak from personal experience and knowledge that in all trials, when a confession is recorded before a Magistrate, he generally questions the accused whether he makes the statement freely and voluntarily and without any pressure, and on his assurance the Magistrate proceeds to record the statement. In view of the salutary changes already made in the existing law, I submit, the proposed incorporation of additional words of such indefinite character would be extremely dangerous and ought to be avoided. I therefore cannot support this amendment.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I think that not only as my Honourable friend, Sir Maneckji Dadabhoy, has pointed out, would it be very difficult for Magistrates to observe the proposed

rule, but it would be very difficult for a Magistrate to record a confession at all if these words are put into the Code. As the previous speakers have pointed out, the accused has to be brought before the Court by police agency, and in these circumstances it would be difficult for the Court to hold that the accused had been free from police influence for the past twenty-four hours. How are you going to arrange that he should be taken from police custody twenty-four hours before recording his confession ? Is the Magistrate to go into the jail precincts to record every confession ? It will create most serious complexities if you compel him to do so ; and I do not think the Code will work should it be amended in the manner suggested.

The Amendment was negatived.

The HONOURABLE THE PRESIDENT : The question is :

"That clause 34 stand part of the Bill."

The motion was adopted.

Clause 34 was added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, in clause (*1*) of this section two lines from the end, I wish to introduce the words "after recording an order to that effect and showing the same to the person concerned" between the words "the grounds of his belief" and the words "search of". Where the police obtain a search-warrant from a Magistrate it is all right. They have got a warrant and the Magistrate has satisfied himself that there is a necessity for the search and has also probably specified the articles which are to be searched for ; whereas if the police officer going there to search for a sword eventually finds a book, he can take the book and record that he searched for that book in his diary which is usually written at the end of the day.

If it is submitted in the morning, then he finishes it the last thing in the evening. If a police officer really wants something and finds a book, there is nothing to prevent him from taking possession of that book ; he may have gone with one object and he may accomplish another object. It also happens, as has happened before, that these officers who go to effect searches do not have sufficient information whether a particular person has got anything or not. They oftentimes effect a search on the mere expectation of being able to find something. They do not rely upon any particular evidence for that purpose. So my amendment proposes not to curtail their powers. I believe the same is the law in England too, that when a house is to be searched, the house owner is distinctly told that the search is made to find out a particular thing or a particular article and he should be in a position to know why that particular article is wanted. Here the police officer may have one article in mind and he may find another and he may start a new prosecution. That should not be the case, and the law should be that no police officer can effect a search without a search-warrant from the Courts. In India, it is considered necessary in outlying parts where the police are armed with the power of searching houses without warrants. I say that the house owner should have the protection of the written order of the police officer himself which should be given to the house owner before the search is effected. If a man comes to my house, I ask him why he has come. Then he gives me that order, so that I may know what article he wants to search. It should not happen that the police officer comes for one thing, as has

[Mr. G. S. Khaparde.]

happened before, and gets hold of another thing. In one case the police officers came to search a certain article and they found a book called "Swaraj" written in the second century. In those days anything that was said about Swaraj was seditious, and the police took away that book. When I asked them why they took it away, they said 'Oh, this is 'swaraj'. I said 'it was written in the second century, my friend', but they would not listen to me. When it was taken to the Court, I pointed out that it was written in the second century long before anybody had dreamt of section 124, and the Magistrate said 'yes, let it go', and the owner of the book got it after two months. What I want to point out is this. If the search is made by an ordinary Magistrate, there is a warrant. If the police officers carry out the search, they should give a written order stating that they are making the search for such and such a thing; otherwise, they may come with the object of finding out one thing, while they will find out something quite different. So I propose that in cases where these searches are carried out by the police themselves and on their own responsibility, they must give a written order to the owner of the house; if they cannot give the written order in original, they must at least give him a copy of it before searching his house.

The HONOURABLE MR. C. M. BAKER: Sir, my Honourable friend's chief point is that the Police officer should record a written order. To whom is the order to be addressed. Can he address an order to himself? Of course, the idea is that the owner of the house should know what is being searched for. Whether that is a good object or not is rather doubtful, because, if he finds it convenient to hide that article the order will make it easier for him. At any rate, if the object is to be attained, I do not think it can be done by the amendment as now worded.

The HONOURABLE SIR MANECKJI DADABHOY: My Honourable friend Mr. Khaparde as a lawyer of longstanding ought to know that in all cognizable offences where a search is made by a police officer, it is always made in the nature of a surprise visit, and if you go to the house owner and preface your surprise visit by giving him the reason for the visit and preparing him to do away with the property by serving on him an order, I think the object of the section will be defeated. We may rather have no search of any kind at all than give notice to the accused that a search in respect of a particular article is to be made. In other words, Mr. Khaparde's amendment is this, you must give notice to the suspect or to somebody else who may be loitering round about the house to do away with the property before the police officer actually enters the house. Sir, I oppose this amendment.

The HONOURABLE THE PRESIDENT: The question is:

"That in clause 35, sub-clause (*1*), the following be added after the words 'the grounds of his belief' and before the words 'search of' after recording an order to that effect and showing the same to the person concerned."

The motion was negatived.

The HONOURABLE THE PRESIDENT: The question is:

"That clause 35 stand part of the Bill."

The motion was adopted.

Clause 35 was added to the Bill.

The HONOURABLE THE PRESIDENT: The question is:

"That clauses 36 and 37 stand part of the Bill."

The motion was adopted.

Clauses 36 and 37 were added to the Bill.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, my attention has been drawn to the fact that there is a mistake in this clause which might possibly be treated as a misprint. But I think it would be better to correct it by a formal amendment if I have the permission of the Council to move it. I therefore move :

"That in clause 38 for the word 'substituted,' the word 'inserted' be substituted."

The motion was adopted.

The HONOURABLE THE PRESIDENT : The question is :

"That clause 38, as amended, stand part of the Bill."

The motion was adopted.

Clause 38, as amended, was added to the Bill.

The HONOURABLE THE PRESIDENT : Is the explanation of clause 39 the same ?

The HONOURABLE MR. H. MONCRIEFF SMITH : Yes, Sir.

The HONOURABLE THE PRESIDENT: I think this will be a convenient opportunity to break off the discussion till to-morrow.

I understand there are messages from the Assembly which may be read.

MESSAGES FROM THE ASSEMBLY *RE* WORKMEN'S COMPENSATION AND INDIAN BOILERS BILLS.

The SECRETARY OF THE COUNCIL : "*Sir I am directed to inform the Council of State that the following motion was carried in the Legislative Assembly at their meeting on the 13th September 1922 and to express the concurrence of the Council of State in the recommendations contained therein, namely* :

'*That this Assembly do recommend to the Council of State that the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 22 members.*' "

There is a further message, Sir.

The HONOURABLE THE PRESIDENT : It may be read.

The SECRETARY OF THE COUNCIL: "*Sir, I am directed to inform the Council of State that the following motion was carried in the Legislative Assembly at their meeting on the 13th September 1922, and to request the concurrence of the Council of State in the recommendation contained therein, namely* :

'*That this Assembly do recommend to the Council of State that the Bill to consolidate and amend the law relating to steam boilers in India be referred to a Joint Committee of this Assembly and of the Council of State, and that the Joint Committee do consist of 14 members.*' "

The Council adjourned till Eleven of the Clock on Thursday, the 14th September, 1922.