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COUNCIL OF STATE.

Thursday, the 1st March, 1923.

The Council assembled at Metcalfe House at Eleven of the Clock. The Honourable the President was in the Chair.

MEMBER SWORN:

The HONOURABLE MR. ALI BAKSH MUHAMMAD HUSSAIN (Sind: Muhammadan):

THE BUDGET.

The HONOURABLE MR. E. M. COOK (Finance Secretary): Sir, I rise to present a Statement of the estimated annual expenditure and revenue of the Governor General in Council for 1923-24. I have been charged by the Honourable the Finance Member to express his regret that, owing to the rules of the Legislature, he is unable to be here, to present this Budget personally. He is however looking forward to facing the music in this Chamber at about 11 o'clock on Wednesday next. At the conclusion of my remarks this morning, there will be distributed to Honourable Members, together with a number of other papers relating to the Budget, a copy of the speech which the Finance Member is now, I have reason to hope, making in another place. Honourable Members will find that that speech contains, besides the usual account of the financial results of the current year and an estimate of the expenditure and revenue for next year, an appreciation by the Finance Member of the general financial position of India as it appears to him—a new-comer indeed to this country, but one, if I may say so, whose reputation as a financier has preceded him. I do not propose therefore to duplicate in my remarks this morning what Sir Basil Blackett has said, or rather is saying or will be saying, in the speech which will be in Honourable Members' hands shortly. I will confine myself, as I did a year ago, to giving the Council a brief summary of the more important facts regarding the current year. I will then proceed to announce our estimates of revenue and expenditure for next year, explaining at the same time what action we propose to take as a result of the inquiries of the Indian Retrenchment Committee. And finally I will indicate how far, after taking such credit as we can for the Incheape Committee's recommendations, it will be possible to balance the revenue and expenditure of the Central Government.

Now, as regards the current year, it will be within the recollection of Honourable Members that the Budget for 1922-23, as it emerged from the Legislature, left us with a deficit of 9 crores 16 lakhs. Honourable Members will also recollect that Sir Malcolm Hailey warned the Legislature that the provision entered in the Budget for expenditure in Waziristan should be regarded as only tentative and he hinted that possibly the provision of 2 crores 13 lakhs on that account would prove insufficient. Well, Sir, in view of the reply which I gave in the September Session to a question which was asked me, I think by my Honourable friend Mr. Sethria, regarding the progress of revenue and expenditure this year so far as they

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could then be foreseen, the Council, I think, will not be surprised to hear that the estimated deficit of 9 crores 16 lakhs is going to be exceeded. As now revised, the estimates point to a deficit of about 17½ crores, that is a net worseness of 8½ crores. There will probably be a saving of 4 crores 14 lakhs in expenditure but revenue will be some 12 crores 48 lakhs less than the estimate.

When we framed our revenue estimates this time last year, we did not count on any hope of a marked or sudden revival in trade, although we certainly expected some improvement on the general trade conditions of the preceding year. On the whole, Sir, our anticipation has been justified. There was considerable stagnation during the earlier part of this summer but now I think, except perhaps in the cotton mill industry in Bombay, the general feeling in the business community is at present one of mild optimism. Considering the impoverishment of most of our former customers our exports have undoubtedly shown a very promising recovery. I will give the figures. So far as merchandise alone is concerned the balance of trade in favour of India during the first 10 months of this financial year has been 62 crores, which contrasts with an adverse balance of 29½ crores in the corresponding 10 months of the preceding year. As against this there has been a substantial net import of bullion, but after including the bullion figures there still remains a net balance of 20 crores in favour of India instead of an adverse balance of 33 crores in the first ten months of last year.

I will now make a few remarks about the figures under the more important heads. Under customs we budgeted for a total net revenue of 45½ crores, of which 9 crores was expected to accrue from the enhancement of duties imposed last March. We now expect a customs revenue which will be some 3 crores short of the figure which we budgeted for. Honourable Members know, I think, that the dominant factor in our customs revenue for the last year or two has been the import of sugar. In the previous year we got 6½ crores from sugar, although the duty was only 15 per cent.; in the current year on the increased duty of 25 per cent. we hoped that we might realise about 6½ crores. Actually we now expect that the revenue from sugar will be less by a crore and a half than the budget figure. The excise duty on cotton manufactures will also bring us in substantially less than we expected, and we shall probably be about 60 lakhs down under that head. As regards the other tariff heads, it is probable that there will be some deficiency in the revenue from liquors, matches, machinery, and cutlery, but any losses under those heads should be counter-balanced by increased revenue from the import duties on cotton piece goods, which are likely to give us nearly a crore more than our estimated revenue of 560 lakhs, and iron, steel and other metals, while the new excise duty on kerosene is likely to bring us in 89 lakhs as against 40 lakhs budgeted for. As regards the so-called "luxury" articles, which are assessed to duty at 30 per cent. the Council may be interested to know that, in spite of a very substantial fall in prices, we expect to get 273 lakhs as against 284 lakhs budgeted for; that has been due to the fact that the import of most of these articles has increased. Up to the present nearly twice as many motor cars have been imported as in the corresponding period of the previous years. On the whole, therefore, I think, Sir, that our estimates from customs, all things considered and having regard to the great difficulties of estimating the yield from increased taxes have not turned out so badly. But it is as regards Railways that the returns have been most

disappointing. The increase in passenger fares was expected to add some 6 crores to the receipts. The traffic, however, both passenger and goods, especially goods has fallen off, and as against the estimated gross traffic receipts of 99½ crores, we do not expect to get more than 92 crores. What small improvement there has been over the receipts of the previous year has been due to the increased passenger fares. On the other hand, we expect a saving of over 2 crores on programme revenue expenditure, but an excess of about a crore in ordinary working expenses, so that, altogether, our net railway revenue is likely to be down by 5½ crores; and I am sorry to say that, after taking into account interest charges, the final result for the general taxpayer will be that there will again be no profit from railways but a loss of about a crore. As regards Post and Telegraphs revenue, the effect of the new postal rates during the first few months of the year was to reduce correspondence. But since then there have been distinct signs of recovery, and it is clear that the public are now gradually getting used to the higher postal charges. For the present, however, I think we must anticipate a decrease of 106 lakhs in our anticipated receipts. There is a small saving in working expenses, and after debiting interest, the Department will probably prove to be running at a small profit of about 24 lakhs. As regards our income-tax collection, the Council will remember that we expected to make large collections of arrears, but after the beginning of the year it became evident, not only that the allowance that we should have to make for bad debts would be large, but also that our revenue was going to be seriously affected by the heavy refunds which have had to be made, chiefly in Calcutta, as a result of the adjustment system in force under the former Act. Fortunately, this complication will, under the new Act, not disturb our estimates again. I understand that in Calcutta in many cases Companies have actually received a cheque from Government instead of paying any tax at all; and the net receipts in Bengal are not expected to be more than 3½ crores. In other provinces the collections have been good, especially in Bombay, though I am afraid that the lower profits which the cotton mills are now making are going to affect our revenue from that city next year. Altogether we anticipate under Income-Tax a total deterioration of 3½ crores. As regards other heads, I think I need only say that we expect to get 89 lakhs more from Opium than we anticipated and probably a slight improvement of Rs. 7 lakhs or so under Salt.

As regards our expenditure, the only important variation that I need mention in our civil expenditure is the fact that there has been a substantial saving of about 186 lakhs in the budget provision for interest on debt. That is mainly due to the fact that a full half year's interest in respect of the greater part of our rupee and sterling borrowings this year will not fall due till after the end of the financial year.

I now come to the military expenditure. But before I give the figures, I must explain to the House a change of some importance that has been made in the method of exhibiting them. I do not think I need explain it at any great length, because the matter has already been discussed in this House a year ago, both in the general discussion on the Budget and also on a Resolution moved by my Honourable friend Mr. Kale. This change affects all the non-commercial heads, but it is specially marked in the case of military expenditure. I think most Honourable Members know that our practice in the last 2 years, in distributing the exchange adjustments, has been to show them against the individual heads of account in the case of commercial services, and that as regards other heads, we used to lump them together under the one head, "Exchange." Now,

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of course, that method would answer well enough if the difference between the statutory rate of 2 shillings and the actual rate had been less; it gives the figures a very misleading appearance when the difference between the two rates has been as large as it has been for the past two years or so. We have now decided to distribute the exchange adjustments between the individual heads in all future accounts and estimates; and the figures of military expenditure that I shall give this morning have accordingly been arrived at after converting sterling expenditure into rupees at the rate of 1s. 4d. Instead, therefore, of speaking of the military budget for the current year as being 62 crores 18 lakhs, as we spoke of it this time last year, I shall speak of it as being 67½ crores, which is the correct figure if you take the sterling expenditure at 1s. 4d.

Now, the military budget provided 65 crores and 10 lakhs for the established charges of the Army, 213 lakhs for Waziristan expenditure and 52 lakhs for demobilization charges, making, as I have said, a total of 67½ crores. Waziristan expenditure in the current year is now estimated at 385 lakhs. The demobilization charges will probably amount to 208 lakhs owing to unexpected progress that has been made with the discharge of surplus officers. On the other hand, the established charges will now amount to only 60½ crores owing to a continued shortage of British troops, the fall in prices and various other causes. A very careful control has been maintained over these charges, and savings in budget grants have not been allowed to be re-appropriated for new measures involving a permanent liability of any magnitude. By those means, in spite of the excess expenditure of 172 lakhs in Waziristan and of the increased demobilization charges, we have been able to effect a saving of 46 lakhs in the total budget grant for military expenditure.

I now come to the Budget for next year. The question, of course, that must be uppermost in the minds of all Honourable Members is, what we are going to do about retrenchment. Here, Sir, we come at once up against a matter that has made the preparation of this Budget so exceedingly difficult. Since they assembled in November last, Lord Inchcape and his colleagues on the Retrenchment Committee, and their Secretary, a distinguished predecessor of mine, have worked at their task with a devotion to the public interests which it would be impertinent for me to dwell on. I only invite the attention of the Council to the fact that each of these six gentlemen has attained a position of considerable eminence in the business world, and that the sacrifices which they have made in leaving their large and varied commercial interests in order to undertake a task of this magnitude must have been very considerable. I think, Sir, that we in this Council can well feel proud that two Members of the Committee are our colleagues here. When the Committee's report is published, the public will understand what an exacting task theirs must have been. Government feel confident that they will have the Legislature and the country behind them in seeing to it that the labours of the Committee shall not have been in vain, and that every effort is made to go to the utmost length in carrying the Committee's recommendations into practical effect, at as early a date as possible, and to the maximum extent practicable.

But, Sir, the more immediate problem is the extent to which we can translate the Committee's recommendations into the budget for 1923-24. Lord Inchcape's Committee, recognizing the difficulties in which we have been placed owing to the necessity for presenting the budget on March

1st, have very kindly provided us with a number of instalments of their report. We received the first portion a little more than a fortnight ago, the second portion last Saturday night and the third portion yesterday. These three parts cover the greater portion and all the more important heads of our expenditure. We understand that the last portion will be received during the course of the next day or so, and we hope then to publish the report as a whole, in complete form, as soon as the necessary number of copies can be printed. I think Honourable Members will now understand what I meant when I spoke about our difficulties in framing the budget. To present a budget with no Incheape in it at all would be unthinkable—it would be like trying to play Hamlet without the Prince. On the other hand, when we attempt to calculate, at such very short notice and without there having been time to make any careful or detailed examination of the report, the extent to which we can take credit in this present budget for the Committee's proposed savings, once we attempt to calculate that, Sir, we are at once met by certain very grave practical difficulties. In the first place, even if we blindly accepted the Committee's recommendations lock, stock and barrel, it is obvious to the Council that some time must elapse, and in certain cases indeed a considerable time, before the full effect of the retrenchments can be reached. Indeed, when one comes to read this report it is clear that the amount of what I may call the 'lag' must be considerable. A second and very important fact, which I would ask Honourable Members to bear in mind when they come to read the report in a few days time, is that the Committee were throughout working on the budget estimates for 1922-23. Now, Sir, the budget estimates for next year, which necessarily had to be prepared without any specific reference to the Incheape Committee's recommendations, already show a substantial reduction as compared with the budget for the current year. This is due to various causes; one of them is the general atmosphere of economy which, I am glad to say, now prevails; another cause is the fact that a good many of the savings are automatic, due to the fall in prices and so forth. Now, when one makes an allowance for these two important considerations, namely, the lag and the fact that the reductions proposed by the Committee are reductions on the 1922-23 scale of expenditure, then the extent to which credit can be taken in the budget for the Committee's recommendations, even supposing it were possible, which obviously it is not, for Government to accept the whole of the recommendations without any examination, becomes very much smaller than might at first sight appear.

I had to clear the ground in this way in order to enable the Council to follow me when I now inform it of Government's exact intentions. There is, however, just one more word of explanation I must give. I said that our budget estimates for next year as originally framed were prepared without specific reference to the Committee's recommendations. There are two exceptions to that; one is the military budget, which I will refer to later, and the second is the post and telegraph budget, in respect of which we had had some earlier information and therefore we were able to take into account some, though not all, of the Committee's proposed reductions.

I now come to the actual budget estimates. I will first take the civil expenditure. I have already indicated, Sir, that Government are not yet in a position to announce definitely which of the particular recommendations of the Committee will be adopted: nor has it been possible for us

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to frame an accurate forecast of the allowance which is to be made for what I have called the lag. Nevertheless the Government of India are of opinion that the situation is one which necessitates their taking some budgeting risks, and they have decided therefore to take the responsibility of saying that in the civil estimates they believe that a reduction of four crores can be effected during the 12 months commencing April 1st next, over and above the reduction for which credit has already been taken in the post and telegraph estimates, either in the ways proposed by the Committee or by some modification of them. Now, in the civil portion of our budget, excluding interest, the Committee have recommended reductions which, although we have still a few pages of their report to receive, we expect will amount to about eight and a half crores. The total civil expenditure in the 1922-23 budget is 103 crores and 9 lakhs. Now, the corresponding figure in the budget estimates for next year, as originally prepared last month, is 101 crores and 3 lakhs, that is, 2 crores and 6 lakhs less. The House will see therefore that our cut of 4 crores, together with this amount of 2 crores and 6 lakhs, makes a total of 6 crores and 6 lakhs; that is to say, out of a total reduction of $8\frac{1}{2}$ crores proposed by the Incharge Committee we propose in this budget to make allowance, on account of the lag or on account of any retrenchments which may be found impossible, for less than 2 crores. I think, Sir, that this allowance, or this margin as I may call it, is, having regard to all the circumstances which I have mentioned, a small one. The Government of India will leave no stone unturned to make actual reductions which will effect the further saving of 4 crores which I have mentioned in civil expenditure. But I must not conceal from the Council that it will tax all Government's ingenuity to give full effect to this 4 crores reduction within the year 1923-24.

As regards military expenditure risks of the same kind, and also of other kinds, are being taken. In spite of the fact that it will be necessary to provide 169 lakhs for expenditure in Waziristan next year, the Government of India are budgeting for a military expenditure which will be $5\frac{1}{2}$ crores less than the current scale. That is to say, they will be budgeting for 62 crores as against a current military expenditure of $67\frac{1}{2}$ crores. I am not in a position to-day to give precise details of the particular retrenchments in military expenditure which the Government hope to effect. I may say, however, that in the forefront of those reductions, and forming the pivot on which the other reductions depend, is a substantial reduction in the strength of British and also of Indian troops. These reductions are being discussed between the Government of India and His Majesty's Government. The exact form which they should take is necessarily a matter of some intricacy and complication, for it is obviously desirable to impair as little as possible the essential structure and organisation of the Army and so to retain, after the reductions have been made, the maximum degree of efficiency possible. The decision, as the House will understand, is also a very responsible one, and, the difficulties being what they are, there simply has not been time to arrive at a final decision. In any case, the full financial effect of these reductions, and of certain other proposals in regard to the military expenditure, could not for practical reasons be expected in the coming year. But if those reductions and others which have been agreed upon could have been fully and effectively in operation from the 1st of April next, then the net military expenditure for 1923-24 would be $57\frac{1}{2}$ crores, that is a reduction of 10 crores on the current scale of expenditure.

As regards our expenditure estimates as a whole, I do not think I need take the Council in detail through the various heads. I think it is enough for me to say that, as compared with the budget estimate of expenditure for 1922-23 of Rs. 215 crores and 27 lakhs, inclusive of the working expenses of commercial departments, our total expenditure for 1923-24, taking the sterling expenditure at 1s. 4d., is estimated to be 204 crores and 37 lakhs, that is, a reduction of 11 crores in spite of an increase of 1½ crores on interest charges.

Similarly, as regards our estimates of revenue. I do not propose to trouble the House with many details. I will only say generally that we have assumed that trade conditions will continue very much as they are at present; we have not counted on any early boom or any sudden revival in trade. The utmost we have done is to allow for a small growth in revenue, such as may normally be expected from year to year. Under the various heads of our customs revenue, we have either repeated the figure which we anticipate for the current year, or we have provided for a small increase where an expansion seems probable. Altogether we are assuming a net customs revenue of roughly 45 crores, or 2½ crores more than in the current year. This estimate, I ought to mention, provides for a reduction to 5 per cent. all round, with no rebate, of the export duty on hides and skins. That reduction has been necessitated by the state of trade. In respect of income-tax we are not allowing for any increase over the current year's revenue of 19 crores. We shall not have the same heavy refunds to make, but, on the other hand, we expect that there will be a fall in revenue in Bombay. The Railway budget as originally framed, provided for a small profit of 35 lakhs. We are assuming, however, that as a result of the Retrenchment Committee's recommendations for a reduction in working expenses, there will be a profit of 3 crores. Similarly, in Posts and Telegraphs we hope by retrenching working expenses to realise a profit of 147 lakhs. The net result, after taking credits for retrenchment, military and civil, is that we are budgeting for an expenditure of 204 crores and 37 lakhs, against an expected revenue, on the basis of existing taxation, of 198 crores and 52 lakhs, leaving a deficit of 5 crores and 85 lakhs.

5 crores and 85 lakhs. What are we to do about that deficit? Are we going to leave it uncovered? I will answer that question in a moment. But meanwhile there is one thing we can do, which although it is not very much more than a change in book-keeping methods, nevertheless does relieve the revenue account. The Gold Standard Reserve consists approximately of £40 millions and is invested in British treasury bills and other short term securities. Government propose to utilise the interest on these securities by crediting it to revenue instead of adding it to the Reserve itself, and this will relieve the revenue account to the extent of 159 lakhs. The Council, I think, will remember that last year the Legislature agreed to this being done in the case of the interest on the securities in the Paper Currency Reserve, and we feel that to a very large extent these two measures are analogous.

There will thus remain a deficit of 4½ crores, and what are we to do about that? Some Honourable Members, who may fully share our anxiety to balance our budget, may suggest that we may safely leave that uncovered, in view of the fact that as time goes on the Inchcape Committee's recommendations will be brought more and more into effect and that, with the disappearance of the "lag," the budget will in a year or two be bound to balance itself. Sir, the Government feel that, however attractive such a

[Mr. E. M. Cook.]

course may appear to some, it would, to say the least, be a dangerous one. When one examines the Retrenchment Committee's proposals, it will be seen that, taking the military budget alone, over 2 crores of the reductions represent merely a reduction in stocks, in other words, that particular saving is non-recurring, for as soon as the stocks are worked down to the new minimum, the normal annual purchases will have to be resumed. The same thing is true of the Railway budget and the Posts and Telegraphs budget, and also of the budgets of one or two other Departments. Further, Government realise, and this I suggest is a consideration of the utmost importance, that this budget provides, to their great regret, for no reduction in the provincial contributions. Government are very much impressed by the undesirability of any further indefinite continuance of the present very unsatisfactory position as regards these provincial contributions. They have stated more than once that, as soon as they are in a position to do so they intend gradually to reduce and finally extinguish the provincial contributions, the aggregate amount of which is about 9½ crores. Now, the essential preliminary to any such reduction must be the balancing of our own budget. If this present deficit of 4½ crores is to remain uncovered, then I must warn the Council that any substantial relief to the provinces will almost certainly have to be deferred for some years, if not postponed indefinitely. On the other hand, if we can cover the deficit this year, then any improvement in our financial position, due to the ringing into full effect in subsequent years of the retrenchments proposed, or to any possible future improvement in our revenues, can and will be devoted to giving to the provinces that relief of which most of them are so greatly in need.

There is only way in which we can bring that relief, if not actually within sight, at any rate within the range of practical politics, and that is by additional taxation. The Government of India dislike proposing additional taxation just as much as the Legislature will the voting of it. They feel, however, that the situation calls for it, not only because India's credit is very vitally involved, after the 100 crores of deficits that we have had in the last five years, in making a final and successful effort to balance our Budget, but also because without it the relief which the Provincial Governments and Legislatures have been anxiously awaiting must again fade into the indefinite future. The Government have carefully reviewed the whole sphere of taxation and have been obliged to reject all possible measures except one, and that is the increase of the salt duty to Rs. 2-8-0 a maund. In a full year this increase will probably give us 6 crores of rupees, although in the first year of its imposition it is not likely to bring in more than 4½ crores. If we can get this additional revenue, the deficit will be covered and we shall have a balanced budget, with a small surplus of about a quarter of a crore.

I have so far said nothing about ways and means estimates. During the last year or two public attention has naturally been concentrated mainly upon the ordinary revenue and expenditure, owing to the very large deficits that have occurred. But my Honourable and revered friend Sir Dinshaw Wacha has, I believe, on more than one occasion pointed out here the great importance of the ways and means figures, for it is in their ways and means operations that the actual financial policy of Government is manifested. At the same time, it is very difficult to budget for ways and means in the same way we budget for our ordinary revenue and expenditure, and it is never possible to adhere to any strict programme in

regard to operations which consist in financing the country's various liabilities and in finding cash for our own and the provinces' day to day disbursements. Of course we may say beforehand that we hope to do so and so, but it is never possible to forecast with any accuracy the changing conditions of the money markets, both here and in London. I am not therefore going to trouble the House with many details about ways and means. Honourable Members will find, however, in the Finance Member's speech a summary of our ways and means operations during the current year and a forecast of our liabilities and assets next year. The only thing I wish to say about the current year is to draw attention to the fact that, owing to our large rupee and unprecedentedly large sterling borrowings, we have been able to make a substantial reduction in our floating debt. We have reduced the Treasury Bills held by the public by 32½ crores and we have cancelled Treasury Bills held in the Currency Reserve to the extent of 8½ crores. We cannot hope to make such large reductions in the ensuing year, but it is Government's intention to do all they can to pursue the policy of funding the floating debt by converting it into securities of longer term.

These large sterling borrowings of ours in the current year have also facilitated the provision of funds in London to meet our sterling obligations. As the House knows, we took advantage of the strengthening of exchange which occurred at the New Year to remit funds to England by the sale of Council Bills. We did this somewhat in advance of the Secretary of State's actual requirements but at a time when we knew that it would be convenient to the market, and when we knew also that we could hope to get our money home at fairly favourable rates.

As regards next year, we are providing the usual 30 crores for railway capital expenditure plus the large lapse which has occurred in this year's grant, making a total of 38½ crores. We shall unfortunately have to allow certain Provincial Governments large overdrafts to meet their revenue deficits, and we also are making loans to several of them for capital expenditure, particularly a large amount to the Bombay Government for expenditure on their development scheme. Altogether, as the estimates stand at present, we expect to have to meet liabilities of about 67 crores, and we are assuming, of course purely for budget purposes, that we shall be able to secure a rupee loan of 25 crores and to make sterling borrowings of £15 millions. With these resources, added to certain other assets which are mentioned in the Finance Member's speech, we hope to meet the liabilities I have mentioned and in addition to effect a further reduction of 5 or 6 crores in our floating debt. On the estimates as they stand at present it will be necessary to remit the sum of about £27 millions sterling to London during the course of the next year. That can be done in two ways. Firstly, we can purchase exchange, one method of which is by selling Council Bills in London, and secondly, we can draw on the Paper Currency Reserve or the Gold Standard Reserve in London, against a corresponding ear-marking out here; but it is obviously impossible for Government to commit themselves in advance as to the extent to which they will combine these two methods, it must depend on the actual money and exchange conditions of the moment.

That completes my summary of the Budget and I have only to thank the Council very cordially for the great patience with which they have listened to what I fear has been a rather bald recital of dry facts and figures.

THE CRIMINAL LAW AMENDMENT BILL.

The HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move that:

"The Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, as passed by the Legislative Assembly, be taken into consideration."

The HONOURABLE SIR MALCOLM HAILEY (Home Member): Sir, I rise to support the motion which has been put forward by Mr. Crerar. The Bill has been so much before the public and has been discussed at such length both in the Press and in another place, that I need not deal at any length with any question of detail that arises, for the details are no doubt well known to all Members of this House. I desire to deal with the motion, and I hope that the House will allow me to do so, on somewhat broad lines. This Bill will, I believe, be of exceptional interest to this House because there must be many here whose recollections, and indeed perhaps whose public life, date back to the time when this controversy was last before the Legislature, and aroused such animosity and hostility between the two communities. Since then India has gone far: and perhaps there is no greater proof of the change in the political and social atmosphere between these two communities, than the fact that we can now bring forward a measure of this type without again raising the antagonisms of the early eighties. It is not, I think, that Indians feel any less than they did then that the maintenance of special trial privileges in favour of Europeans constitutes a slur on the Indian judicial administration; it is not that they believe any less strongly that the maintenance of these special privileges involves on many occasions a miscarriage of justice. Nor do they feel any less that these privileges in themselves constitute a claim of superiority of one community over another. It is certainly not the case that Indians have less capacity for voicing their sentiments on this subject, nor have less power in giving effect to those sentiments in the sphere of legislation. Nor, again, do I think that Europeans cling any less tenaciously to their demand for the traditional privilege of a trial by a jury of their own countrymen. On both these positions the communities stand firm. But if we have been able to make an advance by mutual agreement on this question, it is, I think, because we have made a real advance in the path of statesmanship in India. I think that Europeans on their side realize that, if they are to maintain their position in India, it cannot be by emphasising that they belong to a separate community, by standing aloof from Indian questions, unmindful of the depth of sentiment on an issue which Indians themselves consider so vital as this. They recognize that it is necessary to make sacrifices on their side if they are to give a proof to India of their changed position. I think that Indians on their side, too, have felt that, if they can secure the good-will and co-operation of Europeans in working out purely Indian problems and if at the same time they can secure from Europeans some concession to Indian sentiment on a matter which has so moved the Indian national spirit, then it is worth while to make some abatement of the standpoint which they formerly held.

If I am correct, this is the true analysis of the circumstances by which we have been able to arrive at this agreement. For this is an agreement

which we ask the Legislature to ratify, an agreement of the representatives of the two communities, arrived at by a process both of levelling down and of levelling up. The net result is that Europeans retain practically a minimum of their former privileges; that is to say, that they will be distinguished only by the fact that they will not be tried by second or third class Magistrates, they will not be subject to the exceptional powers of those Magistrates who enjoy what are known as Section Thirty powers, and they will not be subject to a sentence of whipping; though in regard to the last, I may mention that the whole question of whipping is about to be investigated anew as a result of the recommendations of the Committee. Then Indians on their side, it is generally admitted, have also gained much. They have gained greatly in respect of the procedure regarding appeals. They have gained greatly extended powers of *habeas corpus*; and they have gained in another respect to which I know many Indians attach great importance: that is to say, that while we retain the safeguard of the right of Government to appeal against verdicts of acquittal, Government will now be able to make that appeal where racial considerations are involved both on fact as well as law. That I know Indians regard as safeguard against miscarriage of justice in those very vexed and unfortunately much advertised cases.

That, then is the net result of the agreement which we are asking the Legislature to approve. But I think, perhaps, the greatest result of all is this, that, whereas before the whole controversy turned on the question of the nationality of the judge, whereas Indians then claimed that there was no reason why Indian judges should not try Europeans, and Europeans maintained on their side that they would not be tried by Indian judges, now that question no longer exists. Nowhere in our new procedure will you find a reference to the nationality or the race of the judge. Europeans, except for the small point which I have mentioned, namely, that they will not be tried by second and third class magistrates, can be tried by any Indian magistrate or any Indian judge.

I do not think that my presentation of the case would be complete if I stopped at the agreement itself; because, as is well known, that agreement has been modified in two respects under the instructions of the Home Government, and this fact has been widely discussed in the Press. I do not expect this House, any more than the public, to accept without some expression of its feelings the fact that His Majesty's Government have modified the agreement arrived at by the representatives of the two communities. But I claim that that modification does not, as has so often been represented, in itself afford any proof that His Majesty's Government have been prejudiced against the claims of India, or is callous to the sentiment of India on the subject of the disabilities of Indians in respect of franchise and other civil conditions in the colonies. For myself I claim that the fact that His Majesty's Government has insisted that Dominion subjects resident in India should retain the rights which they now possess, is simply the result of a calculation of the advantages to be derived from two alternative lines of action. The Committee would have withdrawn from colonials the rights which they now enjoy. Now, that could not have been intended so much as a reprisal, as an instrument for negotiation with the Dominions in securing fuller rights in regard to the franchise and better legislation in regard to immigration procedure. But when one looks closely into the circumstances one is obliged to realize that the number of Dominion subjects resident in India is so infinitesimal

[Sir Malcolm Hailey.]

that the withdrawal of rights from them would not in itself be sufficient to put any real pressure on the Dominions. That is to say, it might be a threat, but it would not be a threat which would carry with it any terrors. On the other hand, an attitude of forbearance and large-mindedness on the part of India might well secure for India that better atmosphere which her own Ambassador has done so much to foster in the Dominions, and which he, better than any one else, knows to be the one avenue for success in securing better treatment of Indians in the Dominions themselves. I claim, therefore, that, whether His Majesty's Government were right in their calculation, or whether we should be right or wrong in throwing away the opportunity of legislating in the sense recommended by the Committee, the decision arrived at in England does not show any prejudice on the part of His Majesty's Government against the claims of India, nor does it show that it is desirous of postponing the claims of India to those of the Dominions themselves. Then there is a second point, one which I admit has attracted far less public attention and is in itself perhaps of minor importance, I mean the modification in regard to the trial of certain cases which come under the Army Act. As the House knows, there are five major offences, which by virtue of section 41 of the Army Act are withdrawn from the purview of courts-martial and must be tried by civil courts. These cases now come before the High Courts but under our new procedure will be tried by Courts of Session. Only His Majesty's Government have required that the Act should contain a clause providing that at the instance of a competent military authority these cases should be transferred from the Court of Session to the High Court. But, as has been pointed out elsewhere, there is a substantial reason for this. Men serving under the Army Act do not come out to India of their own will; they are drafted here in the course of their military service. Already, when they come to India, they have what must certainly appear to them an inferior judicial status compared to that which they enjoy in England. That is to say, in England, if they are to be sentenced to more than six months' imprisonment they can claim a trial by jury. That trial in the case of all major offences would be before a Court of Assize presided over by a Judge of the High Court; when they come here they will find that for minor offences, they can receive at the hands of Indian magistrates in cases where no racial considerations are involved imprisonment up to two years without the benefit for jury. That is one point. Another point is this, that whereas before they knew that for the major offences which are withdrawn from the purview of courts-martial they would be subject to trial by High Court, now they will be subject to trial by Court of Session. But since the law provides that these cases are withdrawn from the purview of courts-martial when they are committed within a hundred miles of a competent court, and whereas the competent court is now the High Court, for the future since the competent court will be the Sessions Court, we are obviously extending greatly the sphere of trial by civil courts. I do not think it is unreasonable on the part of His Majesty's Government if, in view of the light in which this change of procedure is likely to appear to the British soldier serving in India and in order to prevent discontent arising from that fact, they have insisted that we should place in our Bill a provision that competent military authority should on occasion be able to require a transfer from the Court of Session to the High Court. I would remark that we have confined the definition of competent military authority to the higher authorities, namely, to the Army Commanders who are only four in number, and we have a guarantee from the

Commander-in-Chief that this authority will be exercised only in exceptional cases.

That then is our Bill as based on the recommendations of the Committee and as modified under the instructions of the Home Government. It has been discussed widely in the Press, it has been submitted to close scrutiny in another place. The only amendment of any importance there effected, is that relating to the provision of an appeal against whipping where whipping is the only sentence. That, of course, is not a point relating explicitly to any racial consideration. It was intended as an improvement of the general law. I shall not dwell further on that point now, because an amendment will shortly be coming before the House on which the whole question can be discussed. With that, Sir, I commend this Bill to the House. I believe that this House in accord with the greater part of the public will welcome it, not only as an improvement in our judicial procedure, but more—because it is an agreement between the two communities involving sacrifices and concessions on both sides, and because it should go far to put an end to a controversy which has lasted for 40 years. But most of all, I claim that it should be welcomed because it affords a guarantee that Europeans and Indians are prepared to work together in harmony and in mutual co-operation towards a common object, the development of India on lines which will fit it to take its place as a self-governing unit of the Empire. For I maintain that if India is to gain that position, it is essential for her to carry with her in her task the good-will and the assistance of the Europeans resident in this country.

The HONOURABLE SAYYID RAZA ALI (United Provinces East: Muhammadan): Sir, it is not without mixed feelings of hope and doubt that I rise at this stage to say a few words on the Bill—hope, because I find that, after all, the Government have been able to remove some of the inequalities applicable to the procedure in cases in which nationals of the two races appear as accused in the dock; and doubt, because the distrust and suspicion that pervade the Bill are I am afraid bound to react on public opinion in this country. I must confess that if persuasive powers were allowed to influence the judgment of a man, I must stand absolutely converted to the views of the Honourable Sir Malcolm Hailey. He put his case so sweetly, and so persuasively that I for a minute had considerable doubt whether this Bill, after all, was not a measure of perfection. For a minute it appeared to me that all racial distinctions had been obliterated, that there was no preference shown in the matter of procedure relating to trials, and in a word so far as the Courts of law were involved, that the millennium had come. But, Sir, fortunately, I pulled up towards the end of the Honourable Member's speech, and I would try to express shortly the unprejudiced view that can be taken of the provisions of this Bill. I must at once say that the Bill marks a definite stage in the removal of inequalities in judicial procedure. The Bill is, and it has been admitted by the Honourable Sir Malcolm Hailey, by no means a perfect measure, but I do not think that it would be an extravagant claim on the part of the Government of India to say that they were guided by the considered report that was submitted to them by the representatives of the two communities that sat and considered the whole question. Unfortunately, it appears that His Majesty's Government has again asserted its will, not only asserted but imposed its will on the Government of India in three and not two matters as pointed out by the Honourable Member in charge. The two points he has already placed before this Council. I find that there is yet another matter in

[Saiyid Raza Ali.]

which the Indian opinion demanded reforms to be introduced but on which we find no action has been taken—I am referring to the procedure relating to the trial of Europeans and Americans. I know, Sir, it has been pointed out that because the Government of India had entered into certain treaties with certain countries, it is not possible to take away the rights which the subjects of those countries in India enjoyed. It is further pointed out that if the rights of a certain particular nationality, namely, the nationality that has entered into a treaty with India, are not to be taken away, it would be introducing an invidious distinction to retain those rights while taking away the rights of the subjects of those countries who have not made any treaties with India and to whose subjects Indians are not bound by treaty obligations. Sir, if the recommendations of the Committee had been accepted in their entirety and the Secretary of State on the one hand and the Government of India on the other had not interfered with that report, the Bill would have been a far more welcome measure than it is to-day. It is true that the Bill marks a memorable stage inasmuch as it takes away the disability of the trying judge based on his colour to try cases in which European British subjects are the accused. That I must at once say is a very considerable advance but after going carefully through the Bill one would find that that is practically the only advance which can be brought forward by Government in support of the Bill. Sir, the measure was committed to the care of the committee at a time when unfortunately racial bitterness ran very high in this country. As one who not only gave evidence before that committee but was also present when the evidence of some English witnesses was taken, I can say that great stress was laid by certain leading witnesses representing the non-official British community on the fact that racial feeling at that time was at its height. Some of them went on to say that but for the fact that the political situation was so grave and racial feelings were embittered the non-official British community would have been prepared to go much farther to bring about the removal of these inequalities. That was, Sir, in January last year. Thirteen months have passed since and every one knows that the situation in the country is much better and more hopeful than it was then. Was it too much then to expect that the non-official British community and the Anglo-Indian community would make good their promise and would be prepared to consent to the removal of those inequalities that yet disfigure or will disfigure our Statute Book? But, Sir, I can understand the case of a special procedure in criminal trials being conceded to Colonials or the British residents in this country. Indefensible though the retention of such procedure would be, it has at its back the sanction of usage and law which have obtained in this country for many many years. What I entirely fail to see, Sir, is why non-British Europeans and Americans should be accorded any preferential treatment in this country. Sir, only the other day the Supreme Court of the United States denied the rights of citizenship to an Indian. Is this the record which should encourage us to extend this privilege to the people of America which are not enjoyed even by ourselves? Sir, I will venture to say, that the attitude of Government on this question as regards the inhabitants of the United States in relation to us is one of adding insult to injury, as it comes very closely upon the decision of the Supreme Court of the United States. I hope, Sir, I have not used any unparliamentary language and that I am within my rights in criticising the attitude of the Supreme Court of the United States.

Now, then coming to our own disqualifications I find that sections 30 and 34 of the Criminal Procedure Code have been retained. It might be open to one to say that though that in a way evinces inequality in the matter of procedure, yet it is not a very serious complaint. I submit, Sir, if the powers of the magistrate empowered under sections 30 and 34 when trying an Indian were to be compared with his powers if he were to try an European British subject, the comparison would evince a great disparity. It would disclose in fact a concession in the case of the European British subjects and would amount to hardship in the case of the Indian inasmuch as the magistrate would be in a position to impose an enhanced sentence. The Honourable Sir Malcolm Hailey has already dealt with the question of the definition of 'European British subject' as embodied in the Bill. Sir, nobody wants to start a campaign of reprisals against Colonials. Nobody wants in fact to subject them to any disadvantages in this country. We are not vindictive and we do not propose to take any reprisals but our proposal to modify the definition of the European British subject was not based on any vindictiveness. The simple question was whether in this country we should give any people a right which we ourselves do not enjoy. In the case of European British subjects, as Honourable Members are aware, those rights are much wider even than those which have been extended to non-British Europeans or Americans. Lastly the proposal to make it obligatory that every case in which a British soldier is charged with a major offence, on the report of the military authorities, should be transferred to the High Court does largely nullify the effect of improving the procedure to the extent to which it has been improved by the committee. The net result, Sir, let me say at once, will be this that, whereas in the case of a British civilian it would be open to the Sessions Judge to try him, if the accused happens to be a British soldier, the accused would be in a position to insist, if a report to that effect is made by the military authorities, that his case should be transferred to the High Court, and the High Court is not given any power to exercise its discretion if a motion is made to it for transfer. Sir, I for one am not prepared to say that the Bill introduces a change in our political evolution which would satisfy the vast bulk of public opinion in this country. On the whole it is unfortunately a halting measure, but I do not forget that it is the result of a compromise that has been arrived at between the two communities. The essence of a compromise, Sir, is that none of the parties should be in a position to say that it has entirely succeeded, and the other party has entirely failed. In that view, Sir, personally though I would like these modifications to go much further than they do, I, having regard to the manner in which certain special privileges have been enjoyed by our British friends, cannot say that I will be entitled to move the rejection of this Bill. It is not a Bill, Sir, which can enable us to throw up our hats in joy, but yet I must recognize that the passing of the Bill marks a distinct stage in the career of our political evolution, and it is after all a measure of considerable advance. As such, Sir, I support the consideration of the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay: Non-Muhammadan): Sir, may I without impertinence congratulate the Honourable the Home Member for the dispassionate and impartial way in which he analysed the whole Bill and gave the reasons why this Bill is now before our House. He paid compliments, Sir, to both communities, to Indians and Englishmen, for having changed their angle of vision; he said that the mutual distrust which was visible some years back has practically

[Mr. Lalubhai Samaldas.]

disappeared—I won't say, totally disappeared, but it has disappeared to a very large extent. May I, Sir, add that Government have also changed their angle of vision; and if they had not accepted readily the motion in the other House by my Honourable friend Mr. Samarth, perhaps this Bill would not have been before us. Sir, the way in which the then Home Member and the then Law Member were prepared to accept the Resolution and then to carry it out to its final logical conclusion shows that Government also have recognized that the time has come when racial distinctions should be removed as far as possible. I hope the Honourable Member will not accuse me of a carping criticism when I say that the interference by the Secretary of State if not on both the questions referred to by him but at least in one of them, has really led to a very great disappointment in the minds of many of us. It is not, Sir,—let me assure the Home Member and the Council, as my Honourable friend Mr. Raza Ali said, it is not in a spirit of retaliation that we want that the special privileges granted to Colonials should disappear. May I, Sir, with the permission of the House, read what two Indian Members of the Bombay Council say on this question; they clearly say, 'we are of opinion that the subjects of those British Dominions and Colonies in which Indians are denied the right of British citizenship and equality of treatment should not have any privileges accorded to them in India. We desire that our views be communicated to the Government.' Sir, the feeling is due to the fact not that we do not want to treat them equally,—we want as much reciprocity as possible and we want that they should be treated as Indians, but we do not want that they should be given any more privileges than what Indians are getting in their own country. As regards European British subjects, I realize that they have been enjoying certain privileges, and we will not grudge those privileges for the present, but we do grudge the privileges that are being given to those Colonials. Although the number of these Colonials is very small, and the practical effect of this Bill may not be very great in their favour, but we want to show that we on our part do not want to show any favour and although we do not want to hit back, we do not at the same time want to take it lying down, and that we will treat them as equals but not as our superiors. That feeling does exist, and there is a feeling of disappointment not only in this House and in the other place but also in the country that we cannot, without fear of losing this Bill, show our resentment. We have either to take the Secretary of State's interference in the best spirit that we can and accept it or we can throw out the Bill. We do not want to throw it out, and therefore we accept it, but we do protest, Sir, against the Secretary of State's interference. This may not be due, as the Honourable the Home Member put it—it may not be due to his want of appreciating our difficulties or he may have no idea that in bolstering up of Colonials, his attitude leaves a feeling as of a sting in the minds of most of us. Sir, having said so much I ask the House to allow me to read the concluding portion of the Honourable Sir Malcolm Hailey's speech on the subject in another place, which I do to re-echo what he said there; he said that 'of all things the spirit of compromise and good-will is the most elusive. Catch it while you may, and enshrine it in an imperishable form in your Statute Book.'

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I do not share the apprehensions of doubt or despair to which my Honourable friend Mr. Raza Ali has given vent, but I

welcome this Bill as a straight-forward and statesmanlike solution of a problem, of a controversy which has been raging for 40 years or more. I welcome this Bill not because it finds a permanent solution of the troubles that have agitated this country during the last 40 years, but as it is the only practicable and, as I said, statesmanlike solution of the difficulty. This Bill which we have the pleasure of welcoming to-day is the result of a motion which was made by a distinguished Indian Member of our Legislature in the other House and of the joint deliberations of a Committee on which Indian talent, Indian legal acumen was largely represented. I quite admit, Sir, and as the Honourable the Home Member has said to-day and elsewhere, this is not a final and permanent solution of the question; it is a solution of the question for the time being, as it marks a great advance, as it marks an enormous improvement on the existing law, and as it constitutes a departure from that policy which has been the source of trouble, which has been the source of bad feeling and discontent all over the country. And, Sir, as such, this measure will receive in this House a full measure of support. We accept this Bill and accept it with a feeling of gratitude for one main reason, and that reason is, Sir, that it removes for all time to come that colour bar, that feeling, that stigma of inferiority with which Indians were judged and treated heretofore. No matter what were the qualifications of an Indian, whether he was a Joint District Magistrate or Additional Sessions Judge, he was debarred from trying a European. Whatever may have been the qualifications of an Indian he was not allowed to take cognizance of trials in which European subjects of His Majesty were arraigned. Now this Bill completely does away in a very satisfactory manner with that colour bar; that stigma which hitherto has remained on our Statute Book has been removed for all time to come; and here I do express my gratitude to the European members of the Committee and to this Government for having helped the solution of a controversy and having put their Indian fellow subjects on a footing of racial equality. Let all honour be to Europeans for this great concession, this large and just concession in the history of this country.

So far as the Bill is concerned, Sir, as far as I have marked the public pulse, there has been a great measure of satisfaction. The Bill has been received by the press and the public throughout the country with perfect satisfaction. I have not seen any adverse criticisms in the papers against this Bill as it now stands. I have not seen any adverse criticisms or notice, nor meetings have been held by the public to express their disapproval of this measure. The Bill has been favourably received and it has been favourably received because it marks a distinct departure and permanently removes a stigma and racial disability. Sir, I may claim to say that this Bill is the greatest achievement of the Reformed Council. This Bill will remain a historical document on our Statute Book and it will remain as a monument of that good feeling and fellowship which both Europeans and Indians displayed in coming to a compromise and solving a most difficult, a most intricate and delicate problem of the age. Sir, after all, the sacrifices made by the European community are large: but for their co-operation, but for their good-will, we would not have been able to achieve this result. And if they have suffered a substantial reduction in their privileges, on the other hand I may say that the privileges gained by Indians have been large, solid and substantial. An Indian to-day when the Bill is passed can claim to be tried by a majority of the jury of his own countrymen. An Indian to-day can claim, if he is tried by a Sessions Court, with the aid of assessors who will

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be his own countrymen, and that is a great improvement. The Bill further marks a solid improvement, inasmuch as it gives powers to Government to appeal both against convictions and acquittals on questions of fact and law. We shall hear no more of those insinuations, of those stories sometimes very well founded and at times based on mere surmises, of miscarriages of justice. The power which this legislation now gives will do away for ever with that wanton disparagement of our judicial officers and will restore confidence in all judicial trials in the country. It will give confidence and protection to our judges and the fair name of our judiciary will not be sullied by unfounded reports and insinuations. It will give confidence to the public because in every case in which it appears that there has been a miscarriage of justice there will be the satisfaction of an appeal. It will remove from the European subjects of His Majesty when acquitted in a court of law the insinuation of a partial and dubious acquittal. It will once for all make a very satisfactory solution of our troubles, misgivings and doubts.

Sir, my friend the Honourable Mr. Lalubhai Samaldas has alluded to the fact of the Colonials being given the benefit of special privileges in this country in the matter of criminal trials. Mr. Saiyid Raza Ali has also referred to that matter. I venture to differ from them and I may say with confidence that it would have been both impolitic and inexpedient for this country to have withheld from the Colonials those privileges which we are giving to other European and American subjects. I do not think that, because some of the Dominions have denied to us the fuller rights of citizenship, we should retaliate. I appeal to the sentiment of the Right Honourable Mr. Srinivasa Sastri. He said elsewhere that we should not counter the Dominions with retaliation at any time. He has wisely said that our remedy lies in meeting them more in a spirit of friendliness than in a spirit of retaliation and vindictiveness. I cordially share those views. And further, as the Honourable Sir Malcolm Hailey has pointed out, even if we do not give this concession to the Colonies it would not be an effective threat carrying its own terrors. After all the Colonials in this country are few. They can be counted on the tips of our fingers' end, and all of them are not going to be offenders. When occasionally a Colonial is tried in a court of law, what will it matter if you give him this concession? I think therefore that our sister House has acted in a commendable spirit of magnanimity in giving this privilege to the Colonies and in carrying out the suggestion of the Secretary of State, who in the exercise of his privilege under section 65 of the Government of India Act had intimated that he would not give his approval to the Bill unless the Colonials were given the benefit of this privilege. I say further that this act on our part will be regarded even in the Dominions as an act of magnanimity, forbearance and appreciation which will receive its own reward in time. Because the Dominions are obstinate over certain matters, because the Dominions will not see eye to eye with us in certain measures, it is neither politic nor expedient for us to treat them unfavourably in a matter like this where we extend similar privileges to other nationalities. In conclusion I shall only say, let us hope that this Bill when passed into law will be administered in a manner which will remove friction and promote good will and fellowship between the different subjects of His Majesty in this country, that it will be favourably received and administered with that same spirit of generosity in which it is passed into law to-day. Sir, we owe our gratitude to two Members of the Executive Council,—two members of the Racial

Distinctions Committee who took a great share in the conception and manufacture of this Bill, whose names will ever remain enshrined on the records of our proceedings, I mean Sir William Vincent and Sir Tej Bahadur Sapru. We owe to them a great debt of gratitude and we owe also to the Honourable Sir Malcolm Hailey our gratitude for piloting through the Legislatures the Bill with great adroitness and with marvellous skill and considerable restraint and earnestness. I welcome this Bill therefore and say it is not put on the Statute Book a day sooner than it ought to be.

The HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN (North-West Frontier Province: Nominated Non-Official): I want to make some observations on this Bill, but they will be confined mostly to the general outlines of the Bill. The Bill equalises the status of the Indian subjects of His Majesty with that of the Europeans. The racial distinctions which were enjoyed by Europeans were resented in some quarters by some people of India, and therefore it is a great magnanimity on the part of the Government of India to raise our status to that of Europeans. (*The Honourable Saiyid Raza Ali*: "No, they have not.") They have improved it. They have raised our status, and in raising our status this Bill represents a landmark in the constitutional history of India. This Bill shows that the Government of India are anxious to give equal status to everybody. The Committee had a most difficult task to perform in drafting a Bill which could be unanimously agreed to by both parties. We are grateful that certain concessions which were denied to us formerly have been given to us. Those concessions are trial by jury which did not exist. My Honourable friend Mr. Raza Ali just now said that there was no concession granted. I want to point out that a concession that has been granted is trial by jury. It did not exist for the Indian and it is being granted under this Bill. And a right of appeal in case of conviction has also been extended to us Indians. We hope that the Bill will be so modified in due time that the points to which our friends object will be removed and the Bill made acceptable to them. But the thing that I want to bring to the notice of the Honourable Member in charge of the Home Department is clause 2 of the Bill. In that the Judicial Commissioner

The HONOURABLE THE PRESIDENT: If the Honourable Member wishes to deal with clause 2, he had better reserve his remarks till if later the Bill is taken into consideration.

The HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN: Well, Sir, I will deal with it when clause 2 comes up, but at the present juncture, the only thing that I have to say is that the Bill is a great advance on the previous conditions that existed in India, and I heartily welcome the Bill, and support it strenuously.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN (West Punjab: Muhammadan): Though some may think that this Bill does not fulfil the object for which it has been brought forward, personally I think that it is a very great step forward and as such we should all welcome it. Sir, when the Romans conquered and went to England they were in various stage of development and different from the English. So now we in India are in an entirely different stage of advancement from the English. Their habits and ours are different. So, in that way I think there is a difference, and if there is a difference in trial there is no harm. Indians have been welcoming people from overseas, and if there is some leniency shown to those who come from there I think it is a good thing. Something has been said

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about the Colonies. The whole question is whether our stake or our interests there are greater than their interests in India. For instance, if they had some funds, say worth Rs. 1,000 here and we had there in the Colonies funds worth Rs. 20,000, if we confiscate their little stock of money here with us, what would they do? They will confiscate our money twenty times as much there. In the same way, if there are 10 or 12 of them here and we give them trouble, they can give trouble to hundreds and thousands of Indians there. So I do not think we should quarrel about the matter. The best thing is to keep quiet and see what they do, and then perhaps they shall reciprocate. I am very glad there has been some latitude given to soldiers. I think those who had seen soldiers fight and die for their country would realise the necessity for this. The life of any English soldier in India is at the service of the country, so that if when he is tried he is shown some courtesy, I think it is the right thing.

With these few remarks, I welcome the Bill.

The HONOURABLE THE PRESIDENT: I call upon the Member of Government to whose Department the Bill relates. If the Honourable Sir Malcolm Hailey is delegating the duty to the Honourable Mr. Crerar, it is for him to reply. If he is retaining the duty in his own hands it is for the Honourable Sir Malcolm Hailey to reply, if he is so inclined.

The HONOURABLE SIR MALCOLM HAILEY: I was afraid that I might be offending against the rules of the House if I rose to reply on the subject, as I am not in charge of this measure in this House. I have been obliged to delegate those functions to Mr. Crerar as a Member of the House.

The HONOURABLE THE PRESIDENT: If a Member, not being a Member of the Executive Government, moves a Bill, he naturally has the ordinary rights of the Mover, that is, he can make his motion and he can reply. But the Members of the Government have a further right. They have a right to speak last after the Mover, and I was wondering whether in these circumstances, as the two positions are practically united in the present instance, for the Honourable Sir Malcolm Hailey really moved the Bill (though he was not technically able to do so), whether he could shorten the matter by making a reply.

The HONOURABLE SIR MALCOLM HAILEY: I am glad to do so, Sir, particularly as replying to the criticisms we have received to-day can be nothing but a pleasant task, for it has been recognised I think throughout, that the agreement which has now been put forward for endorsement by this Legislature was a sound and substantial advance towards ending a controversy of old standing. Moreover, it is a measure which can be defended on its own merits. It is true that Saiyid Raza Ali thought that we had paid rather too much observance to the Home Government. I had noticed two points on which they had conveyed definite instructions to us. He detected a third, namely, the status that we propose in our Bill to maintain for Europeans other than European British subjects, and for Americans. That I think we must claim as our own action and not that of the Home Government. If there are any criticisms to be directed on that account, he must direct them against us. He will remember that the Committee recognised that we might be

bound in certain respects by treaty obligations to certain countries, which might force us to retain sections 460 and 461, which define the present rights of Europeans other than British subjects and Americans: "We are of opinion that unless any of the privileges in regard to such persons are found to be based on treaty, they should be abolished." When we came to examine the subject, we found that there were six nations with whom we had treaties which practically bound us to maintain the section 460 rights. I may take as typical European countries Switzerland and Italy. The American countries were perhaps of somewhat less importance, Costa Rica, Venezuela and Columbia. But the practical question for us was this. Assuming, as I think we were justified in assuming, that we were bound to maintain these rights to Swiss and Italians, could we refuse them to the French? Could we refuse them to the Spaniards or the Portuguese? The question of protection for their subjects had never been raised by those countries; they had not suggested making a treaty with us in this respect because they had their rights under 460. If we proceed now to take those rights away, maintaining them at the same time for Swiss and Italians, pressure would naturally be put upon the Home Government by such nations as the French, to secure to them equal rights, and I do not think it could, in reason, be refused. But Saiyid Raza Ali's shafts were directed mainly, I think, against the United States. He quoted a judgment the full effect of which I have not yet mastered, for I do not know the full details. I mean the judgment refusing the rights of naturalization to one Bhagat Singh on the ground that he was not a resident of a free white State. If that be the true effect of that judgment, I admit that Saiyid Raza Ali has some justification for a feeling of resentment against the United States, which give the franchise to American Negroes, but how does our case stand? We are giving these rights to Costa Rica and Columbia; could we refuse them to the United States of America? It would be an illogicality to which I do not think we really could commit ourselves; I do not speak of the States of Costa Rica and Columbia with any depreciation; but could we give them rights which we refuse to the citizens of the United States of America? That is the sole ground on which we have maintained our existing provisions regarding Europeans other than European British subjects and Americans. And what do these rights amount to after all? There are no great privileges attached to their position in our Code. If they happen to be tried by a jury (and they can, of course, claim no special jury rights nor can they claim any of the special rights for which we provide in our chapter relating to racial considerations) then the majority of that jury must be Europeans or Americans; if they have to be tried by assessors, then those assessors are to be Europeans. That is the sole right they enjoy. And I may remind the House that Indians in similar circumstances can claim that the majority of the jurors shall be Indians or that the assessors shall also be Indians. We have therefore placed them in exactly the same positions as Indians themselves. The rights which we maintain for them are so slight that I do not think that any one would be justified in taking serious umbrage at our deciding on the logical course of extending to France the privilege we have given to Switzerland, and to the United States the privilege we have given to Costa Rica.

For the rest, I desire to join with other Members of this House in expressing feelings of appreciation at the statesmanlike attitude of the representatives of the two communities which came to this agreement. I consider myself that India at large as well as their communities are under

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obligations to them. I recognise the great work that was done by the Chairman of that Committee, Sir Tej Bahadur Sapru. I think it would have been impossible perhaps for them to have arrived at any satisfactory conclusion without his political tact, and his sense of equity to guide them. If I may, I should like also to acknowledge the appreciation (which I shall not fail to convey), expressed in regard to the part that was played in these proceedings by my predecessor Sir William Vincent. If it is true, as many members of the public and many Members of the House have said, that this is really an epoch in the relations of the two communities, and if it is true that it does mark a new stage in the progress of the reforms, then the part played by the representatives of the two communities and those who guided them in their deliberations is not a small one. For myself, I believe that it is such an epoch; I believe that it does mean a real step forward in the reforms, because I have one firm article of faith, and that is that, if India is to progress on the path of reform, and if, above all, she is to attain a greater independence in the management of her own affairs, if she is to gain and maintain the position which she desires in the Empire, then it is essential that she should carry with her the Europeans resident in India. I have said before, I have no hesitation in repeating here, that in the struggle, and it must be a struggle, to gain her full position, she will have no greater argument to bring before the British public and the British Parliament than that the Europeans in India want what she wants, are willing to help her in the development necessary to attain that position, and are as much interested in the final result of that effort as she is herself. Then again there is her attitude in regard to the Dominions. If she can take with her the good-will and co-operation of the Europeans resident in India as a proof to the Dominions that whatever her form of Government nevertheless she will always be actuated by ideals that are consonant with those of the British Empire, then she has far better hope of success than if she determines to walk her own path and by her own lights.

Sir, I must ask the pardon of the House if I have proceeded somewhat beyond the immediate details of this Bill, but I have never regarded the details as of great importance. In ordinary life indeed, it is seldom that we regard the details of a compromise as of first importance. What we look at is the fact that a compromise has been arrived at; what we value is the spirit which has actuated those who have arrived at an agreement; for we know that the spirit and the atmosphere in which we envisage large negotiations of this nature, and that the ideals and the objective with which we legislate, transcend in importance the details which are comprised in the agreement or the laws which we pass in legislation.

The HONOURABLE THE PRESIDENT: The question is:

“ That the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The Council then adjourned for Lunch till Fifteen Minutes to Three of the Clock.

The Council re-assembled after Lunch at Fifteen Minutes to Three of the Clock. The Honourable the President was in the Chair.

The HONOURABLE THE PRESIDENT: The Council will now proceed to the detailed consideration of the Bill. We will reserve the Preamble as usual.

The HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move:

"That clause 1 be re-numbered as sub-clause (1) of clause 1 and that to that clause the following sub-clause be added, namely:—

'(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.'

The purpose of this amendment will, I think, be quite clear to the House. It is necessary to provide some brief interval before the Bill comes into operation as an Act in order to permit the Courts and the Magistrates who will have to administer it to obtain and to have in their hands copies of the law as amended.

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The HONOURABLE MR. J. CRERAR: Sir, I move:

"That for sub-clause (2) of clause 2 of the Bill the following be substituted, namely:

'(2) In clause (j) of the same sub-section, after the word 'Rangoon' the words 'and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind' shall be inserted.'

This, Sir, is a purely drafting amendment. If Honourable Members will refer to Schedule I of the Bill recently passed in this House to amend certain enactments and repeal certain other enactments, they will find at the bottom of the first Schedule an amendment of the Code of Criminal Procedure which will affect the original Code before the Bill now under consideration takes effect. The present amendment is prepared in pursuance of that entry in the Schedule.

The HONOURABLE SAIYID RAZA ALI: Sir, the amendment proposed has been necessitated by a change in the law and the practical effect of the amendment is this. Under the Government of India Act, 1919, it is only the High Courts that can deal with and try European British subjects in serious cases. Now, it is proposed to give the powers of a High Court to certain Judicial Commissioners who but for this amendment, would have no jurisdiction to try such subjects. I am glad to notice that the power is proposed to be extended to the Judicial Commissioners of the Central Provinces, Oudh and Sind. But I find, Sir, that there is at least one Judicial Commissioner's Court that has not been included in the amendment, and that is the Court of the Judicial Commissioner of the North-West Frontier Province. The result of the amendment as proposed by the Honourable Mr. Crerar would be that whereas it would be open to the Judicial Commissioners of the provinces named, *vis.*, the Central Provinces, Oudh and Sind, to try a certain class of His Majesty's subjects or to deal with them if a reference is made to such court by the Sessions Judge, it will not be open to the Judicial Commissioner of the North-West Frontier Province to exercise such powers. That, I submit, Sir, seems to be an anomaly. If the power has been extended to the Judicial Commissioners in three Provinces, there is no reason why the same should be withheld

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from the Judicial Commissioner of the North-West Frontier Province. Now, I am sensible of the objection that might be raised by the Government Benches to the effect that the Judicial Commissioner's Court in the Frontier Province consists only of one Judge. There is at present only one Judicial Commissioner who is the highest court of appeal in the North-West Frontier Province, whereas in the other Provinces named in the amendment that court certainly consists of more judges than one. It might be said that in view of the strength of the Frontier Province Court it would be hardship in certain cases if references by and appeals from Sessions Judges were heard by one Judge alone. Sir, this objection loses sight of one very important matter, and it is this: every High Court Judge sits singly when he holds a criminal sessions trial. The law does not provide for any bench of judges to hold a criminal sessions trial. If that point is kept in view, then surely the objection cannot be raised against the Judicial Commissioner's Court. It is true that there is only one judge who presides in that court. All the same, in all the criminal sessions trials of European British subjects he will be in no way more handicapped than any single judge of any High Court. So that on that score it is not open to Government to say that there will be difficulty if the Judicial Commissioner of the North-West Frontier Province is included in the amendment.

Now comes the second point, *vis.*, that in the case of certain references and appeals, such references and appeals will be heard by one Judge instead of two as will be the case if such references and appeals go to the High Court at Lahore. Now, Sir, on that point I venture to submit that there is very serious dissatisfaction and discontent in the North-West Frontier Province, which is not concealed from Honourable Members of this Council, because there the highest court consists only of one Judge; they want the court to be strengthened. Those who have followed the evidence taken by the North-West Frontier Committee as it came out in the Press last year know what very serious agitation has been raised by the people of this Province on that question; and there is no doubt that ultimately—I should say sooner than later—that court will have to be strengthened, and another Judge will have to be appointed to that court. It may be that perhaps to-day the Government of India are not in possession of sufficient funds to strengthen that court, but I doubt not that that will have to be done very soon; and if that court consists of two judges then all possible objections that can be raised against my contention automatically disappear. I do not think I will be in order if I move an amendment at this stage, but I think I will have gained my point by inquiring as to what the intentions of the Government on this question are and as to what is the justification for not including the Judicial Commissioner's Court of the North-West Frontier Province in the definition of High Court as embodied in the amendment.

THE HONOURABLE THE PRESIDENT: I understand the Honourable Member does not want to move an amendment.

THE HONOURABLE SAIYID RAZA ALI: If Government have no objection, I am quite prepared to move an amendment.

THE HONOURABLE THE PRESIDENT: The Government are entitled to stand on notice for this amendment.

THE HONOURABLE MR. J. CRERAR: The Government are not prepared, Sir, to accept an amendment to that effect at this stage.

The HONOURABLE THE PRESIDENT: You object on the ground of want of notice?

The HONOURABLE MR. J. CRERAR: Yes.

The HONOURABLE THE PRESIDENT: Before I can put this clause to the House I should like to read section 65 (3) of the Government of India Act. I understand this clause is the first mention in the Bill of the new power by which these courts are empowered to try European British subjects on capital charges. Is that correct? I am not very familiar with the Bill and I shall want information on this. I had better take the point at once. Section 65 (3) runs as follows:

"The Indian Legislature has not power without the previous approval of the Secretary of State in Council to make any law empowering any court other than a High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe, etc."

I understand this is the first mention in the Act of that power. The Bill does not on the face of it bear evidence that approval has been obtained. Before, therefore, I put the clause to the Council I must have some evidence that that approval has been obtained.

The HONOURABLE SIR MALCOLM HAILEY: Mr. Saiyid Raza Ali did not really, I understand, wish to press his motion for an amendment; indeed he ended by asking only for information on the subject. He inquired what justification there was for excluding the Court of the Judicial Commissioner of the North-West Frontier Province from the extension which we have given to other Courts of Judicial Commissioners. If the House will allow me, I will explain the reason. In the first place, this point was carefully considered by the Committee, and very naturally I imagine that the latter wished to give as wide an extension as possible to the scope of this provision, that is to say, they wished to withdraw wherever possible from Europeans the privilege which they hitherto enjoyed of their cases being taken to Chartered High Courts. They found it possible to do so in the case of Courts of certain Judicial Commissioners such as Oudh, Sind and the Central Provinces. They themselves do not find it possible to do so in the case of the North-West Frontier Province. I think that the Honourable Saiyid Raza Ali has himself seen the reason. It is true that in original cases, a High Court trial is presided over by one Judge only, but it is an important part of our Bill that Government should have the right of appeal both on facts as well as law in cases where racial considerations are concerned. Now if such a case arose in the North-West Frontier Province, and if Government desired to appeal, I think the Committee felt, and not without reason, that it would be preferable that such an appeal should go to the two Judges of the High Court of Lahore, rather than to a single Judicial Commissioner. Mr. Raza Ali added that great dissatisfaction was felt in the North-West Frontier Province at the fact that there was at present only a single Judicial Commissioner. That may be the case. There was evidence before the Frontier Enquiry Committee that such is the fact. But the inclusion of the Judicial Commissioner within this clause would not suffice to create a second Judicial Commissioner for the North-West Frontier Province. I am unable to say what course will be taken in regard to that Court. There are of course two alternatives which have been canvassed in this connection. One is that the Judicial Commissioner's Court should be strengthened by the addition of one or two Judges; the other is that it should be entirely abolished, and that the whole of the appellate work of the North-West Frontier Province should be handed over to the High Court of Lahore. At

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present I am unable to say what course Government is prepared to take in that direction, but it will suffice to repeat that the inclusion of the Judicial Commissioner in this Bill would not have the effect of adding to the strength of the Judicial Commissioner's Court in the North-West Frontier Province. When the matter was mentioned in the Assembly, we had to point out that we had not obtained the sanction of the Secretary of State to the inclusion of that Court among those which could try Europeans. I am grateful to you, Sir, for pointing out this to the House again here. I have only to say that we have no such sanction from the Secretary of State, and that any proposal on our part to include the Judicial Commissioner would, of course, have to be referred to the Secretary of State, with the result that there will be considerable delay in the passing of this Bill.

The HONOURABLE SAIYID RAZA ALI: May I know, Sir, whether sanction had been obtained in the case of the Judicial Commissioners of Sind, Oudh and the Central Provinces, and not in the case of the highest Court in the North-West Frontier Province?

The HONOURABLE SIR MALCOLM HAILEY: Certainly. In accordance with the recommendations of the Committee that point was put to the Secretary of State and his sanction was obtained.

The HONOURABLE THE PRESIDENT: I do not think the Honourable Member has quite apprehended the point. The law requires that the previous approval of the Secretary of State in Council should be obtained, and I was inquiring from the Honourable Member whether that sanction had been obtained. It is not the approval of the Secretary of State, but it is that of the Secretary of State in Council.

The HONOURABLE SIR MALCOLM HAILEY: If you will allow me to refer to the correspondence, I could state definitely that sanction was obtained from the Secretary of State in Council.

The HONOURABLE THE PRESIDENT: Perhaps the Honourable Member would like me to reserve this clause for the present.

The HONOURABLE SIR MALCOLM HAILEY: Yes, certainly.

The HONOURABLE THE PRESIDENT: We will reserve clause 2 in order to give the Honourable Member an opportunity to refer to the papers.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

The HONOURABLE THE PRESIDENT: On the paper before I see an amendment proposing the addition of a new clause, and on the formula before me I see that it should be inserted after clause 4. If the Honourable Member likes to move it now, he may do so. But I may say that as a general rule of procedure the proper course in moving a new clause in a Bill is to move it at the end of the Bill when the old clauses have been disposed of. If the Honourable Member wishes to move his amendment now, he may do so.

The HONOURABLE MR. J. CRERAR (Home Secretary): I will take advantage of your permission. I move, Sir, as an amendment:

"That after clause 4 of the Bill the following clause be inserted, namely:

'4A. In sub-section (1) of section 29 of the said Code, for the words and figures 'provisions of section 447' the words 'other provisions of this Code' shall be substituted'."

This, again, is a purely drafting and consequential amendment. Section 447 of the present Code which is specifically referred to in section 29, will, on the passing of this Bill, be superseded by the more comprehensive provisions of the new Chapter XXXIII, and section 29 must be amended accordingly.

The motion was adopted.

The HONOURABLE MR. J. CRERAR: Sir, I move as an amendment:

"That in clause 5 of the Bill in the proposed new section 29A, the words 'Notwithstanding anything contained in section 28 or section 29' be omitted."

This again is a purely drafting amendment. If Honourable Members will refer to the new section 29A, they will find that the words "Notwithstanding anything contained in section 28 or section 29" are otiose and ineffective and it is therefore proposed to omit them.

The motion was adopted.

Clause 5, as amended, was added to the Bill.

The HONOURABLE SIR MALCOLM HAILEY (Home Member): May I be permitted to say that I have now found the necessary material to answer the question which you put me. I find that on the 29th December, 1922, the Secretary of State stated that, "I have now approved in Council under section 65 (3) of the introduction of legislation which will have the effect of . . . bringing within the definition of 'High Court' in section 4 (1) (j) of the Code for the purpose of trial of European subjects, the Courts of the Judicial Commissioners of Sind, Oudh and the Central Provinces." I regret, that this fact was not recited, as perhaps it should have been, on the Bill when it was introduced to the House.

The HONOURABLE THE PRESIDENT: My only object in asking for the information from the Honourable the Home Member was that unless I had an indication that that approval had been obtained, I should not be justified in putting the clause to the Council. I am now satisfied that that sanction has been obtained and clause 2 is open to discussion by the Council. Perhaps, I might suggest to the draftsman of the Crown that they might consider the advisability of either reciting in the Bills themselves any sanctions which are required by the Government of India Act or at any rate endorsing the fact on the Bill. If they are neither endorsed on the Bill nor contained in the Bill, it makes it somewhat difficult for the Chair to exercise its functions under the Act.

Clause 2 is now open to discussion.

I shall then put the amendment already moved by the Honourable Mr. Crerar, which runs as follows:

"That for sub-clause (2) of clause 2 of the Bill the following be substituted, namely:

"(2) In clause (j) of the same sub-section, after the word 'Rangoon' the words 'and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind' shall be inserted."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

The HONOURABLE SAIYID RAZA ALI: Sir, the question that is involved in the consideration of clause 6 is practically the same as that which has been disposed of by this House while considering clause 2. Sir, the only

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thing that I would point at this stage is that I believe it is rather unfair for the Government Benches to take advantage of what is purely a technical plea. The plea has been raised by the Honourable the Home Member that under section 65, sub-section 3, no Court can be invested with this jurisdiction unless the sanction of the Secretary of State in Council is obtained. Now, that is a very strong plea but my submission is that, when the consideration of the revision of the Code was involved, then it might have been well for Government to have obtained the sanction of the Secretary of State in respect of more Judicial Commissioners' Courts than three and leave the choice of the Courts to the Legislature.

The HONOURABLE THE PRESIDENT: I think that point has already been decided. The Honourable Sir Malcolm Hailey gave an answer not only on the technical point but on the merits and the Council, by passing clause 2, gave its decision.

The HONOURABLE SAIYID RAZA ALI: I am not speaking on the merits. So far as the merits are concerned, the matter has been disposed of by this House, but I am speaking only on the technical plea put forward by Government which is a very bad plea.

Clauses 6, 7, 8, 9 and 10 were added to the Bill.

The HONOURABLE MR. J. CREBAR: Sir, I move:

"That for clause 11 of the Bill the following clause be substituted, namely:
'11. In section 266 of the said Code, after the word 'includes' the following words shall be inserted, namely:
'the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind and'."

This is a drafting amendment for reasons similar to those applicable to my second amendment and is necessitated by an entry in the second schedule of the Repealing and Amending Bill. I do not think I need add to that explanation.

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clauses 12, 13, 14, 15, 16, 17, 18 and 19 were added to the Bill.

The HONOURABLE MR. J. CRERAR: Sir, I move:

"That after clause 19 the following clauses be added, namely:
'19A. In section 390 of the said Code, after the word 'shall' the words 'subject Amendment of section 390, Code to the provisions of section 391' shall be inserted. of Criminal Procedure, 1898.
19B. In sub-section (1) of section 391 of the said Code, for the words 'is sentenced Amendment of section 391, Code to whipping in addition to imprisonment in a case of Criminal Procedure, 1898. which is subject to appeal' the following shall be substituted, namely:—

- '(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or
- '(b) is sentenced to whipping in addition to imprisonment'."

The object of these two additional clauses is to give effect to clauses 21 and 22 of the Bill as passed by the Legislative Assembly and to effect the necessary reconstruction in section 391. I may point out to the Council that

on a close examination of the effect of the two clauses in the Bill which I have mentioned, the following consequences will happen. If a convicted person were sentenced by a Magistrate to a sentence of whipping only, that sentence would ordinarily have to be given effect to immediately, and unless some special provision is made, the only remedy which is left to the convicted person is to make an appeal after the sentence has already been carried out. It is true that if his appeal is successful, he will succeed in having removed from himself the stigma of the sentence but not the other consequences of the sentence. I think that is sufficient to explain to the House the purpose of these additional clauses.

The HONOURABLE SAIYID RAZA ALI: Sir, it is a pure matter of procedure whether these two parts are put together to vote or separately. Now, coming to the substantial question, I was not able to follow the argument of my Honourable friend. I do not know how in view of the right of appeal that has been given by the other House to the accused who is sentenced to whipping, that sentence can be carried out without the appeal being disposed of. Section 391 of the original Code says:

“When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence”

The state in which the change brought about by the Assembly has left the law is not, I am free to confess, very satisfactory. But all the same, I do not think the amendment of my Honourable friend improves matters. If I understand his amendment correctly, the result will be this. If a man is sentenced to whipping and if he is unable to furnish security, it will be open to the Magistrate to have the sentence carried out there and then because there is no provision to the contrary. The amendment of my Honourable friend presupposes that the man will be willing and able to find security. Let us take the case, Sir, in which the man is unable to find security. What is going to happen then? The clear meaning of the amendment, as it stands, will be, Sir, that it will be open to the Magistrate in spite of the fact that the sentence of whipping has been made appealable to carry out the sentence. I submit, Sir, that some steps should be taken by Government Benches to remedy this state of the law. The amendment, if accepted, will bring about the following change in the law. The section will read thus:

“When the accused is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or is sentenced to whipping in addition to imprisonment, the whipping shall not be inflicted until fifteen days from the date of the sentence.”

So that, in case the man is not able to furnish security, the Magistrate will have power to carry out the sentence, which I am sure is not what Government desire. Therefore, I would submit that the law should be changed something on the following lines, i.e., that the word “furnishes” should be substituted by the words “is unable to furnish.” The section will then read:

“is sentenced to whipping only and is unable to furnish bail to the satisfaction of the Court, etc.”

Then, in that case, the law should provide for the man to be detained in jail till fifteen days. I think it will be hard on the man, but that would be much better than the state of the law which will be brought about if

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the amendment of my Honourable friend is accepted. I hope, therefore, that Government will see their way to reconsider this question.

The HONOURABLE SIR MALCOLM HAILEY: I am sorry that Mr. Raza Ali was not able to follow Mr. Crerar's statement of the case. I will, if the House will allow me, again endeavour to put the facts before the House although in different language. The present provision of section 390 of the Criminal Procedure Code is as follows:

"When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct."

That is usually held to make it incumbent on the Magistrate to execute the sentence as soon as possible, because, if that were not done, the sentence of whipping only would obviously be converted into one of whipping *plus* imprisonment. There is at present no provision for giving bail before execution of the sentence. Now, if my Honourable friend will turn to section 3 of the Whipping Act, he will find that in a considerable number of cases, the accused may be sentenced to whipping in lieu of any punishment to which he may be for such offence liable under the said Code; and Magistrates frequently, and quite rightly, prefer to give a sentence of whipping only in order that offenders, especially juvenile offenders, may not be detained in jail. Indeed, one object of that section of the Whipping Act was to allow whipping to be inflicted instead of making the offender what is usually known as a 'jail bird'. The Assembly considered that in every case, that is, not only in cases where whipping is given in addition to a sentence of imprisonment but also in cases where a sentence of whipping only is given, there should be an appeal. At once we were met with the difficulty presented by section 390. If the accused desired to appeal, then how were we to provide for the period, sometimes rather a long one, between the sentence of the Magistrate's Court and the date of the appeal being heard? A sentence of whipping only cannot be held to cover detention in jail during that period. We thought that the proper course was to provide that if the accused could give bail, then the Magistrate should release him pending appeal. That was the course indicated to us by some of our friends who pressed for an appeal. The Honourable Saiyid Raza Ali objects to this clause of ours on the ground that if a man cannot give bail, then the Magistrate would have option to execute the sentence of whipping. But what other option has the Magistrate? He has not the option of keeping the offender in prison, because a sentence of whipping only has been inflicted; he ought not to liberate a man under sentence without taking bail from him. He is proposing, as I understand, a redraft of our amendment, which would convert a sentence of whipping only into a sentence of whipping with imprisonment. That seems to me improper. I do not think that in substance there is any real hardship. After all the Magistrate in a somewhat petty case of this kind can always take bail of a small amount, and there should be no great difficulty in providing bail in such cases. As I said, as between the two alternatives, I have no doubt that it is far better that we should accept that which we have put forward, rather than Saiyid Raza Ali's alternative which is whipping *plus* imprisonment. Everyone knows the undesirability of keeping juvenile offenders in jail. Our constant endeavour is to induce Magistrates to avoid sentencing juveniles to short terms of imprisonment in jail. We have in our new Code provided special sections whereby juvenile offenders can be released on probation. I think one can hardly read a single report on the administration of criminal justice in which a Local Government does not

again impress on the magistracy the undesirability of sending juvenile offenders, or indeed sending anybody else to jail for short terms of imprisonment and yet that is the alternative which Saiyid Raza Ali offers to us.

The amendment was adopted.

Clauses 20, 21, 22, 28, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 were added to the Bill.

The Preamble was added to the Bill.

The HONOURABLE MR. J. CRERAR: Sir, I move that the clauses of the Bill be re-numbered in consecutive order.

The motion was adopted.

The HONOURABLE MR. J. CRERAR: Sir, I move that the Bill, as passed by the Legislative Assembly, and amended by the Council of State, be passed.

The HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I think that as a non-official European elected Member of this Council—the only one in this Council at present—it is but fitting that I should rise at this stage to express my cordial approval of this Bill. The Bill presents itself, Sir, to me not so much in the light of a compromise—to which word I am not particularly partial,—but rather as the outcome of a studied spirit of concession from two opposite schools of thought. This spirit of concession, characterised as it has been by marked restraint, has been very welcome and to my mind augurs well for the future progress of reforms in this country. I sincerely express my approval of this Bill.

The HONOURABLE SAIYID RAZA ALI: The only thing I would say at this stage is that we are perhaps fortunate in having considered this Bill clause by clause. About the attitude of Government I would just say one word. Government no doubt helped the two parties to come to a compromise and did not, I may say, place any difficulties in their way. All the same it must not be forgotten that Government were impervious to all the attempts that were made in another place to improve the scope of the Bill. The entire ground was fought inch by inch and they did not yield on any single point. There was only one small amendment that was made in the Bill in another place and that was to give the accused the right of appeal from a sentence of whipping. That amendment was carried by a large majority in spite of Government opposition and it must be acknowledged that by skilful manœuvring, and I use the word without any offence, Government have so managed things that that amendment is practically killed in this House. I do not know whether we all of us realise the significance of the position but that amendment stands killed. This Bill must go back to the originating Chamber for its concurrence in this amendment. As to what will be the attitude of that Chamber is more than I can say but I do not think, Sir, Government are entitled to any congratulations from us on the attitude they have taken up on this question. If one concession had been wrought from them, Government ought to have allowed it with good grace. That however is not what they have done. As to the broad features of the Bill I do not want to inflict another speech on this Chamber. The only thing I can say is that whether this Bill satisfies the advanced wing of both parties or not, I for one am prepared to accept this measure as on the whole satisfactory.

The HONOURABLE SIR MANECKJI DADABHOY: I did not desire to speak at this final stage but I do not think I can allow the statements just now made by my Honourable friend Saiyid Raza Ali to pass unnoticed. I think he has indirectly paid a poor compliment to this House and especially to his non-official colleagues when he stated that Government has killed an important amendment made in the Assembly by incorporating in it something new here. If my Honourable friend is zealous and watchful of the interests of the people, he must give us a little credit also for watching the interests of the people of this country. After the convincing and explicit explanation given by Sir Malcolm Hailey, after the clear manner in which it was indicated that unless the words about the bail are added there will be no option to magistrates but either to carry out the sentence of whipping or to send juvenile offenders to prison, a policy which has been deprecated throughout the country, it does scarcely lie in the mouth of my Honourable friend to say that the Government and non-official Members have killed what was said to have been an improvement made in the Bill in the other House. I therefore take exception to his remarks as a non-official Member of this Council and I say that his remarks were both unnecessary and uncalled for.

The HONOURABLE DIWAN BAHADUR S. M. ANNAMALAI CHETTIYAR (Madras: Non-Muhammadan): Sir, I have only a word to say on this subject and it is this. Personally I think that whipping as a form of punishment is a relic of the past and should be done away with. It is so repugnant to our enlightened conscience. If at all it is to be retained, it should be confined to juvenile offenders alone. I hope the Government would see its way to take away this kind of punishment in the very near future.

The HONOURABLE SIR MALCOLM HAILEY: I would not have wished to prolong the discussion after what Sir Maneckji Dadabhoj has said were it not that I feel that Mr. Raza Ali has done us somewhat less than justice. Those who follow closely European politics and study continental newspapers, must often be astonished at their comments on British policy. Again and again, when we have done something that seemed to us ourselves merely obvious and straightforward and to our critics at Home so obvious as almost to be stupid, the continental newspapers ascribe to us an attitude of Machiavellian hypocrisy. Something like that has occurred in this case. We accepted an amendment regarding whipping. We took exactly the course which our friends in the other House suggested to us; we did nothing more than to ask our draftsman to put it in his own words. We had no ulterior motive. We decided to make it possible for a Magistrate who had condemned a person to whipping to release him on bail in order that he might appeal. We did not care to face the alternative of forcing the Magistrate to send him to jail or compelling him to set him at large without bail in order that he might pursue his appeal. There were those indeed who thought that in spite of the vote in another House we should not have accepted the provision for an appeal; but in view of the way in which it has been pressed upon us, and in view of the general attitude of that House on the subject of our Bill at large, we thought it advisable to accept the decision and to ask this House to endorse it. But Saiyid Raza Ali finds it within his conscience to describe us as manoeuvring in order to render null and void the whole of the appeal provision. I can only say that he gives us credit for an amount of cleverness which I am sure we do not possess and a degree of dishonesty which I am the first to repudiate.

He complains that throughout we have maintained an attitude of rigid opposition against amendments proposed in the other House. We had, I think, there about 50 amendments. It is true that we opposed them, and for reasons which I am prepared to justify. A large number of those amendments, in the first place, harked back to a Bill put forward some two years ago, which proposed to withdraw entirely all the privileges now enjoyed by Europeans; they overlooked entirely everything that had happened in the meanwhile,—the Committee, the concordat, the general agreement of the public with our present measure. We opposed them, and the House agreed with us in rejecting them. Other amendments we opposed because they struck at the root of the instructions that were conveyed to us by the Home Government, I mean as regards the protection of Dominion subjects. We obtained the statutory approval which was necessary to this Bill on certain terms, and we could not therefore agree with those who attacked those terms in the Assembly. Obviously, we had to oppose such amendments; but if we did so, we could hardly be described as obstructive, or as reactionary. And again, in this case also, the House agreed with us. Other amendments we opposed because we thought they were not improvements on the Bill; and here again we carried the votes of the House. But, indeed, is it not somewhat illogical to describe the attitude of Government in such matters as obstructive? We are not in the days of the Morley Council. We go into a popular Assembly with some twenty official votes, and have to face over 100 non-official critics; if we oppose a proposal we can only oppose it on the merits; we can attempt to persuade or convince; we cannot, like our opponents, whether convinced or not, whether with reason or without reason, vote a proposal down by mere force of numbers. We can make appeal to reason only,—and on this particular occasion we seem to have made an appeal to reason not without effect. We made no concessions there; and, if I am taxed with making no concessions here, I may remark that if they had been made, we should have yielded to a minority of one.

The HONOURABLE THE PRESIDENT: The question is:

“That the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, as passed by the Legislative Assembly and as amended by this House, be passed.”

The motion was adopted.

The HONOURABLE THE PRESIDENT: That terminates the business of the Council for to-day.

The Council then adjourned till Eleven of the Clock on Monday, the 5th March, 1923.