Thursday, 14th September, 1922

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COUNCIL OF STATE.

Thursday, the 14th September, 1922.

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

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY.

The SECRETARY OF THE COUNCIL : Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table the Bills which were passed by the Legislative Assembly at its meeting held on the 13th September, 1922. They are :

1. A Bill further to amend the Court-Fees Act, 1870.
2. A Bill further to amend the Parsi Marriage and Divorce Act, 1865.
3. A Bill further to amend the Official Trustees Act, 1913, and the Administrator General's Act, 1913.

MESSAGE OF CONDOLENCE TO HIS EXCELLENCY THE VICEROY.

The HONOURABLE SIR DINSHAW WACHA (Bombay : Nominated Non-official) : May I request you, Sir, before you commence the business of the day, to express to His Excellency the Viceroy our deep regret at the death of his aged mother. I feel sure that this House will agree with me in conveying to His Excellency our expression of condolence and sympathy in his bereavement, and I therefore move that the Honourable the President will kindly convey to His Excellency the Viceroy this message of expression of our condolence and sympathy with him in his bereavement.

The HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU (Madras : Non-Muhammadan) : I cordially support the motion.

The HONOURABLE THE PRESIDENT : It is so obvious that this proposal expresses the unanimous wish of the House that I do not think I need put a formal question. It will be an urgent duty for me to carry out the unanimous wish of the House in this matter.

MESSAGE *RE* JOINT COMMITTEE ON INDIAN BOILERS AND WORKMEN'S COMPENSATION BILLS.

The HONOURABLE THE PRESIDENT : I understand from a telephonic message I received from the Leader of the House, which I heard very

[The Honourable the President.]

indistinctly, that, as he will be unable to attend at the commencement of the sitting, he desires me to take the two motions regarding the Joint Committee before we resume the consideration of the Bill before us. I think that course will meet with the approval of the House.

INDIAN BOILERS BILL.

The HONOURABLE MR. H. A. F. LINDSAY (Commerce Secretary): Sir, I move:

"That this Council do agree to the recommendation of the Legislative Assembly that the Bill to consolidate and amend the law relating to steam-boilers be referred to a Joint Committee of the Council of State and of the Legislative Assembly, and that the Joint Committee do consist of 14 members."

The House will not, I think, require from me more than a few words by way of explanation. There are at present seven different Provincial Acts dealing with the regulation of steam-boilers. Between these Acts there are many inconsistencies and in some of the provinces there is no legislation of this kind at all. The object of the present legislation is to consolidate and amend the law as it applies at present in the different provinces, to introduce uniformity in the law, and to apply the law in provinces where it does not apply at present. The Bill is in the hands of Honourable Members and the Statement of Objects and Reasons explains the scope of the Bill.

The motion was adopted.

CONSTITUTION OF JOINT COMMITTEE.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I move:

"That the following members of the Council of State be nominated to serve on the Joint Committee to consider and report on the Bill to consolidate and amend the law relating to steam-boilers, namely:

'The Honourable Mr. H. Moncrieff Smith, the Honourable Mr. Lalubhai Samaldas, the Honourable Sir Arthur Froom, the Honourable Rai Bahadur Lala Ram Saran Das, the Honourable Sardar Jogendra Singh, the Honourable Sir Ahmedthamby Maricair and the Honourable Sir Leslie Miller'."

The motion was adopted.

WORKMEN'S COMPENSATION BILL.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I move:

"That this Council do agree to the recommendation of the Legislative Assembly 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 the Council of State and of the Legislative Assembly, and that the Joint Committee do consist of 22 members."

This Bill also is in the hands of Honourable Members and the Statement of Objects and Reasons to the Bill explains the scope of the Bill. I do not think that any detailed explanation will be required from me at this stage.

The HONOURABLE MR. PHIROZE SETHNA (Bombay : Non-Muhammadan) : Sir, in regard to what has fallen from the Honourable Mr. Lindsay I would like to observe that while in connection with the previous motion he suggested a Joint Committee of only 14 I see that he has increased the number to 22 in the present case. I suppose this matter was not left entirely in the hands of Mr. Lindsay, but I should like to point out that the very object of having a committee is frustrated by having so unwieldy a number as twenty-two members. If only a small number were chosen to represent different interests, I contend, Sir, that the work of the committee could be carried on as well and better.

The HONOURABLE THE PRESIDENT : Does the Honourable Member intend to move that a message be sent to the other House recommending that the number of the Joint Committee be reduced to such figure as he is prepared to specify ?

The HONOURABLE MR. PHIROZE SETHNA : I had that in mind but I thought that it would unduly prolong the appointment of this particular Committee, I thank you for the suggestion. It was in my mind to make such a suggestion in regard to the future, but if you think, Sir, that it is possible for me to make such a motion on the present occasion, I will certainly do so.

The HONOURABLE THE PRESIDENT : It is certainly competent to the Honourable Member to move such an amendment. Whether he considers it desirable to make such a motion now is a matter for his own consideration.

The HONOURABLE MR. PHIROZE SETHNA : Then I will formally move that a message be sent to the other House that, in the opinion of the Council of State, 14 would suffice as the number to constitute the Joint Committee on this question.

The HONOURABLE THE PRESIDENT : To the question under consideration amendment moved that this House do agree to the appointment of a Joint Committee, but suggest for the consideration of the Legislative Assembly that the number of the committee be reduced from 22 to 14. That is the amendment now under discussion.

The HONOURABLE MR. H. A. F. LINDSAY : I understand fully the objects with which the Honourable Member has moved his amendment, but at the same time I think I can explain why the number is so "excessive" in this particular case. Twenty-two is certainly a large number in comparison with the Resolution in regard to the steam-boilers legislation. That legislation is very much more simple than this now before the House. The principles underlying the Workmen's Compensation Act are very complicated and the members of the Joint Committee were chosen with great care on account of the experience that they bring to bear on all the different principles underlying this legislation. You will find that the interests of the employer as well as the employee have to be considered. Legal advice has to be taken. The experience of insurance experts is also necessary for a full consideration of the various clauses of this Bill. On these grounds I hope the House will reject this amendment.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : I believe the amendment moved by the Honourable Mr. Sethna is very opportune. The Committees when they are big are

[Mr. Lalubhai Samaldas.]

not able to devote as much attention as a small committee would be able to do. The very fact mentioned by Mr. Lindsay, namely, that the Bill is a complicated one, makes it necessary that we should examine it thoroughly and that can only be done by a few men sitting round a table. The larger the committee the greater the difficulties in the case of Bills of more complicated nature. I realise that it is just possible that the other House may not accept this suggestion. Still I think it is right that we should express our opinion that a smaller committee will be able to do the work much better than a large committee. As regards the various interests about which my Honourable friend spoke, they may be as well represented by two instead of four. If there are two employers' representatives they will be able to do the work as well as four or five. As regards the employee's representative, there is perhaps one only, that is the Honourable Mr. Kale. The Honourable Mr. Khaparde can in no sense be called the representative of the employees, unless he wants to take up that rôle. All the others are employers' representatives. Of course we have Major General Edwards........

The HONOURABLE THE PRESIDENT : The Honourable Member ought not to comment on the personnel of the committee. The question before the House relates to the number of members who are to constitute the Joint Committee.

The HONOURABLE MR. LALUBHAI SAMALDAS : I think, Sir, that all the interests can be represented by a small committee.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, on the question of what ought to be the numerical strength of the Joint Committees generally I am in entire agreement with my Honourable friend, Mr. Sethna. I think Committees as a rule ought to be small, so that the members may be able to attend, and their work may be concentrated and completed within a short time. But I think this particular legislation does require a big Committee. I think Honourable Members must have read the Bill. It is proposed to apply this Act not to all industries but to certain established industries, and if there are no representatives from the various branches of trade on this Committee, it might be said hereafter that they were not represented, and that their special interests were not considered. The Workmen's Compensation Act is a special legislation of great importance ; a new principle is to be introduced into this country in the matter of giving compensation to workmen, and I think that all classes of industries—not only factories of particular kinds—do require the representation of members intimately associated with those industries, to advise and report as to what particular industries should be included and brought within the scope of the Act or not. I am, therefore, in favour of this big Committee. I have already expressed my opinion as regards the numerical strength of other Committees. I think that is sufficient, and my friend, Mr. Sethna, will not deem it advisable, in view of the explanation given by Mr. Lindsay, to press this amendment.

The HONOURABLE SIR DINSHAW WACHA (Bombay : Nominated Non-official) : Sir, I am perfectly indifferent to the number of the Com-

mittee. The truth has to be borne in mind that it is a good practice to put square men into square holes ; but not square men into round holes.

The HONOURABLE MR. V. G. KALE (Bombay : Non-Muhammadan) : Sir, I oppose the amendment which has been proposed, because I am afraid that the course which has been suggested to us will unduly delay matters. The question involved in the proposed legislation is of great importance, namely, the introduction of a new principle altogether into the industrial organization and conditions of this country, and I do not think that we should take any step which is calculated only to postpone the consideration of the whole matter. I am, however, in favour of the general principle that Committees,—Joint Committees,—should always be small, so that they should not become unwieldy. If I am, therefore, permitted by you, Sir, I would propose an amendment to the amendment of the Honourable Mr. Sethna that this House accedes to the proposal coming from the Legislative Assembly, but at the same time we would like to place it on record that Joint Committees that are appointed to consider Bills should not usually exceed the number 14 in the future.

The HONOURABLE THE PRESIDENT : To the amendment under consideration amendment moved :

"That this Council do agree to the recommendation of the Legislative Assembly 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 the Council of State and of the Legislative Assembly, and that the Joint Committee do consist of 22 members, *but that this House do intimate to that Assembly an expression of its opinion that usually Joint Committees should not exceed 14 in number.*"

That amendment is now under discussion.

The HONOURABLE SARDAR JOGENDRA SINGH (Punjab : Sikh) : I support Mr. Kale, Sir.

The HONOURABLE SIR MANECKJI DADABHOY : May I suggest, Sir, that the word 'ordinarily' be inserted ?

The HONOURABLE MR. V. G. KALE : I said "usually".

The HONOURABLE MR. H. A. F. LINDSAY : Sir, I am afraid I must rise to question the propriety of the second amendment. Is it not the case that that suggestion would come better as an amendment of the Standing Orders ? I do not know if this House........

The HONOURABLE THE PRESIDENT : If the Honourable Member asks my opinion, I may say that an amendment of the Standing Orders of this House would be quite infructuous to secure the object of the amendment.

The question is that Mr. Kale's amendment be adopted.

The motion was adopted.

The HONOURABLE THE PRESIDENT That disposes of Mr. Sethna's amendment.

The question is :

"That this Council do agree to the recommendation of the Legislative Assembly 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

[The Honourable the President.]

of employers to their workmen of compensation for injury by accident, be referred to a Joint Committee of the Council of State and of the Legislative Assembly, and that the Joint Committee do consist of 22 Members, *but that this Council do convey to the Legislative Assembly an expression of its opinion that a Joint Committee should usually not consist of more than 14 Members.*"

The motion was adopted.

CONSTITUTION OF JOINT COMMITTEE.

The HONOURABLE MR. H. A. F. LINDSAY : Sir, I move:

"That the following Members of the Council of State be nominated to serve on the Joint Committee to consider and report on 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, namely :

'The Honourable Major-General Sir William Edwards, the Honourable Sir Alexander Murray, the Honourable Mr. Kale, the Honourable Mr. Sethna, the Honourable Mr. Khaparde, the Honourable Sir Arthur Froom, the Honourable Sir Leslie Miller, the Honourable Saiyid Raza Ali, the Honourable Sir Maneckji Dadabhoy, the Honourable Sir Ahmedthamby Maricair, and the Honourable Diwan Tek Chand '."

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL. (*contd.*)

The HONOURABLE THE PRESIDENT : We will now resume the further consideration of the Report of the Joint Committee on the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870. We disposed of clause 38 on the last occasion, clause 39 is blank.

The HONOURABLE THE PRESIDENT : The question is :

"That clause 40 stand part of the Bill."

The motion was adopted.

Clause 40 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 41 to 43 stand part of the Bill."

The motion was adopted.

Clauses 41 to 43 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 44 to 47 stand part of the Bill."

The motion was adopted.

Clauses 44 to 47 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 47-A., 48 and 49 stand part of the Bill."

The motion was adopted.

Clauses 47-A, 48 and 49 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 50, 51, 52 53, and 54 stand part of the Bill."

The motion was adopted.

Clauses 50—54 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE (Berar : Nominated Non-official) : Sir, I beg to propose that after clause 55 the following clause be inserted, namely :

"55-A. To section 205 of the said Code the following sub-sections shall be added, namely :

Amendment of section 204, Code of Criminal Procedure, 1898.

(3) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may at any subsequent stage of the proceedings direct the personal attendance of such accused.

(4) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

The HONOURABLE THE PRESIDENT : Would the Honourable Member excuse me for asking him why he is amending section 205 of the Code, which is apparently not opened by this Bill ?

The HONOURABLE MR. G. S. KHAPARDE : This amendment, Sir, was originally put in to clause 147 and the section was 510A. But it has been thought that it goes more naturally under section 205 than under section 510A. That is the amendment which I have proposed, and in the drafting it has been made to refer to clause 55. I originally put it in as an amendment to clause 147 ; but now it has been put to clause 55 merely as a matter of arrangement, I think.

The HONOURABLE THE PRESIDENT : I will hear the Honourable Member on the point, whether the amendment is in fact an amendment which is opened by the Bill.

The HONOURABLE MR. G. S. KHAPARDE : That is rather a difficult position for me ; but I originally put it in for clause 147, and I think the change has been properly made. So far as my personal judgment goes, instead of putting it under section 510A. it is better to put it under section 205.

The HONOURABLE THE PRESIDENT : I think if the Honourable Member is not prepared to argue that point, I should like to hear the Honourable Mr. Moncrieff Smith.

The HONOURABLE MR. H. MONCRIEFF SMITH (Legislative Secretary) : Perhaps, Sir, I can explain the position. What Mr. Khaparde asks us to do is to consolidate this new section of the Code which is introduced by clause 147 with section 205. Section 205 deals with the attendance of accused, and therefore he thinks that the new section should be included in the same Chapter after section 205. I do not think Mr. Khaparde's suggestion is a very sound one, because, if he looks at the heading of Chapter XVII, he will see that it deals with the commencement of proceedings before Magistrates. Under section 205 a Magistrate at the stage at which he ordinarily issue a summons or warrant for the attendance of accused, may direct that the accused need not attend in person. But the new section which we are inserting by clause 147 deals with the case of an

[Mr. H. Moncrieff Smith.]

accused person who has been before the Court from the beginning of the trial, but is prevented from attendance at some stage in the course of a trial. In any case I suggest that an amendment of this nature should not be made now. Undoubtedly we shall have to consolidate the Code. Once this Bill is placed on the Statute-book we can take up the question of consolidation. I would therefore suggest that Mr. Khaparde should withdraw his amendment.

The HONOURABLE MR. G. S. KHAPARDE : Under the circumstances I will withdraw my amendment.

The Amendment was, by leave of the Council, withdrawn.

The HONOURABLE THE PRESIDENT : The question is :

"That clause 55 stand part of the Bill."

The motion was adopted.

Clause 55 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 56, 57, 57-A., 58, 59, 60, 61, 62, 63, 64, 65 and 66 stand part of the Bill."

The motion was adopted.

Clauses 56—66 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I move :

"That in clause 67—

(*a*) in sub-clause (*i*), in the proposed new sub-section (*1*) after the words 'the Magistrate may' the words 'on his own motion, or on application by the person concerned,' be inserted ;

(*b*) in the same sub-clause, to the proposed new sub-section (*2 A.*) the words 'Any compensation awarded under this section shall be recoverable as a fine' be added ; and

(*c*) to sub-clause (*ii*) the following words be added, namely : '

and the words 'of the second or third class' shall be omitted'."

The reason why I propose this amendment is this. The original section 250, as it stands to-day, runs thus :

"250. (*1*) If, in any case instituted by complaint as defined in this Code, or upon information given to a police officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit."

Here I wish to introduce, after the words "the Magistrate may" the words "on his own motion on or application by the person concerned". It often happens when a person is discharged, that the accused says he has been needlessly prosecuted. By the addition of the words I have suggested, you make it permissible for the person affected by the order to get an opportunity of arguing it out. Beyond that there is nothing further in it. That refers to clause (*1*).

In clause (2-A) there is a matter of some importance I think because originally compensation of which a Magistrate has ordered payment

under the sub-section would be recoverable as if it were a fine. These words have been omitted in the amended Bill that is before us. So the question will arise as to how this compensation is to be realised, and it may be that when it is a fine the Court has jurisdiction to say on the application of the person, "I give you four days' time to pay the fine, or I give you so much time and so on." Whereas if that word is taken away it cannot be recovered as a fine. The Magistrate may say under the new clause "It is compensation, it is not fine. I cannot give you time. Pay it at once or take the consequence of being sent to jail." That causes practical inconvenience. There is nothing much of principle except a mere matter of convenience. Formerly all these compensation orders were treated as so many fines and the procedure applicable to the recovery of fines was made applicable to the recovery of these compensations. Now, there appears to be a distinction made between compensation given and fine imposed because originally the clause was that it should be recoverable as if it were a fine. That clause has been deliberately taken out. So the Court would be right in saying, "Well, compensation is not the same thing as fine and I have no jurisdiction to give you time to pay compensation. Either you pay it now or you go to jail at once." So it is rather an important point in this way and I wish to bring it before this House to enable them to make up their minds. Personally I think the old practice was the correct one. Everything demanded by a Criminal Court by way of compensation or fine was to be treated as fine, and as fine the Court had jurisdiction to give time to the man to pay it. I humbly submit therefore that this distinction which I think has been unconsciously introduced should be taken away and the old practice of treating fines and compensations in one and the same way should be restored.

Then comes the last clause of this section, I mean clause (*ii*). "In sub-section (*3*), for the word and figure 'sub-section (*1*)' the word and figure 'sub-section (*2*)' shall be substituted. I propose also and the words 'of the second or third class' shall be omitted. Originally these compensations were looked upon as fine and as the second class Magistrate and the third class Magistrate........

The HONOURABLE THE PRESIDENT : Is the Honourable Member moving all the amendments ? Would it not be better to dispose of sub-clause (*i*) first ?

The HONOURABLE MR. G. S. KHAPARDE : I would be very glad. I thought I had to move all the amendments at the same time. Then I take the first amendment, which is covered by clause (*a*).

The HONOURABLE THE PRESIDENT : You can move the other amendment afterwards.

Amendment moved :

"That in clause 67—

(*a*) in sub-clause (*i*), in the proposed new sub-section (*1*) after the words 'the Magistrate may' the words 'on his own motion, or on application by the person concerned,' be inserted ;

(*b*) in the same sub-clause, to the proposed new sub-section (*2-A.*) the words 'Any compensation awarded under this section shall be recoverable as a fine' be added."

That Amendment is now under discussion.

[Sir Maneckji Dadabhoy.]

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces General) : This amendment is merely a drafting amendment. My submission is that the proposed words are superfluous and not necessary. They are covered by the words " by his order of discharge or acquittal." When a Magistrate has passed any such order he has acted either on his own motion or on the application or initiative of the party aggrieved. It matters therefore very little that these words should be expressly added. Action on the part of the Magistrate is implied on the initiative of the applicant. He only takes action on a motion made to him by the applicant or he acts on his own account.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN (West Punjab : Muhammadan) : I support the amendment. Sometimes it happens that the accused approaches certain witnesses during the trial who then say they know nothing about the case. The man who brought the case does not know that his case is going to fail and perhaps has not brought any money with him. Then if he is asked to pay a fine, he has not got the money and he will be sent to prison. That is rather hard. I think it would have been better if the old practice had been continued and the compensation treated as a fine.

The HONOURABLE SIR BENODE CHANDRA MITTER (West Bengal : Non-Muhammadan) : I do not think these two amendments are at all necessary. With regard to the first amendment, the section as recommended by the Joint Committee reads as follows :—" The Magistrate by his order of discharge or acquittal " call upon the person and so on. It is sought by the proposed amendment to add these words " of his own motion or on application by the person concerned." The section passed by the Joint Committee, I think, gives right to the person concerned to make the application. When it is said that the Court may do a particular thing it is always open to the litigant to set the Court in motion. If you make that amendment here one has to look carefully at the different other portions of this Code and to see whether by introducing these particular words we may not be prejudicing the rights of the accused person in other sections. We have not had time to go through each section carefully, but I see no necessity for this particular amendment. The section as drafted gives the person who is making an application the full right to do so.

With regard to the second portion of the amendment, I think Honourable Members who have supported the amendment have omitted to look at the additions which have been made to sub-clause (*4*). Sub-clause (*4*) says :

" and where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.;"

so that there is no risk of a person against whom an order is made being sent to prison at once.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I think the Council will generally agree with the previous speakers that the Honourable Mr. Khaparde's amendment is unnecessary. In practice Courts are nearly always moved by accused persons or by pleaders on

their behalf to take action under section 250 in every case of acquittal, and I think, as the Honourable Sir Benode Mitter has said, if we add these words in the sub-section, it will throw a doubt on the interpretation of other sections in which they do not occur. It is undoubtedly open to parties to move the Court now to award compensation and it is unnecessary to put these words into the Code.

As regards the second amendment, Sir, I fear once more that the Honourable Mr. Khaparde has overlooked the provisions of the Code. If you look at section 547 of the Code you will find these words:

"Any money (other than a fine) payable by virtue of any order made under this Code, shall be recoverable as if it were a fine."

It was that section which the Joint Committee had in view when they dealt with section 250 of the Code.

The HONOURABLE THE PRESIDENT: The question is that the following amendments be made:—

"That in clause 67—

(*a*) in sub-clause (*i*) in the proposed new sub-section (*1*) after the words 'the Magistrate may' the words 'on his own motion, or on application by the person concerned,' be inserted; and

(*b*) in the same sub-clause, to the proposed new sub-section (*2-A*.) the words 'Any compensation awarded under this section shall be recoverable as a fine' be added."

The Amendments were negatived.

The HONOURABLE MR. G. S. KHAPARDE: I move:

"That in clause 67—

To sub-clause (*ii*), the following words be added, namely:

'and the words 'of the second or third class' shall be omitted'."

Originally in the Code it is as follows:

"A complainant or informant who has been ordered under sub-section (*1*) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order in so far as the order relates to the payment of compensation as if that complainant or informant had been convicted on a trial."

Under the present section the first class Magistrate has power to inflict a fine of Rs. 50 and there is no appeal permitted from his order.

Under the old Code the first class Magistrate's powers also did not extend beyond Rs. 50 to award as compensation. A fine of Rs. 50 was made appealable only because he could not inflict a fine above Rs. 50 without allowing an appeal. But now the power has been raised to Rs. 100 and under the existing Code that fine of Rs. 100 would be appealable but the compensation of Rs. 100 would not be appealable, whereas in the case of third class Magistrates they cannot pass any unappealable order and therefore an appeal has been permitted. So, to be consistent with this, the Rs. 100 fine which exceeds the powers given by the Code for non-appealable sentences should not be allowed to be made non-appealable here in this way. The powers should be confined ordinarily to the powers that are given in the Code to third, second and first class Magistrates. The first class Magistrate can pass a sentence of Rs. 50 fine and there is no appeal, but if he inflicted a sentence of Rs. 100 there would be an appeal allowed by law. The anomaly comes in this way. The first class Magistrate may not fine more than Rs. 50 but could award Rs. 100 as compensation and there will be no appeal allowed. That introduces an anomaly and also something affecting the symmetry of the whole Code as it was

[Mr. G. S. Khaparde.]

originally and as, I believe, it is conceived to be now. The amended Bill permits an appeal on the compensation awarded by third class Magistrates but does not allow an appeal to be preferred against Rs. 100 compensation awarded by the first class Magistrate. By taking away the words ' of the second or third class ' we make all compensations awarded by all Magistrates appealable and that restores the harmony of the Code as it was before and as it is intended to be as amended now. Otherwise there would be this anomaly left that the first class Magistrate can only fine Rs. 50 but can award compensation up to Rs. 100 without there being an appeal. I therefore propose this amendment.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I do not think that the anomaly to which Mr. Khaparde refers is quite so evident as he suggests. It is quite true that a Magistrate of the first class can impose a non-appealable sentence of fine up to Rs. 50. In the first place the amendment which the Honourable Mr. Khaparde proposes would give an appeal in all cases where compensation is awarded irrespective of the fact whether the amount exceeds Rs. 50 or not. He suggests no limitations in that respect. In the second place, though the amount of compensation awarded is, as was pointed out just now, recoverable as a fine, there is considerable difference between compensation and fine. In the case of the fine, the person has been definitely convicted of an offence and a stigma attaches to his name, and it is necessary in certain cases to give him the right to go to a higher Court and get that stigma removed. In the case of compensation I do not think the same consideration applies at all. The amendment proposed would, I think, have an unfortunate result and I suggest that it should not be made. I would remind the Honourable Member and the Council generally that there is always a right of revision in these cases ; there are sufficient safeguards provided for the particular cases which Mr. Khaparde has in mind.

The HONOURABLE THE PRESIDENT : The question is that the amendment proposed by Mr. Khaparde be made.

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

" That clause 67 stand part of the Bill."

The motion was adopted.

Clause 67 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

" That clauses 67-A. and 68 stand part of the Bill."

The motion was adopted.

Clauses 67-A. and 68 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : The amendment that I have proposed to clause 69 does not appear in the papers before me.

The HONOURABLE THE PRESIDENT : The Honourable Member has two amendments to clause 69 on the paper and I should like to know which he intends to move first.

The HONOURABLE MR. G. S. KHAPARDE : I move that :

" in clause 69 after the word ' at ' the words ' or before ' be inserted or......"

The HONOURABLE THE PRESIDENT : The Honourable Member must move only one amendment at a time.

The HONOURABLE MR. G. S. KHAPARDE : Then I move the first amendment :

"that in clause 69 after the word 'at' the words 'or before' be inserted."

The object of this amendment is like this. The alternative amendment brings it out more clearly. The first does not. For a long time charges were framed after the evidence for the prosecution has been recorded, but Magistrates have got the power to frame a charge at any stage. So they examine one witness and frame a charge. Now the accused has got two rights under the Code as it exists, namely, to cross-examine the witness for the prosecution before the framing of the charge and after the charge is framed. The accused can say "I wish to recall so many witnesses I want to re-cross examine them" and he gets two chances of cross-examining the witnesses for the prosecution but some Magistrates frame a charge after examining the complainant and then they say. "You cross-examine him now or not at all. We have framed a charge. You must avail yourself of this opportunity of cross-examining or you get no right of cross-examining in the case." That leads to a very great practical difficulty. In the mofussil Courts and occasionally I believe even in the High Courts it happens that lawyers get engaged at the last moment and there is not time enough to give them full instructions. So what they would do is this. They would say "Sir, I have been engaged just now. Therefore I shall not cross-examine the witnesses now but I shall cross-examine them as the case goes on."

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But in the present state of things, and this is why the amendment is now introduced, a lawyer may be engaged at a late stage, or he may have no time to take instructions, then the Magistrate says, 'you are going to appear in the case, this man must be guilty because he has engaged a very eminent lawyer ; therefore he says, you cannot go on with the cross-examination, take your chance.' This has happened at one time, I will not mention names, but it has happened like this, and the Magistrates have it in their power to deprive the accused of both his rights of cross-examination before and after the charge. So I propose to introduce this one word 'in' there which will have that effect, or, in the alternative, the other thing which I wish to propose later on if this fails. It is like this. Take the words......'either or forthwith, or if the Magistrate thinks fit at the commencement of the next hearing of the case'. Well, those words, I humbly submit, are difficult to interpret. 'Either forthwith' means as soon as he frames the charge or as soon as the witness is examined, whichever one can take it or at the commencement of the next hearing,— the hearing may take place before a little vacation for drinking water or sweets and he might say, the next hearing is at 3 P.M. and you come and be prepared for the cross-examination. If it is a heavy case, it is not easy to be ready with the cross-examination. So I have put it 'at or before the commencement of the next,' that is to say you get at least a few hours or at least a whole day before you are compelled to have the cross-examination.; and because I thought that this small amendment might be opposed and it is rather difficult to understand,

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it is a little technical in language, which one knows after actual practice at the bar. Therefore, I put in that alternative also. Isn't it?

The HONOURABLE THE PRESIDENT: I think if the Honourable Member thinks his amendments are the same, he had better speak about the more valuable amendment which will effect the same object; let him select the one amendment he thinks best and move that.

The HONOURABLE MR. G. S. KHAPARDE: I thought the object would be accomplished by introducing the words 'or before' after the word 'at,' or if that object can be better brought out by the alternative amendment which I have put in, and which is that the words "if the Magistrate thinks fit" be omitted. I would omit those words; so it will depend upon how the Honourable Members wish to do it, either by curtailing the discretion of the Magistrate or by putting in another word. I personally, if I was asked, should be in favour of not giving Magistrates this discretion of taking away the right of cross-examination conferred by the Code on the accused; personally, I prefer the alternative, but I have put in the other easier one as not involving any great curtailment of discretion; and I commend my amendment because this will be a very important thing and will affect nearly all the trials that take place in the Mufassil.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I am afraid there is some confusion as to these amendments. I have tried to follow the Honourable Member's arguments. He attempted to make the point that the accused is going to be deprived of the right of cross-examination. He says that some Magistrates frame charges after hearing the complainant and thereupon ask the accused to state forthwith whether he wishes to cross-examine any witnesses. That is not the case under the present law, because the actual section lays down that the accused shall be required to state whether he wishes to cross-examine any, and, if so, which of the witnesses for the prosecution whose evidence has been taken. No question can be put to the accused in regard to witnesses who have not yet been examined. I do not think there is really any point, Sir, in putting in the words 'or before' after the word 'at' because the only occasion when the accused will be able to express his wishes in the matter will be when he next appears before the Court, and that will be the next hearing of the case. So the words 'or before' will not help matters.

This clause of the Bill came in for a considerable amount of criticism. On the one hand, we had the suggestion that the accused should have an unlimited right of cross-examination—and I think Honourable Members are aware of the dangers of this, how cases are prolonged. Witnesses are brought back probably not because the accused desires further to cross-examine them, but simply and solely because he wishes to annoy the witnesses, and to put off the disposal of his case. On the other hand, the judicial authorities—I think Honourable Members will find, if they look at the papers on the Bill that this is so,—and the executive authorities generally wanted to go very much further than the Bill does; they wanted to lay it down that the accused should express his wish forthwith

and should have no further opportunity. There is no doubt whatever as to what 'forthwith' means; it means after the accused has been asked to plead and he has pleaded or refused to plead. These same authorities also thought that if a further opportunity were given to the accused, the exercise of the right should be subject to the discretion of the Court.

I would suggest that the Bill now before the Council goes quite as far as the accused has a right to expect.

The HONOURABLE THE PRESIDENT : I will put the first amendment. The question is :

"That in clause 69 after the word 'at' the words 'or before' be inserted"

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

"that clause 69 stand part of the Bill."

The motion was adopted.

Clause 69 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 70 and 71 stand part of the Bill."

The motion was adopted.

Clauses 70 and 71 were added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 72 stands over for the same reason as clause 9.

The HONOURABLE MR. H. MONCRIEFF SMITH : Exactly the same reason, Sir.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 73 to 77 stand part of the Bill."

The motion was adopted.

Clauses 73 to 77 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 78 to 81 stand part of the Bill."

The motion was adopted.

Clauses 78 to 81 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 82 to 87 stand part of the Bill."

The motion was adopted.

Clauses 82 to 87 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 88, 89, 90, 91, 92, 92-A, 93, 94, 95, 96, and 97, stand part of the Bill."

The motion was adopted.

Clauses 88—97 were added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 98 is blank.

[The Honourable the President.]

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, and 112, stand part of the Bill."

The motion was adopted.

Clauses 99-112 were added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 113 is blank.

The HONOURABLE MR. G. S. KHAPARDE : Sir, my amendment relates to sub-clause (3) of clause 114. I move, Sir :

"that in clause 114, the words and figures 'or section 144 or proceedings under Chapter XII' be omitted."

This raises a very important question which is much discussed in High Courts and is, I believe, of great public importance. It happens, Sir, when parties are fighting about one and the same piece of land, both claiming possession while one actually is in possession, there is often a chance of disturbance or rioting. The Magistrate in his proceedings, which are generally summary proceedings, comes to the conclusion that so and so is in possession and will continue in possession, while the other party, if he wishes to do anything must bring a civil suit. From the executive point of view the matter ends. What often is the result however, is that these orders under sections 144 and 145, being of a summary nature, are defective, and often the wrong party is maintained in possession. Then, as there is no appeal from such an order, the matter is taken in revision to the High Court, and when it has reached there the High Courts of Calcutta and Madras have said that they had the power to look into the matter and see whether the procedure has been properly carried out and, in other words to see whether the Magistrate had jurisdiction to do what he did. The Allahabad High Court, on the other hand, said that under no circumstances could that procedure be looked into by the High Court. I have noted the rulings which show these different points of view. For instance, in 19 Calcutta, in 16 Calcutta and in 25 Calcutta, the Judges held that they had the power of review ; in 38 Indian Law Reports, Madras and 489 Madras, the same view was taken. But in 15, 16, 17 and 31 Allahabad, the High Court there held that they had not the power to look into these proceedings. It was further affirmed in Calcutta and Madras that the High Court had the power under their Letters Patent, not under the Code ; the Allahabad High Court reads the Letters Patent differently and says it has not the power. Incidentally, Judicial Commissioners and Chief Courts, which exercise all the powers of the High Courts, have not this power of looking into the proceedings under the Code. So, as matters stand at present, in Madras and in Calcutta these matters can be taken to the High Courts ; in the Punjab when it had a Chief Court only they could not be ; in my own Province, as we have a Judicial Commissioner, we have no power ; while in Allahabad I suppose it is open to the people concerned to argue out the question over and over again.

In the case of small properties this is perhaps not of very great importance ; but in the case of large properties, involving heavy litigation, a wrong order under those summary proceedings may put a poor

man to very great expense, and this is a matter of great practical and administrative importance. I am aware that executive officers say that though this order is passed by a Magistrate, it is still an executive order and not a judicial order ; they lay stress on that. To that my reply is that it is an order passed by an executive officer who has magisterial powers, and therefore it is what I may call a mixed order, magisterial as well as executive. If it was purely executive, then it might be passed by a revenue officer having no magisterial powers at all : but such a thing could not be done. Therefore I contend that it is a quasi judicial order properly speaking, because, unless the officer passing it is a Magistrate, he cannot pass such an order at all ; and, since that is so, it should be open to revision by the High Court. On this point, however, as I have shown, there is a conflict between the different High Courts, and this conflict of law has to be settled one way or the other. It has been said that the intention of legislation is to put the practice of the law beyond dispute, and it should be possible to do so here. I submit therefore that this amendment of mine should be taken into careful consideration.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I am afraid I must oppose this amendment. Under section 435 of the existing Code of Criminal Procedure, powers of revision are given to the High Courts and the Sessions Courts in certain circumstances to call for the proceedings of the lower Courts, and to revise any such order, decree or sentence as the High Court or the Sessions Court deem proper. These powers of revision are confined to certain cases, and by clause (*3*) of section 435 of the existing Act it is expressly provided that for the purpose of interpretation the word "proceedings" shall not include proceedings under Chapter XII, or any act or order passed under section 176 of the Code. Now Chapter XII refers only to disputes as to immoveable property. Magistrates are empowered to make inquiries into questions of possession, not into questions of title, and to pass an order that the party already in possession should retain possession.

These orders are only of an emergent, summary nature for the purpose of preventing a breach of the peace and violence and injury to persons, and the party against whom an order under section 144 is made is entitled to prove his title to the land by a civil suit. Now, what happens is that Courts are simply inundated with applications for being placed in possession. Every Court, every District Officer will tell you that applications of this sort are made in many cases vexatiously and without any cause and for the purpose of obtaining wrongful and speedy possession and avoiding the expensive machinery of a Civil Court. Immediately an adverse order is made the party resorts to the High Court, and the High Court is simply inundated with applications for the revision of such orders. These orders being absolutely of a summary character, and that the High Courts may not be troubled with applications, a clause in the existing Act was inserted to the effect that orders made under sections 143 and 144 and proceedings under Chapter XII and section 176—and section 176 refers to inquiries into the causes of death—should not be regarded as proceedings in which the High Court should exercise its powers of revision. I think it is an absolutely sound law. I have often practised in the District Courts and had much to do with cases of this nature, and I

[Sir Maneckji Dadabhoy.]

can assure the Council that in nine cases out of ten applications under section 144 were made frivolously and vexatiously to obtain wrongful possession. Several petty cases constantly come up before the lower Courts, and it would be no use troubling the High Courts with exercising its revisional powers in such cases. The new clause in the Bill is a replica of the clause in the existing Act, and I do not think that any case has been made out for interference in this matter. We have considered very carefully in this connection the recommendations of the various Local Governments and also the opinions given by legal associations, and we are definitely of opinion that we should preserve the existing clause of the Act. I therefore think that this Council will act wisely in adhering to the present procedure and not making any departure from the existing law and throwing a large quantity of unnecessary work on the High Courts and Sessions Judges by accepting the amendment proposed by my Honourable friend.

The HONOURABLE MR. E. L. L. HAMMOND (Bihar : Nominated Official) : Sir, I should like to associate myself with what has fallen from the Honourable Sir Maneckji Dadabhoy. As I said yesterday, in many cases a concrete instance is the best justification of what is wanted. I do not know if Honourable Members recollect a case which occupied a good deal of space in the Press known as "the Grant case." It was one of these disputes, in which land which had gone below the Ganges came up again and was fit for cultivation. Both the zemindar and his ryots claimed the land. The ryots were of two parties, one of whom was prepared to pay a higher rent to get the land and the others wanted to get it at the existing rent. There was the usual proceeding under section 145 of the Criminal Procedure Code, Chapter XII, which Honourable Members will remember refers to cases where "immediate prevention or speedy remedy"—I would lay stress on these words "speedy remedy"—is necessary. There was the inevitable reference to the High Court. I think I am right in saying that the reference was made in August 1920, —I think I am right in saying that—and in February 1921 that reference had not been disposed of, and in the meanwhile 20 Gurkhas had come by their death owing to this serious land dispute. The effect of the reference was that the proceedings of the Magistrate were held in abeyance, the question of possession was still left undecided, and as is only too often the case it was settled by actual force and violence. In other words, the immediate prevention could not be attained, nor the speedy remedy. What is wanted in these diara lands when disputes occur is that there should be peace, a summary settlement, and no more trouble. But when such a case gets up to the High Court, rightly or wrongly, it is regarded that it is still open to the parties to try and effect possession with violence and that is what is done. So far as I can see, this amendment which the Honourable Mr. Khaparde proposes would encourage resort to the use of the lathi rather than the law Courts.

The HONOURABLE SIR WILLIAM VINCENT (Home Member) : Sir, I should like in the first place to point out that Government have not proposed any change in the existing law on this subject, and the Joint Committee thought on the evidence of men who have experience of this

question for many years that it was inadvisable to make any change in the law. I submit also to this Council that if Mr. Khaparde proposes to suggest any amendment which materially changes the law, he ought to give very good reasons for such a course before this Council will accept it. And now I want to deal, if I may, with the two parts of the amendment separately. The first part deals with section 144. The suggestion is that orders under section 144 which are made, as the last speaker said, only when they are urgently necessary, for the prevention generally of a breach of the peace, should be subject to revision by the High Court. Sir, in order that the High Court may exercise its jurisdiction properly and reasonably it is, in the first place, essential that there should be a record of evidence on which they can act. If you ask the High Court to proceed on reports of police officers, on oral information, often hearsay, or reports in newspapers or any other information you are asking them to perform a function which is really not one for the Court at all but one for the executive, and it is quite impossible for them to accept this duty. I believe further that it would be unfair to ask the High Court to exercise their judgment on such material. I want to put the sort of case that does arise. Take a case such as has recently occurred in Multan, a dispute between the Muhammadans and Hindus as to tazias in a Mohurrum procession. The Magistrate makes an order,—I am not referring to Multan or saying such an order was issued there—but in a case of that kind a Magistrate has often to issue orders on his own knowledge of the actual temper of the town, of the feeling there, often on reports that he has received from the police,—all hearsay evidence and often on reports in the papers. Take another case. I do not know if Honourable Members remember a time when disputes were prevalent between Arya Samaj and others in the Punjab. In circumstances like that it is essential to pass an emergent order. But if the Magistrate's order is subject to revision by the High Court, he must have everything cut and dried, and carefully recorded, if he is to have a chance of success. Moreover it is quite impossible for him in many cases really to produce evidence of a legal character of the reasons for his order. There are many cases in which judgment is formed on his own knowledge and impressions, and to make such orders revisable by the High Court would, in my judgment, be a very great error and it would greatly increase the danger of a breach of the peace, because anything that prevents a Magistrate from making an order which is really necessary in the public interest is fatal. It is true that the propriety of the orders cannot be questioned in some cases. Where however an order is made without jurisdiction I think,—I speak subject to correction from much more eminent lawyers here,—but I believe every High Court has decided that there is a right of revision. I was just looking at some of the cases and here is one :

> "But the proceeding must be in intention, in form and in fact a proceeding under Chapter XII by a Magistrate duly empowered ; the mere mention of an order as having been made under this section will not of itself make it an order under this section and the High Court will interfere if the order purporting to be one under this section discloses an exercise of powers not conferred by it."

Here is another case in which the Judges say that the High Court would not hesitate to interfere in the exercise of their revisional power where an order is beyond jurisdiction. It is true that the case I cite refers

[Sir William Vincent.]

to Chapter XII. But exactly the same principle, I submit, applies to orders under section 144. Now I want to turn for a short while to deal with this question of section 145. That is really proceedings under Chapter XII. This section 145 is used where there is a dispute likely to cause a breach of the peace as to possession of land between two persons. Here again if the order is beyond jurisdiction any person aggrieved has a right to go to the High Court and get the order set aside. In such cases the difficulty to which I have referred about evidence does not arise in this case. Evidence is recorded, but it is essential that the interests of public tranquillity and safety should be kept in view by giving decisions in such cases finality. If they are left open to revision by the High Court, the inevitable result would be riot, disorder and serious loss of life while the proceedings were pending. These properties are not small in value in many cases. For instance submerged lands come up to the surface in the case of the rivers of Bengal. The possession of those lands is a matter of great importance. Both sides, claiming possession of the land, come up armed with lathies, guns, spears and try to take forcible possession and it is essential that there should be a speedy and immediate decision as to who is actually in possession. If the question is not settled speedily the result would be bloodshed and riot. I would further point out that no man is precluded by any of these orders from exercising his civil rights and bringing a suit. In some cases he can even bring a suit under section 9 of the Specific Relief Act. In certain cases, I think, he can, but in certain cases he cannot. In any case he can always go to the Civil Court in a regular suit and prove hostile when full justice would be done. I submit that in these circumstances this Council would be wise to leave the law which has worked satisfactorily as it is and as it has been for many years.

The HONOURABLE SIR BENODE MITTER (West Bengal : Non-Muhammadan) : I beg to say that the reasons which the Honourable the Home Member has given are of a cogent character. I shall take the two sections separately. Now under section 144 the existence of emergency is a condition precedent to the passing of an order under that section, and if there is no emergency, then the High Court has already got jurisdiction to interfere with an order under that section. Secondly, the ordinary rule is, at least in the Calcutta High Court, that opportunity is given, except in very exceptional cases where if the Magistrate gives an opportunity to show cause why the order should not be made before the final order is made. Thirdly, it may be pointed out that we have made a slight alteration in the Code itself. In dealing with section 144 we have added this sub-clause (5) : " Where such an application is received the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order, and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing." Therefore opportunity will now be given to the person against whom the order is sought to be made. As a matter of fact we have given effect to some decisions upon this point. Now bearing these facts in mind is it possible really to go further and convert what in substance and in effect is an executive order into a judicial order ? Now the Honourable the Home Member gave an instance in connection with the recent Multan disturbances. Take an ordinary case which

happens almost every day with regard to religious processions. Now if the Magistrate gets information that if a particular procession goes through a particular street there will be bloodshed and riot, what is he going to do ? Is he going to pass his order after taking the statements of witnesses and so on ? He will obviously take some time to do so and in the meantime there will be bloodshed. The fact of the matter is Honourable Members must make up their mind with regard to section 144. If they think that the proceedings under section 144 should be judicial proceedings, then so far as I can see its usefulness in many cases entirely disappears and it will be worthy of consideration whether it is necessary to keep that provision at all. There are a certain number of safeguards already. That is the order must be necessitated by the existence of extreme emergency. That is the very basis of it. If this is wanting the order is without jurisdiction. Whether a particular order is interfered with under the Letters Patent or under section 435 makes very little difference. Even under the Charter, as I understand it, it is a question really of jurisdiction. It has been made clear by the changes proposed to be introduced that opportunity should be given to the person concerned or his pleader to be heard, and if his application is rejected, the reason for so doing is to be recorded. There has been no demand on the High Court, the local bodies and public associations for the amendment proposed although the law has been in this condition hitherto. It will be a mistake to accept the amendment, for it will materially reduce the usefulness of this section. Coming to section 145 no doubt in many instances parties consider that their case has not been properly tried by the Magistrate, but, after all the fact that he cannot go to the High Court is not a serious grievance for the questions involved in section 145 are of a quasi-civil character and he can go to a Civil Court where the question is considered more fully. Section 145 I always regard as being in the nature of a preliminary canter. People gather *lathials* very often. They fight over the possession of land. When one side or the other loses he files a civil suit. Under section 145 in many instances the question is of the utmost urgency. The Magistrate receives credible information that there is going to be a riot over the possession of a plot of land and he has to take action at once, and inasmuch as the right is given to litigate the matter by a civil suit, it is difficult to see what particular object is achieved by allowing the High Court to go into the matter except upon a question of jurisdiction, for the High Court ordinary declines in revision to go into a question of fact. There is only one point that I omitted to mention in connection with section 144 and that is, that after all the order remains in force at most for two months.

The HONOURABLE NAWAB SIR BAHRAM KHAN (Punjab : Nominated Non-official)* : I agree with the Home Member in detail regarding section 145. Whenever there is a landed property contested both the contending parties want to show that either they are in possession or go further to take possession of the disputed property. This invariably leads to bloodshed. Such circumstances in the outlying districts which are bounded on the Frontier generally take more serious aspect, owing to their martial spirit and the ignorance of law. If in these circumstances prompt action is taken by the authorities such a calamity could be averted. Though the authority in a hurry to avert bloodshed may make

* Translation of a speech delivered in the vernacular.

[Nawab Sir Bahram Khan.]

a mistake this could be easily remedied by the Civil Courts, but the above decision will be of great use to the public interests. It is for this that I strongly support that the section should be retained as embodied in the present Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That the following amendment be made :

'That in clause 114 the words and figures 'or section 114 or proceedings under Chapter XII' be omitted'."

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

"that clause 114 stand part of the Bill."

The motion was adopted.

Clause 114 was added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 115 is blank.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 116, 117, 117-A. stand part of the Bill."

The motion was adopted.

Clauses 116, 117, 117-A. were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 118 to 126 stand part of the Bill."

The motion was adopted.

Clauses 118 to 126 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I beg to move :

"That for clause 126-A., the following clause be substituted, namely :

'126-A. For section 477 of the Code, the following section shall be substituted, namely :

Provision for powers of Judges and Magistrates being exercised by their successors in office.

'477 (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code, or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge'."

This, Sir, is not an amendment of substance ; it really I think will come better under the relevant section, and it need not stand by itself as a different thing. That is all I have to say.

The HONOURABLE THE PRESIDENT : Amendment moved :

"That for clause 126-A., the following clause be substituted, namely :

'126-A. For section 477 of the said Code, the following section shall be substituted, namely :

Substitution of new section for section 477 of the Code of Criminal Procedure, 1898.

'477. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

Provision for powers of Judges and Magistrates being exercised by their successors in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code, or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge '."

The question is that the amendment be made.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, as the Honourable Mover has said, there is really no substance in the amendment (Laughter) ;—Mr. Khaparde is trying to do some consolidation here. The Bill puts this provision into the Miscellaneous Chapter of the Code simply because that seems to be the best place for it. Mr. Khaparde would put it in the Chapter which deals with proceedings in cases of certain offences affecting the administration of justice, which certainly, to my mind, is a most inappropriate setting for it. In any case I would suggest that it should be left over until the Code is consolidated.

The HONOURABLE THE PRESIDENT : The question is :

"That the amendment be made."

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

"that clause 126-A. stand part of the Bill."

The motion was adopted.

Clause 126-A. was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 126-B., 127 and 127-A. stand part of the Bill."

The motion was adopted.

Clauses 126-B., 127 and 127-A. were added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 128 is blank.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 129 to 139 stand part of the Bill."

The motion was adopted.

Clauses 129 to 139 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 140 to 146 stand part of the Bill."

The motion was adopted.

Clauses 140 to 146 were added to the Bill.

[The Honourable the President.]

The HONOURABLE THE PRESIDENT : Clause 147. Mr. Khaparde.

The HONOURABLE MR. G. S. KHAPARDE* : This amendment was disposed of by the earlier amendment.

The HONOURABLE THE PRESIDENT : The question is :

"that clause 147 stand part of the Bill."

The motion was adopted.

Clause 147 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 148 to 150 stand part of the Bill."

The motion was adopted.

Clauses 148 to 150 were added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 151. Mr. Khaparde.

The HONOURABLE MR. G. S. KHAPARDE : That† amendment also has been disposed of under an earlier section.

The HONOURABLE THE PRESIDENT : The question is :

"that clause 151 stand part of the Bill."

The motion was adopted.

Clause 151 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"that clauses 152 to 154 stand part of the Bill."

The motion was adopted.

Clauses 152 to 154 were added to the Bill.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I beg to move :

"that clause 155 be so amended as to provide in Schedule II that all offences not punishable with death, transportation for life, or imprisonment for more than seven years are bailable."

I examined this Schedule with considerable care, and I found all through that in the large majority of cases—cases which are not punishable with transportation for life or imprisonment for more than seven years—are bailable. But exceptions have been made in the case of offences referring to property in some places ; in other places it is very difficult to discover wherein the differentiation lay or why it was made except that it is generally in accordance with what has been done before. But, I think, since this Schedule is being revised, the opportunity may be taken to specify that offences punishable in a particular way will be non-bailable and others bailable. That would simplify matters very much. As it is the differentiation seems to be very arbitrary between bailable and non-bailable cases.

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* That clause 147 be omitted.

† That for clause 151, the following clause be substituted, namely :
"151. Section 559 cf the side Code shall be omitted."

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I do not know whether Mr. Khaparde has carefully studied and worked out the effect of his amendment. It will affect something like 55 sections of the Code. It will make, in other words, 55 separate offences bailable which are not bailable under the present law. I think the Honourable Mr. Khaparde has ignored the very important amendment that the Joint Committee introduced into the Bill in clause 132, when they were dealing with section 497, which enables bail to be given in certain non-bailable cases. Section 497 as it stands at present lays down that a person charged with a non-bailable offence may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. Now, what the Joint Committee has done is to lay down that a person accused of a non-bailable offence may be released on bail ; and the only restriction on that is that he shall not be released if it appears that he has been guilty of an offence punishable with death or transportation for life. That is a very great advance in favour of the accused person ; an advance which, I think, I may say, certain executive officers regard with great misgiving. But I think it will go a very long way to meet the point put forward by my Honourable friend, Mr. Khaparde. Some of the offences which his amendment would now make necessarily bailable in every case, are sections dealing with very serious offences : section 115—abetment of an offence punishable with death : 126—depredations on the territory of a foreign power in alliance with His Majesty : 369—kidnapping of a child for the purpose of taking property from the person of the child : 379, 380, 381—thefts : 401 and 402—assembling for the purpose of committing a dacoity : 408—criminal breach of trust : 411—dishonestly receiving stolen property : all the coining sections and most of the burglary sections : particularly section 457—house-breaking by night. All these will become necessarily bailable ; a Magistrate will not be able to keep any person accused of these offences in custody, and I think Mr. Khaparde's suggestion, if adopted, would create a very dangerous situation.

The HONOURABLE THE PRESIDENT : The question is :

"That the amendment be made."

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

"That clause 155 stand part of the Bill."

The motion was adopted.

Clause 155 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That clauses 156, 157, 158 and 159 stand part of the Bill."

The motion was adopted.

Clauses 156—159 were added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

"That the Preamble stand part of the Bill."

The motion was adopted.

The Preamble was added to the Bill.

[The Honourable the President.]

The HONOURABLE THE PRESIDENT : That concludes the detailed consideration of the Bill before us.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, I beg to move :

"That the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as amended by the Joint Committee be passed."

Sir, the discussions that have taken place in the Council in the last two days have made this motion more or less a formality. Though I sympathise with my Honourable friend, Mr. Khaparde, in the ill-success of his attempts to improve the Bill, yet as a member of the Joint Committee I do find a certain amount of satisfaction—and I have no doubt that that feeling is shared by my colleagues on the Committee—in the fact that this Council at all events has found itself able to accept the Bill which the Joint Committee proposed. I hope the Bill will have as good a fate in another place.

I beg to move that the Bill be passed.

The HONOURABLE SIR WILLIAM VINCENT : Sir, I rise to express my great gratitude to the Members of this Council for the assistance given in the Joint Committee on this Bill. I do not think that every one realizes what a tax it is upon the time of Honourable Members to give us this assistance on a heavy Bill. Members had to come up to Simla during the busy time of year and to sit for many consecutive days working out the details of this Bill. I desire therefore on behalf of Government to express my gratitude to those Members of this House who afforded us real assistance by sitting on the Committee on this measure.

The HONOURABLE MR. G. S. KHAPARDE : Sir, I desire to say a few words before we pass this Bill. Although I proposed a number of amendments, that does not mean that I wish to cast any reflection on the Members of the Joint Committee. I recognize that they were human beings ; I also recognize that there were a number of lawyers on the Committee. But realizing the imperfections of human nature, I believe that many things did escape their notice. Law points are often obscure and especially when they relate to matters of this kind. It was not likely, after having made up their minds on these points, that they would change them because I asked them to do so. But my hope is that when this Bill comes up again, the public will have become so educated that they will accept the amendments which I have put forward. But notwithstanding all this, I do appreciate the labours of the Joint Committee in regard to this Bill. I am prepared to admit that they have made a very great advance and that they have improved the old Criminal Procedure Code in very many respects, though they have not reached the point I should have liked them to do.

With these words I have no objection to this Bill being passed.

The HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as amended be passed."

The motion was adopted.

The HONOURABLE THE PRESIDENT : Does the Honourable the Leader of the House wish to make any announcement as to the official business which is to come before this Council in the immediate future ?

1 P.M.

GOVERNMENT BUSINESS.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI : Sir, the List of Business has already gone out for the 15th. On Monday, the 18th, if the non-official business is concluded in time, four Government Resolutions will be discussed. The subject matter of these is as follows :

(1) Limitation of hours of work in Inland Navigation.

(2) Recommendations of the General Conference of the International Labour Organization of the League of Nations in regard to fixing minimum age of young persons for employment as trimmers and stokers, and medical examination of such persons employed at sea.

(3) Recruitment for the Indian Forest Service.

(4) Application of weekly rest-days in commercial establishments as recommended by the International Labour Organization of the League of Nations.

The Council then adjourned till Eleven of the Clock, on Friday, the 15th September 1922.