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COUNCIL OF STATE.

Tuesday, the 13th March, 1923.

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

ANNOUNCEMENT OF SUMMER SESSION IN JULY, 1923.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, with your permission, I beg to announce that His Excellency the Viceroy has decided that he will have a summer session of this Council and accordingly the Council of State will meet at Simla about the 12th of July next.

The HONOURABLE KHAN BAHADUR E. H. JAFFER (Bombay Presidency: Muhammadan): Sir, before the business of the day commences I would like to say a word of explanation about my absence on Thursday last. Owing to the after effects of influenza of which I was suffering I was compelled to break journey on the way from Bombay to Delhi and therefore could not reach here on Thursday morning as I had intended. I am sorry I could not send an intimation to the Legislative Department in time. I beg to apologise to the House and His Excellency the Commander-in-Chief for the inconvenience caused on that day.

The HONOURABLE THE PRESIDENT: The Honourable Member has adopted a very proper course.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE THE PRESIDENT: The Council will now proceed to the consideration of the amendments made by the Legislative Assembly in the Code of Criminal Procedure. I propose to deal with these amendments as if they were clauses of a Bill, that is to say, I shall call the amendment by its number and the House will understand that the question before the House is whether they do or do not concur in the amendment made by the Legislative Assembly. In fact, the usual procedure we always follow in dealing with the clauses of a Bill.

Amendments* Nos. 1 to 9 were concurred in.

*1. In clause 2 sub-clause (*ii*)—
(*a*) for the figures '192' and '528' the figures and words '192, sub-section (1)' and '528, sub-sections (2) and (3)' respectively were substituted;
(*b*) the figures '436' were omitted.

2. For clause 5 the following was substituted, namely:—
"5. In sub-section (2) of section 29 of the said Code, after the words 'High Court or' the words 'subject as aforesaid' shall be inserted."

3. In clause 6—
(*a*) for the words and figures "after section 29" the words and figures "before section 30" were substituted;
(*b*) for the figures and letter "29A" the figures and letter "29B" were substituted;

Amendments* Nos. 10, 11, 12, 13, 14 and 15 were concurred in.

(c) in the proposed new section 29B, as so renumbered, the words "Notwithstanding anything in the last two preceding sections" were omitted.

4. In clause 10 (now clause 9)—

(1) in sub-clause (i) (a)—

(a) the following words were inserted at the beginning :—

"after the word 'occupier,' where it occurs for the second time, the words 'in charge of the management of that land' shall be inserted, and";

(b) the words 'or obtain' were omitted;

(2) in sub-clause (ii), after the word 'inserted' the following words were inserted :—"after the word 'persons' the words 'with his or their consent' shall be inserted."

5. In clause 11 (now clause 10)—

(1) in sub-clause (1)—

(a) for the words and figures "To sub-section (1) of section 54 of the said Code" the following words and figures were substituted :—

"In sub-section (1) of section 54 of the said Code, in clause *fourthly*, for the word 'or' the word 'and' shall be substituted, and to the same sub-section";

(b) for the words 'that officer' the words 'the officer who issued the requisition" were substituted;

(2) sub-clause (2) was omitted.

6. To clause 12 (now clause 11) after the word 'inserted' the following was added :—

"and to the same sub-section the following shall be added, namely :—

'The officer so required shall before making the arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order'."

7. In clause 14 (now clause 13)—

(a) sub-clause (a) of the proviso to proposed sub-section (6A) was omitted;

(b) the following new sub-section was added to section 88 of the Code :—

"(6E) If the proclaimed person appears within the time specified in the proclamation, the Courts shall make an order releasing the property from the attachment";

(c) the clause was re-numbered as clause 13 (1) and the following new sub-clause was inserted after it :—

"(2) In sub-section (7) of the same section, after the words 'date of attachment' the words 'and until any claim preferred or objection made under sub-section (6A) has been disposed of under that section' shall be inserted".

8. In clause 16 (i) [now clause 15 (i)], for the words and figures "section 153A" the words and figures "section 143, section 149, section 153A or section 154" were substituted.

9. (1) Clause 17 was renumbered as 16 (2) and before sub-clause (2) as so renumbered, the following sub-clause was inserted :—

Amendment of section 107, Code of Criminal Procedure, 1893.

"(1) In sub-section (1) of section 107 of the said Code, after the words 'the Magistrate,' where they first occur, the words 'if in his opinion there is sufficient ground for proceeding' shall be inserted."

(2) In sub-clause 16 (2), as so re-numbered, for the words "section 107 of the said Code" the words "the same section" were substituted.

*10. In clause 18 (now clause 17)—

(1) after the word "manner" the word "intentionally" was inserted;

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I would like to make a request. I suggest that the discussion of my amendment may be taken up a little bit later, after Sir Henry Moncrieff Smith's amendment is disposed of.

The HONOURABLE THE PRESIDENT: What amendment does the Honourable Member refer to? I have no amendment here.

(*b*) after the word "inserted," where it occurs for the first time, the following words were inserted :—

"after the words 'such Magistrate' the words 'if in his opinion there is sufficient ground for proceeding' shall be inserted."

11. In clause 19 (now clause 18), in sub-clause (*ii*), between the words "kidnapping" and "extortion" the word "abduction" was inserted.

12. In clause 21 (now clause 20), in the proposed section 122—

(*a*) in sub-section (*1*) the words "as being" and clauses (*a*), (*b*) and (c) were omitted;

(*b*) for sub-section (2) the following was substituted :—

"(2) Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him."

13. In clause 23 (now clause 22), sub-clause (*iii*), in the proposed sub-section (6)—

(*a*) for the second paragraph, the following was substituted :—

"Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion";

(*b*) in the third paragraph, for the word "may" the words "shall, subject to the provisions of section 122" were substituted, and after the words "original order" the words "for the unexpired portion aforesaid" were inserted.

14. To clause 26 (now clause 27), sub-clause (*i*), the following words were added :—

"and after the words 'under this section' the words 'there is sufficient ground for proceeding under this section and' shall be inserted."

15. In clause 28 (now clause 29)—

(*1*) in sub-clause (*1*) in the proposed proviso to section 146 (1), after the words "District Magistrate" the words "or the Magistrate who has attached the subject of dispute" were inserted;

(*2*) in sub-clause (2)—

(*a*) for the words "To sub-section (2) of the same section" the following was substituted, namely :—

"In sub-section (2) of the same section, after the words 'thinks fit' the words 'and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court' shall be inserted, and to the same sub-section";

(*b*) in the proposed proviso, for the words "subject-matter in dispute" the words "subject of dispute" were substituted.

The HONOURABLE SIR MANECKJI DADABHOY: Amendment to clause 34 of the Bill.

The HONOURABLE THE PRESIDENT: I see your amendment. What was the Honourable Member's request?

The HONOURABLE SIR MANECKJI DADABHOY: My request is that my amendment may be taken up after Sir Henry Moncrieff Smith's amendment is disposed of. If it is necessary I shall move it; otherwise I will withdraw it.

The HONOURABLE THE PRESIDENT: The Honourable Member might wait till the Honourable Sir Moncrieff Smith rises.

The HONOURABLE SIR HENRY MONCRIEFF SMITH (Secretary, Legislative Department): Sir, I apologise for having kept the House waiting. I thought probably the House would like to know why the previous amendments standing in the name of my Honourable friend Mr. Crerar and my Honourable friend Sir Maneckji Dadabhoy were not being moved. However, the House will remember that when it postponed the discussion of these amendments a week ago to-day, no secret was made by my Honourable friend Mr. Lalubhai Samaldas of his object in moving the adjournment of the discussion. It was to enable an opportunity to be given for negotiations between what I may call the Government and the Opposition with a view to arriving at some compromise with regard to section 162 which the Legislative Assembly amended by amendment* No. 16 which is now under the consideration of the House. Government was anxious, Sir, that some *via media* should be found because it felt that section 162 in the form in which it had been put by the Legislative Assembly was so wrong, so unworkable and so dangerous that should it stand, there was a very great probability that the whole Bill would be wrecked and that it would be impossible to bring the Bill into operation with section 162 unamended. Sir, I need not attempt to explain to the House why the Bill ever attempted to amend section 162. I think Honourable Members are well aware of the difficulties that section 162 has caused in the past. There is a very large volume of rulings by the High Courts on the subject and for the last 12 or 15 years it has been recognised by the Government that something should be done to put that section into a different form. The form, Sir, in which it stood until it was amended a very short time ago by the Legislative Assembly was a form that was decided upon by what is known as the Lowndes Committee—a Committee presided over in 1917 by the late Law Member Sir George Lowndes and composed of several High Court Judges and eminent lawyers. Government, Sir, introduced the Bill with section 162 in the form which the Lowndes Committee devised. The Joint Committee left that form untouched. This House, Sir, when the Bill came before it for consideration, made no amendment in the clause. The amendments which the Legislative Assembly has made are before the House on the paper which is under their consideration. The Bill as introduced, Sir, in the proviso to section 162—and after all the proviso

* "16. In clause 33 (now clause 34)—

(a) in the proviso to the proposed sub-section (*1*) of section 162 after the word 'shall' the words 'allow inspection to the accused and' were inserted;

(*b*) The words 'may then if the court thinks it expedient in the interests of justice' were omitted."

is the important part of the section—left discretion to the Court as to whether a copy of a statement made to a police officer and reduced to writing should be given to the accused or not. There was no question then of any inspection of such a document, and by inspection we must understand physical inspection of the original document. The Assembly, Sir, has done two things. It has made it obligatory upon the Court as soon as a witness steps into the witness box, whose statement to a police officer has been reduced to writing, to give to the accused that statement in original to be inspected. It has taken away further the discretion of the Court entirely. It lays down that after inspection has been made, if the accused so requests, the Court shall then furnish a copy of the statement. That means a copy of the whole statement. When this amendment was under discussion in the other place, Honourable Members of this House will be aware that not only on the part of the Government but on the part of several non-official Members of some prominence it was pointed out that to allow inspection of the whole statement to the accused was very dangerous. The mere fact that there have been negotiations resulting from the opportunity given by my Honourable friend Mr. Lalubhai Samaldas will, I think, reveal to this House that there is what I may call a general idea now that the clause in the form in which the Assembly put it compelling the Court to allow inspection in every case is dangerous. I need not, therefore, elaborate to any great extent the arguments against that part of the clause. There are two obvious cases in which it would be most inadvisable to hand over the whole statement. The police are investigating, say, a conspiracy case—a conspiracy case of very wide ramifications. When they commence their investigation and take the statements of witnesses possibly over the greater part of a province they do not know in the first place what parts of the statements made to them are relevant to any particular case. They do not, as a matter of fact, at that time know what case they are likely to prosecute or what persons they are likely to prosecute. In a conspiracy case, further, it may happen that some of the accused are absconding; and the statements cover not only the cases of the accused before the Court in the first place; they cover the cases of other accused who may be arrested from time to time.

Another case is the case of the Police going out to investigate a series of burglaries or dacoities. They start possibly with the investigation of one case, but as they go on they get information with regard to other burglaries and dacoities and they cannot separate these cases and take the statement a dozen times over; they record it once for all. That statement will be the statement which will have to be put into the hands of the accused when the first case is prosecuted. It may be most dangerous. It gives away all the information that the Police have against other members of the gang whom they may not have been able to arrest. You are handing to persons who are probably the accomplices of the absentee accused valuable information which enables them possibly to conceal stolen property,—they know what the Police are after—possibly to abscond and evade justice altogether. It was suggested in the other House that this difficulty would be met if the Police were given executive instructions to record in each case which they were investigating just so much as was relevant to the case which they proposed to bring before the Magistrate. That would be all very well if the Police did know at the time exactly what case they intended to prosecute. As I say, they are investigating one case and in the course of that they get on the tracks of several others.

[Sir Henry Moncrieff Smith.]

There was one case in my own experience when I was a Magistrate in which a person was brought before me to make a statement and for four solid working days I was recording that person's statement. That was a statement which could equally well have been recorded by a police officer. It dealt with something like 27 or 28 separate offences and I certainly could not have separated the evidence in all these cases and recorded 27 or 28 separate statements which should have been confined in each case to one particular offence.

Another point, Sir, is that allowing inspection of the whole statement would in many cases involve the giving away of the name of the informer. Now, the House will remember that our law has something to say on that subject. There is a section in the Indian Evidence Act which lays down that no Magistrate and no police officer shall be bound to disclose the sources of his information. Now, that section of the Evidence Act does not safeguard us in this case because this will not be a case of a Magistrate giving away his own sources of information. There is nothing to guide him there. It is the case of a Magistrate giving away the sources of information to the police and therefore the Indian Evidence Act does not help us. Therefore, Sir, I submit, and I think the House will be with me, that to allow inspection of the whole statement, to make it obligatory to give inspection of the whole statement as a witness steps into the witness box is a most dangerous thing.

If that is conceded, then it follows as a necessary corollary that there cannot be any inspection of the original at all. And the reason is very simple, because it is a physical impossibility in most cases to allow inspection of a portion of a document. The only way of doing it satisfactorily would be to take a brush and a bottle of very thick and very black ink and blot out everything that the defence is not to see. The obvious result of that would be that the statement is gone for ever. That statement which might be useful in other cases—might possibly be very valuable to the defence in other cases—has gone, and will not be available again; and when a subsequent case is prosecuted the Court will not be able to comply with the requirements of the law. Therefore, Sir, inspection goes altogether. If inspection goes, what we have left in the Bill is an obligation on the Court to give a copy of the whole statement. Well, Sir, the arguments against giving a copy of the whole statement are exactly the same as the arguments against giving an inspection of the original document and I need not repeat them. It comes down to this that we must provide that in certain cases the Court is to have discretion to withhold or to exclude from the copy given portions of the statement and the only question before the House really for consideration is what ought to be the grounds that should justify the Court in excluding portions of a statement from the copy given to the defence.

The first obvious ground is that of relevancy. I think it will be generally admitted that if portions of a statement are irrelevant to the case for the time being before the Court, copies of those portions should not be given. They will not be of any assistance to the accused but they might be of assistance to other people who are not before the Court, and after all, all that we seek to secure for the moment is that justice is done to the accused who is before the Court. Therefore, Sir, in the first place, we provide for the exclusion of irrelevant matter. The second point and the more difficult point is the question of expediency. As the House is aware,

under section 162 as it stands the Court gives the accused a copy of the statement if the Court is of opinion that it is expedient in the interests of justice. That has been entirely turned round now. There is no discretion in the Court. The Court has got to give a copy to the accused. The House will see what the Government's original intention was with regard to this from the amendment on the paper which stands in the name of my Honourable friend the Home Secretary. Government intended to move an amendment which would have the effect of enabling the Court to exclude a portion of a statement from the copy if it was of opinion that the disclosure of that portion would be inexpedient in the public interests; and that, Sir, is just the point where the Government on the one side and those Members of both Chambers who have taken a great interest in this matter on the other could not agree. It was thought that Government was going too far and that where it is a case of doing justice to an individual before the Court questions of public expediency should not come in. It formed the subject of discussion between the Government and the non-official Members which my Honourable friend opposite contemplated when we adjourned the debate, and I think I may say that the amendment which stands in my name reasonably represents the decision which was arrived at at a round table discussion we had on Saturday evening. That, Sir, is my reason and my apology to the House for the lateness of the notice given of my amendments. The amendments had to be drafted and then they had to be printed and I was unable till yesterday to have my amendments circulated through the Secretary. The compromise, if I may say so, at which we have arrived, lays down that expediency in the public interests shall not be the only test, but that the Court, before excluding a portion of a statement from the copy given must also be of opinion that it is not essential in the interests of justice in that particular case to give a copy of that particular portion. Therefore, Sir, if a portion of the statement is relevant and if the Court is of opinion that it is essential in the interests of justice to let the accused have a copy of that statement the Court has got to give that copy. It cannot be withheld on the ground that it will be inexpedient in the public interests. With these remarks I move the amendment. I think I omitted, when I rose, to move the amendment which stands in my name. It is in two parts. I propose with your permission to move them both together as they hang together and cannot be discussed separately. I move, Sir, that in clause 84 of the Bill:

"(*a*) In the proviso to the proposed sub-section (1) of section 162, the words 'allow inspection to the accused and' be omitted; and

(*b*) after the same proviso the following proviso be added, namely:—

'Provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused'."

Before I sit down, I might perhaps just refer to the words "but not the reasons therefor." I think it must be obvious to the House that if the Court is excluding matter on the ground that it is not essential in the interests of justice and also that it is inexpedient in the public interests the Court cannot very well give its reasons for excluding the matter. It states the ground on which it refuses a copy but not the reasons for arriving at that decision, because in doing so it would necessarily have

[Sir Henry Moncrieff Smith.]

to give away the very matter which the law is laying down that it shall not.

The HONOURABLE THE PRESIDENT: The question is that in place of the amendment No. 16 made by the Legislative Assembly this House do propose the following amendment, namely:

"(*a*) In the proviso to the proposed sub-section (1) of section 162, the words 'allow inspection to the accused and' be omitted; and

(*b*) after the same proviso the following proviso shall be added, namely:—

'Provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused'."

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay: Non-Muhammadan): Sir, I rise to support the amendment. I am thankful to the Government and also to this Council for having extended their indulgence to me last time and having accepted my proposal for the postponement of the detailed consideration of this Bill. The time that was thus given has been very well utilised, as my Honourable friend Sir Henry Moncrieff Smith said, in having a round table conference with the leaders of the opposition as he said, who are as anxious as the Government to see that justice is done to the accused. They are at one on that point. They met together at a round table conference and have come to a decision which I hope will be acceptable to all, because it gives the accused all chances of defending himself and it does not give him an opportunity or give his friends an opportunity of prying into secrets which may have to be used at some other time against other persons. As regards the difficulty mentioned by my Honourable friend Sir Henry Moncrieff Smith about conspiracies and dacoities where many accused are concerned and only one is brought up, that difficulty disappears under this arrangement and I hope that the House will approve of the arrangement arrived at by the Government and by the leading Members of the other House. I may add that though some of them still think that their position is not so absurd as my Honourable friend Sir Henry Moncrieff Smith considers, yet they are prepared to accept any reasonable proposal that, while removing real difficulties in the way of the Government, satisfies the ends of justice. They are therefore willing to accept this amendment and I have been asked to support it on their behalf.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, if I extend my support to this amendment it is not because I feel that it is an ideal amendment but because I feel that it is the only and practical solution of a controversy which has agitated the professional mind for years together. Sir, section 162 of the Criminal Procedure Code has been as it has been said elsewhere a battleground for many a controversy between the Magistrate, the Judge and the Advocate. As one who has taken some part in some of these controversies in the earlier struggles of my professional life, I feel that I am not in ecstacy over the amendment which is proposed to-day but at the same time I am quite prepared to lend it my support because I find that it would be difficult to come to any other arrangement which will meet with the acceptance of all. Sir, I share the apprehensions to which my learned friend Sir Henry Moncrieff

Smith has graphically given expression regarding the dangers of a wholesale inspection of the statements recorded by police investigating officers. I quite agree and I personally have noticed in the course of my professional experience that often it would be most advisable that this information should be withheld from the accused, though at times the accused might have seen it without prejudicing the trial. Often public interests and the interests of the criminal administration of justice in the country have necessitated the withholding of the information but I must at the same time say that the law as it stood before the introduction of the Bill was not entirely of a satisfactory character. The amendment made by the Assembly was also likewise not of a character that appealed to those impartial minds who are interested in the impartial dispensation of criminal justice in this country. The difficulties are numerous. I quite agree with Sir Henry Moncrieff Smith that it would be wrong, it would be almost dangerous and unworkable to extend an entire freedom of inspection of these statements. I entirely agree that it will be prejudicial not only to public interests, but also at times to the trial itself to make it obligatory on the part of the court to allow inspection in each and every case. It must be remembered also that the statements before investigating police officers are sometimes very loosely and thoughtlessly made and are often most inaccurately recorded by a majority of police officers who are not accustomed to the recording of evidence and who do not realise or who are not aware of the law of relevancy. At times in the statements that are recorded a great deal of irrelevant and unnecessary and objectionable matter is introduced which it would not be safe in the public interest to divulge. Further, another objection to it is that it would not be always safe to treat this piece of rambling evidence substantially and practically as evidence. And, therefore, one can understand the objection to the inspection of these statements. At the same time, while these are substantial reasons for not allowing inspection, I say that very substantial and strong reasons can also be adumbrated to the contrary. It is all right if Magistrates who are called upon to proceed with the trial do their duty carefully and studiously; no serious difficulties will perhaps then arise. In my own experience I have come across Magistrates who have never opened the police diaries and who have never read the statements made before the police officers. The law as it existed in the Act of 1898, requiring the Magistrate to peruse the statement and if necessary to give a portion of that statement to the accused and which power was of a discretional character, did not always work very happily and it did at times cause a great deal of inconvenience. I can cite various such instances but they would be superfluous for the present purpose. We must therefore really understand and appreciate that there is much to be said for and against this provision. It is impossible to frame a provision of law, and to embody it in a nut-shell, which will work satisfactorily in every imaginable case. It is difficult to do that. However, I give my support to this amendment, as, after all, it will not cause any serious hardship to the accused. If the Magistrate thinks that the matter is not relevant to the inquiry, if the Magistrate thinks that the disclosure to the accused is not essential in the interests of justice, he will refuse this permission; if the Magistrate on the contrary thinks it is in the interests of the accused, he will be called upon to exercise his discretion. Likewise, the Magistrate will have to consider the expediency of the public interest and in this matter, of course, the Magistrate will be the sole judge. There is no other alternative that would meet every imaginable difficulty. It is much better, therefore, to have

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at least a law which goes so far at any rate as to alleviate any gross injustice or any great hardship. I personally think that the amendment thus made will not cause any serious hardship and will work well in practice. I think, therefore, this Council would be well advised to accept this amendment and thus put an end for the time being at least to a controversy which has been raging since 1898. It is no use going back to the old law. We must take things in the present altered condition of affairs and I am firmly of opinion that this amendment which is in the nature of a compromise meets all practical requirements and purposes. It is for this reason, as there is no other satisfactory alternative, that I support this amendment and commend it to the acceptance of this Council.

The HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): It appears, Sir, from the speech of the Honourable Sir Maneckji Dadabhoy, to which the House has just had the pleasure of listening, that he was totally opposed to the retention of clause 34 of the Bill and his view was . . . .

The HONOURABLE SIR MANECKJI DADABHOY: Sir, I have not spoken on my amendment at all. I had not the opportunity. I have spoken on Sir Henry Moncrieff Smith's amendment.

The HONOURABLE SAIYID RAZA ALI: His view, Sir, as I gathered from his speech, was that the law should be kept in the state in which we find it enacted in Act V of 1898. Sir, fortunately the Government, though by no means insensible of the impasse created by the position taken up by the Assembly, realise the reasonableness of the demand for a change in law so as not to leave everything in the matter of copies of statements to the discretion of the Magistrate or trying Judge. The result, Sir, is embodied in the amendment which has been moved by the Honourable Sir Henry Moncrieff Smith. We find, Sir, that this amendment has received the hearty support of the Honourable Sir Maneckji Dadabhoy. Is it too much to say, Sir, that, if the Government had found themselves in a position to accept the amendment made by the Assembly, my Honourable friend would have given his support to it even then?

Sir, the question that is involved in the consideration of the present section 162 and various amendments that seek to bring about a change in the law is by no means an unimportant one. Without going into the past history of this very complicated and complex question, I must say that, whatever may have been the experience of the Honourable Sir Maneckji Dadabhoy in the struggles of his professional career, the experience of those who still practise on the criminal side is that the law incorporated in section 162, as it stands, leads more often than not to a failure of justice. It is agreed, I should say almost unanimously agreed, among the Bar, and also it is the opinion of a large number of eminent Judges that the time has come when the law should be amended. I need hardly say that the Bill as it left the Council of State in September last did not practically make any changes in the law and it left section 162 very much in the condition in which it was. Changes of a far-reaching character were inserted in the clause by the Assembly and soon after the present clause 34 (old clause 33) was passed, it became evident that if that amendment were to hold good, some complications, at any rate, would arise in the administration of criminal justice. Sir, I am not prepared to take the view that it would be a dire calamity or utter misfortune to agree to the amendment made by the Assembly. But I am free to confess that cases might

occasionally arise when the free access given to the accused to the prosecution witnesses' statements as recorded in the police diaries and also the furnishing of the accused with copies thereof would lead to difficulties. Some cases have been pointed out by the Honourable Sir Henry Moncrieff Smith, but my Honourable friend, I believe, would be the last man to ignore that those cases—cases of sufficient importance no doubt in themselves—form only a very small percentage of the total number of cases that are tried by criminal courts. It would have been possible, I venture to say, Sir, to provide for such cases as have been mentioned by my Honourable friend by enacting an exception and adding it to clause 34. The way in which the Government have tried to meet the difficulty is one that I hold would commend itself to most of those who have any experience of criminal courts. As the Honourable Sir Henry Moncrieff Smith has pointed out, the Assembly's amendment gives an unfettered discretion to the accused. The real object of legislation on this point should be that while the accused should not have access to statements of a highly confidential nature, yet, when a witness for the prosecution comes in court and makes a statement directly contrary to that he made before the police, the accused should be given a copy of such a statement to enable the Judge to assess at its proper value the evidence of the witness as given in court. That object is aimed to be achieved by the amendment that is before the House. The amendment takes away the right of the accused to have a free access to the statements recorded by the police. That might occasionally lead to failure of justice but on the whole, Sir, I think that the dangers that are involved in accepting this amendment are by no means greater than those which would be there if this amendment were not accepted. On that ground, Sir, I am prepared to support this portion of the amendment.

The next point is as to what are the circumstances in which copies of statements recorded by the police might be given to the accused. The original amendments, Sir, of which notice was given, were of a more sweeping character. I am very glad that as a result of certain negotiations between the Government and those non-official Members—it may be even some official Members—who feel strongly on the subject and who are well qualified to speak on this question, the Government have brought forward this amendment which denies the giving of copies of such statements to the accused in two and only two cases. The first is that if the prosecution witness has made a statement which is irrelevant to the inquiry or trial proceeding in the court, then the accused will have no right to obtain a copy of such statement. I hope, Sir, every one of us will agree with a proposition of that character. Next comes the question of public inexpediency involved in the giving of copies of statements to the accused. That, as it originally stood, raised a very big question. It may be that what one man considers as inexpedient is not taken in the same light by another man and therefore the law did not lay down any definite rule or standard. I am very glad to notice that now that condition has been coupled with another the co-existence of both of which only can justify the withholding of copies of statements from the accused and the two conditions laid down are that if in the opinion of the Magistrate it is not essential in the interests of justice that such copies be given and further that the giving of such copies would be inexpedient in the public interests, then only those documents can be withheld from the accused. I think, Sir, the compromise is one on which both the Government and the non-official Members are entitled to be congratulated. I have not the slightest

[Saiyid Raza Ali.]

doubt as to its wisdom and I entirely dissociate myself from the remarks made by the Honourable Sir Maneckji Dadabhoy that if we give our acceptance to this amendment, difficulties of a serious character would arise in future. I hope, Sir, that this is an amendment which on the one hand safeguards the interests of the accused and on the other hand places sufficient restrictions on the accused having access to information of a confidential character. I support the amendment.

The HONOURABLE THE PRESIDENT: The question now before the House is that in the place of amendment No. 16 made by the Legislative Assembly, this House do propose the following amendment, namely:

"(*a*) in the proviso to the proposed sub-section (1) of section 162, the words 'allow inspection to the accused and' be omitted; and

(*b*) after the same proviso the following proviso shall be added, namely:

'provided further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused'."

The motion was adopted.

Amendments* Nos. 17, 18 and 19 were concurred in.

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*17. (1) In clause 34 (now clause 35), sub-clause (*i*), before the words "Any Magistrate" the words "Any Presidency Magistrate" were inserted.

(2) In sub-clause (*ii*) (*a*) of the same clause, after the word "that" the words "he is not bound to make a confession and that if he does so" were inserted.

(3) In sub-clause (*ii*) (*b*) of the same clause, after the word "that" the words "he is not bound to make a confession and that if he does so" were inserted.

18. In clause 35 (now clause 36)—

(*1*) in sub-clause (*i*) in the proposed sub-section (*1*) of section 165—

(*a*) for the words "in the diary hereinafter prescribed relating to the case" the words "in writing" were substituted;

(*b*) after the word "belief" the words "and specifying in such writing, so far as possible, the thing for which search is to be made" were inserted;

(*2*) in sub-clause (*ii*), for the words "in the diary relating to the case" the words 'in writing" were substituted;

(*3*) after sub-clause (*iii*) the following sub-clause was inserted:—

"(*iv*) after sub-section (4) the following sub-section shall be added, namely:—

"(5) Copies of any record made under sub-section (*1*) or sub-section (*3*) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

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

19. In clause 36 (now clause 37), in sub-clause (2)—

(*a*) to the proposed sub-section (*4*) of section 166 the following was added:—
"and shall also send to the nearest Magistrate empowered to take cognizance of the offence copies of the records referred to in section 165, sub-sections (*1*) and (*3*)";

(*b*) after the proposed sub-section (*4*) the following sub-section was added:—

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

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

The HONOURABLE THE PRESIDENT: The question is that this Council do agree with the Legislative Assembly in the following amendment:

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20. Clause 40 was renumbered as 40 (1) and to the said clause the following sub-clause was added, namely :—

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

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

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

The motion was adopted.

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

" That in sub-clause (5) of clause 47 of the Bill, for the proposed new sub-section* (5), the following be substituted, namely :

' (5) Where a complaint has been made under sub-section (1), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint '."

Sir, it will be observed by the House that the amendment passed by the Legislative Assembly to which my amendment refers has reference to the three parts of sub-section (1) of section 195 of the Code of Criminal Procedure. It may perhaps be of some assistance to the House if I indicate very briefly what the effect of the amendment passed by the Assembly would be. The first sub-section of section 195 relates to three classes of offences—(*a*) offences committed in contempt of the lawful authority of public servants, (*b*) certain offences, of which perjury is an example, coming within the cognisance of the Courts, in the course of or in connection with their proceedings and (*c*) certain other offences similarly coming within the cognisance of the Courts of which forgery is an instance. I will deal in the first instance with the application of the amendment passed by the Assembly to the first class of offences, namely, offences committed in contempt of the lawful authority of public servants. The first inconvenience which would attend the application of the amendment for which my amendment is intended to be a substitute is that it does not provide any regular means for calling upon the accused person to show cause. A second and still graver defect is that it does not give sufficient regard to the anomalies and even absurdities which would arise in view of the very wide extension of the term " public servant ". " Public servant " would include among others such officers as a patwari, a bailiff, an assessor, a process server, a police constable, a patel. What advantage would be gained by providing that officers of that status should be called upon to take a principal part in, in fact, to regulate themselves what would be almost in the nature of a judicial proceeding? They would be called upon to consider the application of the law, to appreciate evidence and to come to a decision. I think the House will agree what it would be quite impracticable, quite unreasonable to expect officers of that status to discharge that duty satisfactorily.

Then, there is another consideration. The amendment to which I refer would lay certain restrictions, and I think restrictions of an unreasonable

* " (5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint."

[Mr. J. Crerar.]

character upon the legal right of public servants to make a complaint in the same manner as any other member of the public can make a complaint. Any Honourable Member of this House, indeed, any member of the public if he conceives that a criminal offence has been committed against him can, without any further delay, without any intermediate procedure, come to the Court and make his complaint. Now, Sir, if the public servant is the subject of a criminal offence, even though it may be in respect of his public duties, in his public capacity, is there any rational ground for restraining him from taking the same course? Moreover, let us look at it from the point of view of the person accused. I should like to emphasise the fact that the whole result of the particular proceeding which we have now under consideration is that the public servant makes a complaint before a Magistrate. Now, on such a complaint being made, the Magistrate has got various courses open to him under the general criminal law. If he is not satisfied that the complaint is a *primâ facie* reasonable and justifiable complaint he can dismiss the complaint. Or if he is still not satisfied that a sufficient *primâ facie* case has been shown to justify him in proceeding with the trial of the case he can order a preliminary trial. If, on considering the results of the preliminary inquiry he considers that the case ought not to proceed, he discharges the accused. In the last resort he proceeds according to the ordinary forms of the law to the trial of the accused. I do not think, Sir, that on that statement of the case there need be any reasonable apprehension that a person accused of an offence of this character is not provided with a sufficient safeguard against a miscarriage of justice. However, in order to make assurance doubly sure, it is proposed, in the terms of the amendment standing in my name, that in a case of the kind which I have cited it would be open to the accused person, as soon as a complaint is made, to apply to the authority to which the public servant who has complained is subordinate and it will be open to that superior authority, if it is not satisfied that there was a good cause for making that complaint, to withdraw it. Sir, that procedure provides a series of remedies, one after another, which are quite sufficient to prevent any miscarriage of justice and to secure fair trial to the accused person.

Sir, having explained the precise purpose of my amendment in respect of offences committed in contempt of the lawful authority of public servants I proceed to the other two categories of offences. With regard to these I would invite the attention of the House to clause 128 of the Bill. That clause makes very important changes in the provisions of the existing section 476 of the Code which refers to offences of the nature to which I have previously alluded, coming within the cognisance of the Courts. The word 'Court' it will be observed is interpreted to mean not only criminal Courts, but also Civil and Revenue Courts. Now, so far as the amendment passed by the Assembly refers to offences of this character, I would point out that it is entirely out of place as an amendment to section 195. The procedure to be taken by the courts to whose cognisance offences of this character have come is laid down in section 476, and, if clause 128 becomes law, will be contained in sections 476, 476A and 476B. As a preliminary objection, it is inconvenient at the least to have an amendment of this nature inserted in clause 195. However that is merely a preliminary point. The main question we are concerned with is whether a person accused of these offences is being given a reasonable remedy for all the inconveniences to which he may be subjected in the matter of the making of the complaint and I invite the attention of the House more particularly to the proposed section 476B contained in clause 128 of the

Bill. The relevant and operative words so far as my present purpose is concerned are as follows:

"Any person against whom a complaint has been made may appeal to the court to which such court is subordinate and the superior court may thereupon after notice to the parties concerned direct the withdrawal of the complaint."

In view of that very express provision, I submit that the amendment passed in the Assembly is so far as it applies to offences of the two categories now in point would be superfluous and otiose. It is further provided in section 476 that any court before making a complaint may, after such preliminary inquiry if any as it thinks necessary record a finding. It empowers the court to make a preliminary inquiry and I think that in view of the rulings of the High Courts on the existing section of the Act, the courts proceeding under the new section would probably act on those rulings. In other words they would in any doubtful case hold a preliminary inquiry and if they do not hold a preliminary inquiry it is highly probable that on a reference to the superior court their proceedings would be rectified. I submit, therefore, Sir, that in respect of the offences of the first category, that is to say, offences committed in relation to the authority of a public servant, the amendment which I propose gives a practical application to all that is of substance in the amendment passed by the Assembly and, in the second instance, with reference to the two categories of offences, offences which come to the cognisance of courts in the course of or in connection with their proceedings, the law as it will stand if clause 128 of the Bill is passed into law provides every possible remedy that could be devised in the interests of an accused person who may be innocent. I think in view of the explanation which I have given the House will agree with me that the amendment which I propose to substitute for the amendment passed in the Legislative Assembly provides all that is necessary and gives every reasonable safeguard and remedy.

The HONOURABLE THE PRESIDENT: The question before the House is that in place of that part of Amendment No. 21, which inserts a new sub-section (5), passed by the Legislative Assembly, this House do propose the following amendment, namely, that the following be substituted:

"(5) Where a complaint has been made under sub-section (1), clause (*a*) by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint."

The HONOURABLE SIR MANECKJI DADABHOY: I think it was Lord Bacon who said that it is at times difficult to understand the inscrutable motives of legislatures. I must say that when I perused this Bill I found myself more or less in the same position. I could not understand why it was deemed necessary and essential that clause 5 as drafted and passed by the Council of State should have been so altered and accepted by the Assembly. I do not propose to go into the whole genesis of this section at this stage. It will suffice to say that after the clear and explicit manner in which the Home Secretary has explained the position, it seems to my mind, the more judicious and expedient attitude to adopt is to accept this amendment. If you examine and compare clause 5 as it now stands with the proposed amendment and read it in conjunction with section 476 of the Criminal Procedure Code, it is apparent to one's mind that the clause as it stands at present is both meaningless and useless. This clause gives power to any accused or any person against whom any proceedings have been started a right of demanding further inquiry. It gives

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him an opportunity to show cause against the validity of the complaint. Now all offences under section 195 of the Criminal Procedure Code refer to prosecutions for contempt of lawful authority of public servants, and section 476 expressly provides that before a Magistrate proceeds to take any action in the case he shall make a preliminary inquiry that may be necessary or may send the accused for inquiry or trial to another Magistrate. So it is essentially necessary that some sort of proceeding under the law will have to be started by the Magistrate in whose Court the offence has taken place or by another Magistrate to whom the case is sent. That serves the purpose completely to my mind of an inquiry. It is true that in many cases it is found that the accused stands in a disadvantageous position, particularly if he is able at any stage of the inquiry or trial to produce some further evidence of his innocence. The Magistrate cannot stop the proceeding himself, because he says that the trial was ordered by a public servant and must proceed unless withdrawn by him. He cannot interrupt the trial. It must take its course. There must be some authority or power vested in a public servant to stop the proceedings at any part of the trial and that is all what the amendment now proposed contemplates. In my opinion it is a very reasonable amendment which gives all possible and reasonable opportunities to an accused to approach at any time any authority under whose order the prosecution has been started, and, if that authority is satisfied, he may pass such order withdrawing the complaint and that will terminate the proceedings. So that this proviso is complete in itself and it will meet all the ends of justice. I am, therefore, in favour of accepting this amendment.

The HONOURABLE THE PRESIDENT: The question is that, in place of that part of amendment No. 21 by which a new sub-section (5) would be inserted by the Legislative Assembly, this House do propose the following amendment, namely:

"(5) Where a complaint has been made under sub-section (1), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint, and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint."

The motion was adopted.

The HONOURABLE THE PRESIDENT: The further question I have to put to the House is that, subject to the amendment just made, the House do concur in the amendments made by amendment No. 21 of the Legislative Assembly.

The motion was adopted.

Amendment No. 21, as amended,* was concurred in.

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*21. In clause 47—

(*a*) in sub-clause (*1*), in the proposed sub-section (*1*) of section 195, in clauses (*b*) and (*c*) the words "or on complaint made by order of, or under authority from, the Local Government" were omitted;

(*b*) in sub-clause (*4*) in the proposed sub-section (*3*), for the word "of" after the words "principal Court" the words "having ordinary" were substituted;

(*c*) after sub-clause (*4*) the following sub-clause was inserted:—

"(5) after sub-section (*4*) of the same section as re-numbered the following sub-section shall be inserted, namely:—

'(5) where a complaint has been made under sub-section (*1*), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint'."

Amendments* Nos. 22 to 34 were concurred in.

* 22. In clause 49 (now clause 50)—

(*a*) in sub-clause (*i*), in the proposed sub-section (*1*), for the words "the authority having power to order or, as the case may be, to sanction the removal from his office of such Judge, Magistrate or public servant" the words "the Local Government" were substituted;

(*b*) in sub-clause (*ii*), for the words "for the word 'Government' the word 'authority' shall be substituted, and" the following was substituted, namely :—
"after the word 'Judge' the word 'Magistrate' shall be inserted".

23. In clause 54 (now clause 55), for the proviso to the proposed sub-section (*1*) of section 202, the following was substituted :—

"Provided that no such direction shall be made—

(*a*) unless the complainant has been examined on oath under the provisions of section 200, or

(*b*) where the complaint has been made by a Court under the provisions of this Code."

24. In clause 67 (now clause 69)—

(*a*) in sub-clause (*i*) in the proposed sub-section (*1*) of section 250, for the words "call upon the person upon whose complaint or information the accusation was made forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or may" the following words were substituted :—

"if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or"
and for the word "issue" the words "direct the issue of" were substituted :

(*b*) to sub-clause (*ii*) the following words were added :—

"and for the words 'to an accused person' the following shall be substituted, namely :—

'or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees'."

25. In clause 69 (now clause 72), for the words "either forthwith or if the Magistrate thinks fit at the commencement of the next hearing of the case" the following words were substituted :

"at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith".

26. In clause 77 (now clause 79), in the proposed section 292,—

(*1*) in clause (*a*), before the word "evidence" the word "oral" was inserted;

(*2*) in clause (*b*), for the proviso the following was substituted :—

"or (*c*) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence :

Provided that, in the case referred to in clause (*c*) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

27. Clause 82 was omitted.

28. In clause 85 (now clause 86), in sub-clause (*i*),—

(*a*) in the proposed sub-section (*1*) of section 337, after the words "ten years" the words "or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years" were inserted, and the figures "211" were omitted;

(*b*) to the proposed sub-section (1A) the following words were added : —

"and shall, on application made by the accused, furnish him with a copy of such record;

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

The HONOURABLE SIR HENRY MONCRIEFF SMITH: Sir, I move:

"That for clause 109 of the Bill the following clause be substituted, namely :—

109. For section 406 of the said Code the following section shall be substituted, namely :—

Amendment of section 406, Code of Criminal Procedure, 1898.

'406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

Appeal from order requiring security for keeping the peace or for good behaviour.

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

(*b*) if made by any other Magistrate, to the Court of Session :

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided further that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123 '."

The clause of the Bill as originally introduced, Sir,—it was I think at that time clause 106,—made one small amendment in this respect in section 406 of the Code. Under the law as it stands at the present moment, there is an appeal in a very limited class of cases of security proceedings. Persons ordered to give security for good behaviour under section 118 by Magistrates who are subordinate to the District Magistrate may appeal to the District Magistrate, but there are no other appeals at all provided for by the present law. The Bill proposed to extend the provisions of 406

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29. In clause 86A (now clause 88), in the proposed section 339A—

(*a*) in sub-section (*1*) for the words "to whom a pardon has been tendered" the words "who has accepted a tender of pardon" were substituted;

(*b*) for sub-section (2) the following sub-section was substituted :

"(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

30. In clause 87 (now clause 89), in sub-section (2) of the proposed section 340—

(*a*) after the words Court under" the words and figures "section 107, or under" were inserted;

(*b*) for the words "if he so desires be examined" the words "offer himself" were substituted.

31. In clause 88 (now clause 90)—

(*a*) in sub-clause (*i*), after the word "substituted" the following was inserted :—

"and to the table in that sub-section, after the entry relating to criminal intimation, the following entry shall be added, namely :—

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(*b*) in sub-clause (*ii*), after the entry relating to section 357 of the Indian Penal Code, the following entry was made in the table :—

Dishonest misappropriation of property	403	The owner of the property misappropriated.

32. In clause 93 (now clause 96), in the proposed sub-section (2A) of section 356, after the word "hand" the words "or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence" were inserted.

33. In clause 99 (now clause 102), in the proviso to sub-section (*3*) of the proposed section 386, the words "in any case in which the court passing sentence upon him as directed his imprisonment in default of payment of the fine" were omitted.

34. In clause 104 (now clause 107), sub-clause (*v*) was omitted.

to security proceedings in which persons were bound over to keep the peace. The Bill proposed to give an appeal in those proceedings for keeping the peace to exactly the same extent as appeals were allowed in good behaviour proceedings, that is to say, an appeal to the District Magistrate from the Subordinate Magistrates. That proposal, Sir, held the field for at least ten years. It was in the Bill as originally introduced. The Lowndes Committee had examined this clause and they had, except for matters of drafting in the proviso with which we are not concerned to-day, left it unaltered. The Joint Committee on the Bill also considered it and left it unaltered and this House, Sir, passed it in the form in which it was proposed in the Bill as introduced. Recently, Sir, in another place, a very wide extension indeed has been given to the clause. The Legislative Assembly by its amendment would lay down that in all these security cases there shall be an appeal. They have given an appeal against the Presidency Magistrate's order to the High Court. That, Sir, my amendment does not propose to touch. They have given an appeal against the District Magistrate's order to the Sessions Judge, and that again, Sir, my amendment leaves alone. They have given an appeal in all cases in which security has been ordered by Magistrates subordinate to the District Magistrate to the Sessions Court, and that, Sir, is the amendment which my amendment proposes to modify. Government regard the very wide extension of the provisions of section 406 which the Bill as passed by the Legislative Assembly recently would make as in the first place unnecessary and in the second place as extremely undesirable. The amended clause will involve a very large increase in the number of appeals and that will involve taking up far more time of the Sessions Courts. I think Honourable Members of this House who ever have the happiness or misfortune to go anywhere near them (*The Honourable Mr. Lalubhai Samaldas*: "No, never")—those Honourable Members will be aware that the District and Sessions Judges are extremely busy for a greater portion of their time over their criminal work. They have two functions to perform. They are criminal judges and they are civil judges. The criminal work is work which cannot wait. The Judge has to perform it. Justice cannot be kept waiting. Prisoners cannot be kept under trial. Appeals must be heard. But the civil work has to wait. I have known judges who sometimes from year's end to year's end never touch their civil work. This House will be aware in all probability of the many unfavourable comments that have been made on the delays in civil litigation in this country The Privy Council in the last two or three years have been constantly commenting on it in a manner which with all respect I may say is very uncomplimentary to the civil courts of this country. They have suggested that some means should be devised for speeding up work and Government have measures in contemplation for securing a more speedy disposal of civil litigation. This amendment made by the Legislative Assembly, if left unaltered, will to a considerable extent nullify the measures which Government hopes to be able to take to speed up the civil work. If there is an increase of work, Sir, in the Sessions Courts, it naturally follows as a corollary that there will be a great increase of expense, and I would ask the House to remember that this increase of expense will fall not on the Central Government but on the Provincial Governments. This amendment, which has been introduced into the Code by the Legislative Assembly, is an amendment on which the Local Governments have had no opportunity of expressing an opinion, and I think, Sir, that in this matter it is up to the Government of India to try and put the case fairly from the point of view of the Local Governments.

[Sir Henry Moncrieff Smith.]

I began by saying, Sir, that I regard the amendment as unnecessary—unnecessary because we think that in the case of orders passed by the subordinate Magistrates the District Magistrates are quite capable of disposing of the appeal. The District Magistrates already do a great deal of appellate work. As the House is aware, they have appellate powers under the Code in other respects, and we are not prepared to admit—and I hope this House will not suggest—that District Magistrates are not fit to dispose of the appeals which are laid under section 406. I can contemplate some of my Honourable friends here suggesting, "Yes, the District Magistrate may be fit; but the Sessions Judge is much fitter." (*The Honourable Saiyid Raza Ali*: "Hear, hear.") Then, Sir, if the Sessions Judge is fit, the High Court is still fitter. My friend does not say "Hear, hear." Pursuing it to its logical conclusion, why should we not give an appeal to the High Court straightaway in all these cases? If the machinery that you have got is competent to deal with the matter, why then employ a more expensive machinery? It may be suggested that if these appeals are dealt with properly, it will take up as much time of the District Magistrates as it does of the Sessions Judges. Well, Sir, that may be true. But I have pointed out that what will suffer in the Judge's court will be the administration of civil justice. What will suffer in the Magistrate's Court will not be his judicial work at all. It will be the numerous other functions with which the District Magistrate is invested. He will find less time to devote to these numerous other duties that a District Magistrate performs at his headquarters and all over his district, duties which do not fall within the four walls of the Court, and therefore, Sir, in the District Magistrate's case, it is a very much less serious proposition. However, Sir, the Government, as my amendment shows, does not propose to do away with the appeal which the Assembly contemplates to the Sessions Judge in this case, but the Government of India feel that where a District Magistrate is fit to try these appeals and when he has time to do so, it should be within the power of the Local Government to direct by notification that in that particular district, appeals should not go to the Sessions Judge but should go to the District Magistrate. Government regards this, Sir, as a reasonable compromise. They are not prepared to go as far as the Assembly did in this matter. They even now regard the extension in the law made by this clause 109 even if it is amended in the manner that I am at the moment suggesting as one that will involve a considerable expenditure of valuable time and considerable expenditure of money. I move, Sir, the amendment which stands in my name.

The HONOURABLE THE PRESIDENT: The question now for the consideration of the Council is:

That in place of the amendment* No. 35 made by the Legislative Assembly this House do propose the following amendment, namely:

"That for clause 109 of the Bill the following clause be substituted, namely:—

* 35. In clause 106 (*1*)—

(*a*) after the words "said Code" the following words were inserted, namely:—
"the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted";

(*b*) after the word "inserted" the following was added:—
"and for the words 'District Magistrate,' where they occur for the second time, the words 'Sessions Judge or, in the case of an order by a Presidency Magistrate, to the High Court' shall be substituted".

109. For section 406 of the said Code the following section shall be substituted, namely :—

Amendment of section 406, Code of Criminal Procedure, 1898.

'406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

Appeal from order requiring security for keeping the peace or for good behaviour.

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

(*b*) if made by any other Magistrate; to the Court of Session :

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided further that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123 '."

That proposition is now open to debate.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay: Non-Muhammadan): Sir, I thought that the lawyer Members would give us the advantage of their experience, but somehow or other they have not got up to speak. So, I thought I would, as a layman, make a few remarks on this amendment. As the Honourable Sir Henry Moncrieff Smith has tried to show, this is a compromise between the attitude of the Government of India and the attitude of the Legislative Assembly. It is rather difficult to understand why Government have not accepted whole-heartedly the proposals of the Assembly. The reasons given by my Honourable friend are, if I may classify them, first, that the civil work of the Courts of the District Judges will suffer if more criminal appeal work is thrown on them as would be the case under the clause as amended by the Assembly. Can my Honourable friend give me statistics to show what burden will be thrown on the District Judges if appeals of this character lie to the Sessions Judges and not to the District Magistrates? Unless we are satisfied that the work is so heavy that the District Judges will not be able to cope with it or that the civil work will suffer to such an extent that the new machinery which Government want now to create to expedite the speed of civil work will suffer, I do not think that the Honourable Member is justified in giving that as one of the reasons for moving his amendment. The other reason that my Honourable friend gave was that as the District Magistrates will not have any civil work before them, if more work is thrown on them it is not civil work that will suffer but his other work. I think that at least the work of collecting revenue—I am referring to my own presidency—which the District Magistrate has to perform is far more important, or ought to be far more important to the Provincial Government than the work of speeding up the disposal of civil litigation. I realize that though some of us would like to do away with civil litigation altogether, but so long as it continues we must make provision for carrying it out thoroughly. Yet land revenue collection work which is just as important as if not more important than civil litigation will suffer if all this burden is thrown on the District Magistrates. Therefore there is very little force in that argument of the Honourable Sir Moncrieff Smith. The most important point which appeals to me as a layman against this amendment is this. If I understand aright, orders under section 118 are usually made either under instructions from the District Magistrates or after his approval has been obtained. If I am wrong, I

[Mr. Lalubhai Samaldas.]

stand to correction, but I believe the usual procedure is that all these orders are made either under instructions from the District Magistrate or after his approval or sanction has been obtained. If that is so, I think it is not right in the interests of justice that he should be the final authority to decide the appeal. That is the reason why I think Government should have carefully considered the position and accepted the Assembly's recommendation. I am not going to refer to the constitutional crisis because the Assembly will accept this amendment if they are satisfied with the reasons given by the Honourable the Mover of the amendment, but so far as I can judge as a layman, I think there is no necessity for the proviso put forward by my Honourable friend Sir Henry Moncrieff Smith and I think the amendment passed by the Assembly might very well stand.

The HONOURABLE SIR MALCOLM HAILEY: My Honourable friend has joined in this debate as a layman. I occupy the same position, Sir, though I may have in the course of long and laborious days in the Assembly gained a kind of elementary working knowledge of it, I am no expert in the matter, and do not propose to discuss the points of law involved. The legal history of the case has already been explained to the Council with great lucidity by Sir Henry Moncrieff Smith. The Honourable Mr. Lalubhai Samaldas asked us if we could say exactly what additional work would be thrown on the Sessions Judge. Before we could say that, we should have to know how many of the persons who have been the subject of orders under Chapter VIII of the Criminal Procedure Code are likely to appeal, and that is a difficult factor. But it will, I am sure, interest the Council to know how many persons are made the subject of such orders; they can then draw their own deductions as to the number of appeals that are likely to go to the Sessions Judges. I have the figures here. They differ widely from province to province, but the yearly average over the three years from 1919 to 1921 was 43,243 persons. In Madras the average was 2,971, in Bengal 7,684, in the United Provinces 9,221 and in the Punjab—I confess to a slight feeling of hesitation in mentioning this high figure in regard to my own province—it appears it was necessary to issue orders of this nature in regard to no less than 14,715 people. The number is small in Burma, is not considerable in Bihar and Orissa and also in the Central Provinces and Assam. In the North-West Frontier Province it amounts to 3,078. I repeat that the total for India is 43,243. If only a small percentage of these people appeal, there will have to be a very considerable addition to the number of Sessions Judges, that is to say, if a Sessions Judge did nothing else at all it would be impossible for him to hear more than 1,000 appeals of this nature in a year. In the alternative it has been put to us whether, after all, it would not be better to let the Sessions Judges take these appeals and save the time of the District Magistrates. I do not deny that the general executive and administrative work of the District Magistrate is important. But the fact is that at present you have two classes of officers both of whom are fully occupied. Obviously you will not decrease, by anything you are now doing, the number of District Magistrates but if you take the work away from them which they now do and give it to the Sessions Judges you would have to increase the number of the latter. We occupy a somewhat difficult position here. We legislate for criminal justice, but we must be careful lest in so doing we affect vitally the finances of Local Governments. It is quite clear that the Local Governments could not

face such an increase of criminal work of their Sessions Judges as to further delay the course of administration of civil justice. Already, as the Honourable Sir Henry Moncrieff Smith has said, there is a general complaint on this score, and indeed in some cases it amounts to such a degree as to justify the adage that justice delayed is justice denied. I am afraid that lately in our Racial Distinctions Bill we have already put some further burden on Sessions Judges. The Patna High Court with reference to one of the provisions of that Bill said that they feared that to enhance the right of appeal from all sentences of imprisonment, though it was impossible to calculate the nature of the additional staff that would be required, would, they believed, have the result of further reducing the time that the Sessions Judges could give to civil appellate work. It was once hoped, they say, that the District Judges would occasionally take up original civil suits but in the majority of districts this is now impossible of fulfilment and the most that can be expected is that they should in the exercise of their appellate jurisdiction see something of the work of their munsifs and subordinate judges. That is not a very bright picture and we do not wish to darken it. There is a further objection of my Honourable friend. He says that the proceedings in all these cases are taken at the instance of the District Magistrate.

The HONOURABLE MR. LALUBHAI SAMALDAS: 'Almost all' I said.

The HONOURABLE SIR MALCOLM HAILEY: I would demur to his statement that the proceedings are really taken at the instance of the District Magistrate. The District Magistrate does not ordinarily himself investigate these cases and initiate proceedings. Were that the case, there might be some slight ground for saying that the course of trial before a Magistrate of the first class might be prejudiced but the fact that the District Magistrate gives his approval to the prosecution in such cases is in the vast majority of instances nothing more than a mere formality, and you cannot take it that this so far influences the course of the prosecution that it would prejudice the cause of justice. Moreover let me say that these are tried by first class Magistrates and surely our first class magistracy are not going to allow themselves to be deflected from the course of justice by the mere fact that formal orders have been passed sanctioning prosecution in certain cases. I would remind the House that there is still in these cases, even under our new amendment, an appeal to the Sessions Judge. One last argument. It is said that the Sessions Judge is infinitely better qualified to try these appeals than the District Magistrate. I put it on one side that a District Magistrate already tries appeals against sentences from second and third class magistrates. Even if the Sessions Judge may be a better appellate court than the District Magistrate, is there any very great difference after all between the District Magistrate and an Additional Sessions Judge? Is it not frequently the case that the Local Government does constitute a District Magistrate an Additional Sessions Judge for the purpose of hearing this class of appeals? There is not that wide difference between the two classes of courts as the comparison instituted by Mr. Lalubhai Samaldas would suggest.

The HONOURABLE LIEUT. RAO BAHADUR CHAUDHRI LAL CHAND (Punjab: Nominated Non-Official): The Honourable Sir Henry Moncrieff Smith and the Honourable the Home Member have already dilated at length upon the expense that would be involved if the appeals were to lie to the

[Lieut. Rao Bahadur Chaudhri Lal Chand.]

Sessions Judge, but they have lost sight of the expense to the litigant public. We have no Sessions Judge in every district. The Sessions Judge of Gurgaon holds his court in Hissar. The Sessions Judge of Rohtak holds his court in Karnal and it is very expensive for a man who has to appeal to the Sessions Judge to take his counsel all the way to Karnal and engage a fresh pleader there. These are not the only two districts that are under that disability. There are any number of districts in other provinces and in the Punjab also. For instance, the District Judge of Montgomery holds his court in Lahore. So from the point of view of those who have to file these appeals, the amendment should be welcomed and supported.

The HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): The history of the question that forms the subject matter of the amendment has been given to the House briefly by the Honourable Sir Henry Moncrieff Smith but I would like to supplement his remarks by giving a few more facts which would enable the House to see what has been the opinion on this quesion of competent lawyers, both advocates and judges, and of those who are competent to form a judgment. Sir, the Criminal Procedure Code, as the House knows, has been under consideration since the year 1914. The Honourable Member speaking on behalf of Government, I mean the first speaker, referred to the Lowndes Committee which sat in 1916. We find, Sir, that opinions were invited, as is the general practice on such questions, from various representative bodies and the Local Governments. I think it will be useful if I turn for a minute to these opinions and show to the House what was the overwhelming current of thought on the question whether appeals in cases under Chapter VIII should lie to the Sessions Judge or the District Magistrate. A précis of these opinions was prepared by the Government of India and on referring to it I find that influential and representative bodies, bodies which are among the best qualified in the country to express an opinion on legal questions, gave their opinion. The Calcutta Vakils' Association, the Second Additional Judicial Commissioner of Oudh, the Calcutta Bar Library and that influential and aristocratic body, the Bengal Landholders' Association—all declared themselves in favour of these appeals going to the Sessions Judge instead of to the District Magistrate.

The HONOURABLE SIR MALCOLM HAILEY: Did any Judicial Commissioner say that?

The HONOURABLE SAIYID RAZA ALI: Unless I am mistaken, the Second Additional Judicial Commissioner is a judicial officer of high repute. Then, Sir, we come to the two bodies, namely, the Calcutta Vakils' Association and the Calcutta Bar Library. The first represents the indigenous element in the Bar and the second the English bar, composed fortunately both of Englishmen and Indians. Now, Sir, the question at that time was raised in the form of two sub-clauses which were numbered 106 and 106 (*a*), but, since that question was very much like the one that is before the House, opinions were expressed freely on the suitability of the appeals being allowed to the Sessions Judge or the District Magistrate. Sir, I should not forget that two of the Governments, whose opinions I find are given here, took the view against the appeals being heard by the Sessions Judge. One of them was the Government of the province from which the Honourable the Home Member comes, namely,

1 P.M.

the Government of the Punjab. The other Government, Sir, that took a similar view was the Government of the province where the dispute between Brahmans and Non-Brahmans is unfortunately raging at present. Whether that Government was influenced at that stage by the caste struggle is more than I can say. But this much is certain, the Madras Government was of opinion that the appeals should lie to the District Magistrate.

Then, Sir, we come to the next stage, when the Joint Committee, composed of both Houses of the Indian Legislature, considered this question. My Honourable friend, Sir Henry Moncrieff Smith, referred to the opinion of the Committee and, so far as he did so, he was right. But I will place another fact before this House, namely, the view that these appeals should be heard by the Sessions Judges was advocated there, though as appears from the Report of the Committee, it was defeated by a majority.

The HONOURABLE SIR MANECKJI DADABHOY: May I rise to a point of order, Sir? Is the Honourable Member right in bringing before this House what passed in the Joint Committee?

The HONOURABLE THE PRESIDENT: If the Honourable Member is referring to a published Report, he is perfectly right.

The HONOURABLE SAIYID RAZA ALI: This paper was circulated among the Members of the Legislative Assembly and it is a public document. Now, the view there, as I have submitted, was expressed and advocated, but the advocates of this view formed, as appears from the Report, a minority. Then this question came up before this August House in September last year. Now, it is true, Sir, that no amendments were made in this clause by this House. Without meaning any disrespect, Sir, to this House, I should say that, because the measure was laid before the Council towards the end of the session, perhaps most of the Honourable Members found themselves rather busy,—(*The Honourable Mr. Lalubhai Samaldas*: "No, no." *The Honourable Sir Maneckji Dadabhoy*: "Speak for yourself: don't speak for others")—and, on referring to the Report, I find that the Bill was considered, I hope carefully, by this House in the course, if I mistake not, of one day. That Bill, as Honourable Members are aware, has taken the other House a little more than a month to go through. Now, Sir, in the Assembly an amendment was made giving the right of appeal to the Sessions Judge. The Government had their say, they fought on this question and their every argument was put before the House, but at least this much is certain that the Government failed to assure that House that the position which they took up was the right one, and, now, Sir, since the amendments made by the Assembly have come to us, an amendment has been moved by Government nullifying the effect of what the Assembly has done as regards clause 109. (*The Honourable Sir Maneckji Dadabhoy*: "Not altogether nullify.") The Honourable Sir Henry Moncrieff Smith, Sir, described the various portions of the amendment as they stand. Honourable Members will see that, except the last portion, there is no amendment, Sir, of any vital importance involved in the consideration of this clause;—in fact, the remaining clause re-enacts the law as it is. The amendment allows appeals to be heard by a District Magistrate and it is to this portion only that objection has been taken by me. I should at once point out, Sir, that, as will appear from an amendment of which I have given notice, I have no objection to the Government carrying this amendment *minus* the proviso which occurs

[Saiyid Raza Ali.]

between the last proviso and part (*b*) of the first clause. The words to which I take objection are these:

"Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session":

In other words, Sir, the Government are prepared to accept the reasonableness of the proposition that in all those cases where it is possible it is highly desirable that appeals should be heard by the Sessions Judge and not by the District Magistrate. They want to reserve to themselves the power that in certain exceptional cases it should be open to them to authorise District Magistrates to hear such appeals. Now, various arguments have been brought forward, Sir, by Government, and I have listened attentively to the speeches that have been made in support of the amendment. Sir, I will, if the House allows me, deal with the second speech first, namely, the speech of the Honourable Sir Malcolm Hailey. Now, he brought forward a formidable array of figures to impress this House how difficult it would be to make suitable arrangements for the Sessions Judges hearing appeals. He gave the figures for three years, namely, 1919, 1920, 1921, which amount to 43,243 throughout British India, which gives us an average of a little over 14,000 persons who were . . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: No, I think 43,000 is the average for the three years

The HONOURABLE SAIYID RAZA ALI: May I take 43,000, Sir, as the average for a year, not for three years?

The HONOURABLE SIR MALCOLM HAILEY: That is the yearly average over a course of three years.

The HONOURABLE SAIYID RAZA ALI: Now, the number, Sir, as I pointed out, is a formidable one. But the number of persons against whom action was taken cannot be a sufficient guide as to the amount of additional work that would be involved in making these appeals cognizable by the Sessions Judge. The real question, to which I expected Honourable Members on behalf of Government to give a reply, is this. How many are the cases that are started every year under these security sections? Out of those cases, in how many cases are appeals actually lodged at present? If we have these two figures, then we can have a fairly accurate idea as to what will be the additional work entailed on the Sessions Judges. But, Sir, the number of persons involved is not at all a safe guide inasmuch as Honourable Members are aware that sometimes in a *badmashi* case, there are as many as 10, 15, 20 or even 50 persons involved. Therefore, the number of accused may vary from 10 to 50. His figures, therefore, are illusory and the Honourable Sir Malcolm Hailey himself will realise when he considers it coolly that they do not support his contention. Now, the second question which the Honourable Member addressed himself to is that the cadre of Sessions Judges would have to be strengthened if you are to have this right of appeal, and he said that the District Magistrates were quite competent to hear these appeals. He also did not conceal from himself the fact that the Sessions Judges are more competent to perform a similar function. On my complimenting the Honourable Sir Henry Moncrieff Smith with "Hear, hear" he went on

to say that the High Court was more competent than the Sessions Judge and yet there was no suggestion that such appeals should be heard by the High Court. Now, Sir, I do not think it is necessary to go into a question of that character. The High Court indeed is the most competent court in India to hear these cases. But the question is, can you afford to set up the necessary machinery? Can you strengthen the cadre of the High Court Judges to such an extent that they may, without congestion of work, be in a position to dispose of this class of work? As a matter of fact, a still better court would be His Majesty's Privy Council. Unfortunately, it is impossible to make provision for all these appeals going to the Privy Council. The argument loses sight of a part of the argument which the Honourable Member himself advanced, namely, that we want the best court available, but that court must be within our reach. The District Magistrate and the Sessions Judge are officers who so far as the question of pay is concerned are almost on the same footing. If we take the junior civilians who are drafted on to the judicial line as Additional Judges, we find that the disparity of pay, if you take the average pay, between the two classes of officers is by no means very great. I wonder if the argument of the Government Benches takes into account the very serious confession that is involved in that argument. The argument that appeals should be heard by District Magistrates presupposes either of two things,—either that the District Magistrates have not got sufficient work at present and are therefore people who have got ample leisure at their disposal, or that they dispose of the work in such an expeditious manner that the Government are quite convinced that if this class of work continues to be performed by them, it may not at all be necessary to entertain any additional staff. Now, Sir, if the first argument is correct, namely, that these officers of whose being overworked we have been hearing a good deal have not sufficient work, I am extremely sorry. I can say with certainty that in many districts, in my own province, they have perhaps more than sufficient work. Their hands are full up already and the Government are not at all justified in expecting them to dispose of work of the class now sought to be given to them. I know, Sir, there are some Members in this House who have better means of information than myself, but I know that in Madras and Bengal the District Magistrates are terribly over-worked, so much so that in certain districts of Bengal and in certain districts of Bihar and Orissa, it has been found necessary to appoint Additional District Magistrates. Sir, I ask the Government Members if you insist on creating Additional District Magistrates, if you find it necessary in course of time to do so, where is the difference between this class of cases going to Additional District Magistrates or to Additional Sessions Judges, assuming that you might find it necessary to create one or two posts of Additional Sessions Judges in every province? There is a philosophic suspicion at the back of my mind that the Government in fact are not prepared to relax the control of the Executive and therefore, in spite of the fact that the expenditure will be the same in both cases, they would insist on these cases being heard by the District Magistrates, rather than by the Sessions Judges. Sir, there is just one more question which I will place before this House. Honourable Members of this Council are aware that the definition of "general repute" in section 117 has been considerably widened by the Joint Committee and that definition has been accepted by the Assembly. If hearsay evidence, namely, evidence of general repute, the scope of which has been widened, is now admissible under section 117, I entirely fail to see why the Sessions Judge should not be exactly in the same position and surely better than the District Magistrate would be in disposing of all

[Saiyid Raza Ali.]

these cases. We have got to deal with principles. On the principle accepted a lot of evidence would be admissible which could not be admitted otherwise. If there is any suspicion in the minds of the occupants of the Government Benches that perhaps it would not be desirable in the interests of administration that Sessions Judges should be given these powers, I submit, Sir, that having regard to the definition of "general repute" it is not a fear that can be justified by anything that finds a place in the four corners of the Bill.

Another point is that this House practically gave its acceptance to a Resolution that was moved early in the first Session of this Council in 1921 by the Honourable Mr. Sastri as he then was. Honourable Members are also aware that action has been taken in various provinces to bring about a separation of the executive and judicial functions. I submit, Sir, that having regard to the trend of public opinion and to the strong views expressed in competent legal circles, it would be highly inadvisable and inexpedient, while bringing about a separation of executive and judicial functions, to keep the District Magistrate, who after all is the head of the police, your appellate court for the purpose of these appeals. The Honourable Mr. Lalubhai Samaldas referred to the fact that the District Magistrate was the head of the police. I would further say, Sir, that in *Badmashi* cases, prosecutions are started either with the sanction of the District Magistrate or with the sanction of some competent Magistrate, generally the Sub-Divisional Officer. That being so, it is highly undesirable to combine the functions of thief catcher and judge, as the expression goes. It is therefore highly undesirable that this power should be given to the District Magistrates. I would only make one more remark and that is that I have had occasion to talk to two Judges of a certain High Court on this question, namely, whether such appeal should lie to the District Magistrate or the Sessions Judge. Both those Judges were Englishmen and further they were members of the Indian Civil Service and their view was that, after all, on the whole it would be more desirable that this class of appeals were heard by Sessions Judges than by District Magistrates. I oppose the proviso contained in the amendment proposed by my Honourable friend Sir Henry Moncrieff Smith.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): I rise to oppose the amendment. The arguments which have been put forward by my Honourable friend Mr. Lalubhai Samaldas have not been well refuted and I at least have not been convinced by the reply. My Honourable friend Chaudhri Lal Chand has supported the amendment on the ground that Sessions Courts do not exist in all the headquarters of the districts. As far as I know, the persons who do appeal in such cases do not generally reside in the headquarters of the district, but they have to come from long distances and it matters little to them whether the distance is a few miles more or less. (*The Honourable Lieutenant Rao Bahadur Chaudhri Lal Chand*: "Only a few miles?") Yes, a few miles. (*The Honourable Lieutenant Rao Bahadur Chaudhri Lal Chand*: "They have to come 200 miles.") I have not been able to follow what my Honourable friend Chaudhri Lal Chand aims at, but one of the instances he gave was that there was no Sessions Judge in Gurgaon, nor was there one in Rohtak and that people had to go to Karnal for the purpose of their appeals. But as far as my knowledge

goes, the Sessions Judge at Karnal does sit at Rohtak occasionally to dispose of cases of that particular district and that Gurgaon is equidistant from both places. (*The Honourable Lieutenant Rao Bahadur Chaudhri Lal Chand*: "Only murder trials.") That does not matter very much. When these people have to pay heavy fees to vakils a rupee or two in railway fare is not a matter of much importance. On the other hand, I can say that the lawyers of the place where there is no Sessions Court do suffer in income in cases where appeals have to go to the Sessions Judge. Since the activities of non-co-operation, Akali and other similar organised movements the work of the District Magistrates has alarmingly increased and they have no time to cope with it. (*The Honourable Sir Maneckji Dadabhoy*: "Has the Sessions Judge time to spare?") Yes! Besides, the District Magistrates are, after all, human beings and once they accord sanction on the executive side to security being taken under this section, generally they will decide against the appeal when the case comes before them on the judicial side. On these grounds I am sorry that I cannot support the amendment, so I oppose it strongly.

The HONOURABLE LALA SUKHBIR SINHA (United Provinces Northern: Non-Muhammadan): I think I should not dilate much on the point whether the Sessions Judges' Courts are better and more satisfactory than the Courts of District Magistrates, because as a matter of fact it is admitted from every side that the Courts of District Magistrates are not so satisfactory as those of District Judges. In cases of security for keeping the peace or for good behaviour it is often found that the District Magistrates are prejudiced as the police prosecution is generally made at their instance or with their approval or with the approval of the Sub-Divisional Officers. In such cases I think it is more satisfactory, more just and more equitable if the appeals are allowed to go to the Courts of the Sessions Judges than to the Courts of the District Magistrates. I think the plea of the Home Secretary that the work of Sessions Judges will increase does not hold much ground because work is increasing everywhere, not only in the Courts of the Sessions Judges but in the Courts of the District Magistrates also. I find from experience that District Magistrates are over-worked in almost every district. They hardly find time to do any work for the improvement of the district. They are always busy with their Court work, this appeal work, or that work—all routine work. They hardly find time to go about the country. Everywhere work is increasing and therefore we have to find out where justice can be obtained more easily, more quickly and in a better form. It seems to me therefore that if appeals are allowed to lie to the Sessions Judge instead of to the District Magistrate, it will be much better and more satisfactory. On these grounds, Sir, I oppose the amendment.

The HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU (Madras: Non-Muhammadan): Inasmuch as the Government has condescended to allow appeals to be preferred in security cases I think it is better and safer that the appeals are made to Sessions Judges. The general impression is that the Sessions Judges possess a better judicial frame of mind than the District Magistrates. The statements made by my Honourable friends Lala Ram Saran Das and Lieutenant Chaudhri Lal Chand are at variance with one another. Moreover, the District Magistrates are over-worked officials. In the interests of justice it is not safe that an appeal should lie from the Divisional Magistrate to the District Magistrate. Moreover, the District Magistrates are hardly inclined

[Diwan Bahadur V. Ramabhadra Naidu.]

to hear appeals. Considering all these facts I think it is safer and wiser to allow appeals to the Sessions Judges.

The HONOURABLE SIR MANECKJI DADABHOY: I am sorry that I have to intervene in this debate at this late stage, but the importance of the subject demands that I should answer as briefly as possible some of the observations that have been made and say a few words as to the real scope of this amendment which has been misconstrued by some of my Honourable Colleagues. I am perfectly aware that there is a widespread feeling in the country among some people and also among a class of lawyers that the District Magistrate is not ordinarily fitted to hear appeals against orders passed under section 118 by First Class Magistrates. I have often tried to find out the real cause of this feeling. My friend the Honourable Mr. Lalubhai Samaldas has told us that the reason that has influenced him is the common impression among a large class of people, that in the generality of cases where criminal cases are instituted the action of the executive is influenced by the District Magistrate. There is another argument which I have often heard and that is that the District Magistrate is always in touch with the District Superintendent of Police and he hears so much of the case that he is not likely to do justice in appeals going up before him. I have never heard of any other reason barring these two advanced against District Magistrates hearing the appeals. May I ask my Honourable colleagues that in coming to a decision on this matter, namely, whether the amendment proposed should be accepted or not, they will confine their attention to the merits of the case only and not be led away by prejudice and passion. Sir, in the first instance what is the import of this amendment. The amendment by no means seeks to take away the right of appeal ordinarily provided in the Sessions Court. Here I am afraid some of my Honourable colleagues have misunderstood the scope of the amendment. Ordinarily, where an order has been passed by a District Magistrate or a First Class Magistrate the appeal will lie to the Sessions Judge. It is only in certain Districts which will have to be notified by the Local Government that the appeals will be heard by the District Magistrates and not by the Sessions Judges. Now is there any hardship in the rule. Ordinarily the appeal will lie to the Sessions Judge. There may be a district in which there may be a highly competent District Magistrate. You are aware that in some districts there are Magistrates of long standing who exercise powers even under section 30. Even the Sub-divisional Magistrates exercise those powers and the District Officers of standing and qualifications could be safely trusted to dispose of these cases, petty appeals which do not involve any questions of law but merely involve pure questions of fact and simple questions of evidence about the general reputation of a man who is arraigned in Court. Can you seriously argue that a District Magistrate who can hear appeals from judgments passed by second class and third class Magistrates should not dispose of a mere question whether in a particular case security for good behaviour should be taken or not? Forgive me for saying so. I say it will be foolish, absolutely puerile to my mind to suggest that a District Magistrate of some standing is not ordinarily capable of dealing with cases of this nature. There may be Districts in which a certain amount of redistribution of work may have to be made. I am not aware of the practice in all the provinces but in some parts I am aware that the Sessions Judge is not always available on the spot. He is far away. It would involve considerable expenditure of time

and money to go to the Sessions Court and engage fresh lawyers in the Sessions Court and the lawyers present here will bear me out that the Sessions Court lawyer as a rule demands a larger fee than those practitioners who generally practise in the Court of the District Magistrate. I say that the position is something like 'Save us from our friends.' If you really and dispassionately consider the matter, it is not so serious as some people seem to really think. I am afraid it is more some sort of prejudice which is at the bottom of this than the merits of the case and I appeal to my Honourable colleagues to decide the question purely and absolutely on the merits. The amendment does not ordinarily take away the right of appeal. Only in certain cases power is given to Local Governments by notification to empower District officers to hear appeals under section 108. Sir, this is one aspect of the case. I have got another point to urge. My Honourable friend Saiyid Raza Ali has stated that probably Government are not prepared to loosen the control of the executive. Now, I have been in touch with many District Officers. Government have not laid any stress on this aspect of the case. I have often come into close touch with these officers and if there is one idea which I have formed, not hastily, not impulsively but after mature consideration, it is this. There is a great deal to be said against the adoption of any policy that will undermine the authority and prestige of the District Officer. The whole fabric, the entire constitution and success of your administration depends upon the character and competence of the District officer. I know that the district officer is now a much maligned man. Charges are indiscriminately made against him. But you must realise that for the good of the district, for the good of the people who live in the district, it is absolutely dangerous to lightly interfere with the powers of the District Magistrate and to emasculate his control, his authority and make him look small in the eyes of the people over whom he presides in the district. For the good of the district, I say that the prestige of the District Magistrate should be maintained and I am against any proposal that reflects on his credit or causes a curtailment of his power or prestige. Then my Honourable friends should also remember from whose orders the District Magistrate hears appeals. It is a reflection upon our own countrymen. He hears appeals against the orders of the first class Magistrate the majority of whom are our own countrymen who are, the majority of them, your own countrymen. (*The Honourable Mr. Lalubhai Samaldas*: "Our, our.") Yes, they are my own countrymen. They are all Indians. You assume in the first instance that the Magistrate has not done his duty properly and that the District Magistrate is going to support an erroneous judgment or an unsupportable finding of an Indian Magistrate. I say these conclusions are too extravagant, and it is on this that unfortunately your opposition is based. Sir Malcolm Hailey has rightly referred to the expenditure of time. I would say, it would make it in many cases absolutely impossible and in some cases almost a withdrawal of justice. If you make it obligatory that the Sessions Judge alone should hear the appeal, in the majority of cases, you will find that there will be no appeals. People who are not in a position to incur the expense of travelling long distances or engaging counsel will not move at all and you will be doing more injustice to them than saving them. Therefore, I submit that the amendment made by the Legislative Assembly goes very far in enlarging the scope of the section. I think that in all these cases a limited right of appeal should only be given and personally I am of opinion that the original section 406, as it stood, ought not to have been interfered with. I have never heard of

[Sir Maneckji Dadabhoy.]

any serious cases of injustice having happened under the law as it stands at present. I think it was unfortunately a mistake to have interfered with the existing law. But in any case, this Resolution offers to the Council a very fair and a very reasonable compromise. It does not say that in every case the appeal must go to the District Magistrate. It only gives the Government power in a certain class of districts to bring it out of the purview of the ordinary tribunal. And I am sure you are not going to oppose such a reasonable suggestion. I therefore request my Honourable colleagues not to consider a matter of this great importance with passion or any sort of prejudice. And, if you will consider it purely on its merits, I think you will come to the conclusion that the amendment is a reasonable one.

The HONOURABLE SIR LESLIE MILLER (Madras: Nominated Non-Official): Sir, the form in which the amendment is put suggests that the Government possibly not exactly of their free will accepted the view that the Court of Session is to be preferred as a Court of Appeal rather than the Court of the District Magistrate, because they have prescribed the Court of Session as the Court to which appeals ordinarily lie, and by the proviso they have taken power for Local Governments to provide if necessary that appeals shall lie to the District Magistrate. Now, if the question is simply one of finance, as it seems to me it is from the point of view of the Government Benches, that is a very reasonable and proper way of providing. In fact the Government view is, as I understood the Honourable Sir Malcolm Hailey, "we have no objection to making the Court of Session the Court of Appeal except that we cannot afford it, or at any rate the Local Governments cannot afford it. Well, in places in which the Local Government are unable to afford it, we allow them to leave the matter to the District Magistrate. What we would like, of course, would be that they should have money enough to provide a Court for everybody who wants it. If we have not got it, somebody has got to suffer. We accept the view that the Sessions Judge ought to be made to suffer generally, but, sometimes, if his sufferings are more than he can possibly bear, we put it on the District Magistrate." That sums up the matter. I confess I cannot see what harm it is going to do. I sympathise and agree with the view that the Sessions Court is probably from most points of view a better Appellate Court. Not that there is any difference in capacity, but for the reason, which really actuates the non-official view, that the District Magistrate is, in a sort, a party to the proceedings. It is peculiarly the District Magistrate's business to round up the bad characters in the district. And, therefore, the attitude of the District Magistrate towards proceedings of this kind is likely to be less detached, less impartial on the whole, than that of the Court whose business is only to deal with cases that are put before it. I think there is something in that, especially in these security cases, more than in cases of offences committed. If an offence is committed, and a man is arrested, the case must go to some Court or other. The District Magistrate has nothing to do with it. He is not in any case the complainant. In these cases, there is no doubt that, though he may not be the formal complainant, yet it will probably be, if the case is at all important, in pursuance of the policy enunciated, and in pursuance of instructions, general though they may be, given by him to the police, that certain characters are rounded up and brought before the Court. In so far as these proceedings are in the nature of executive proceedings, then, I see no reason why a District Magistrate

should not be the final authority, and he knows probably better than anybody else what is necessary for securing the peace of the District; and if it were the case that these proceedings ended only in an order to furnish security, ended only in the taking of bonds, I would say—leave it to the District Magistrate, let there be no appeals. Let us not trouble about it at all. In cases where long terms of imprisonment are imposed on persons who are unable to find security, and it is an exceptional thing that a person against whom an order is passed is able to furnish the security required,—in those cases in which long terms of imprisonment are imposed it becomes rather a matter of judicial inquiry whether those imprisonments have been rightly imposed; then if the matter is judicial, I don't suppose that anybody can doubt that the Sessions Court is the better Appellate Court for the reasons that I have stated. There is no question of a difference in capacity, if by capacity is meant the power to construe the Code of Criminal Procedure and the Evidence Act. One man can do that as well as another. It is rather the attitude towards the proceedings as a whole that leads me to join with the non-official Members in saying that if you want a judicial decision on an appeal, you may get a more impartial decision on the whole from the Sessions Court. Then, the only question remaining from my point of view is whether we can afford to have more Sessions Courts. I am not afraid of serious injustice at the hands of the District Magistrates. I don't tremble to think what will happen if this Code is not amended, and the old provision stays as it is. Consequently I think the amendment might well be accepted as leaving it to the Local Governments to decide in what cases it is absolutely necessary to leave the matter to the District Magistrate rather than to give an appeal to the Sessions Court.

The HONOURABLE RAJA SIR RAMPAL SINGH (United Provinces Central: Non-Muhammadan): Sir, the point under discussion before the House is one in which even a layman can take part. It is only a matter of experience from which one can form a judgment. As far as my experience goes, in security cases I think the District Magistrate is in a better position to decide equitably such cases than a District Judge. It is quite possible that in a Sessions Court legal justice might be given out in such cases but simple and pure justice is always given out by the District Magistrate's Court. That is my experience and I cannot go against my experience as far as these cases are concerned. I endorse the point of view of my friend the Honourable Sir Maneckji Dadabhoy that really in *badmashi* cases we can trust and put confidence in the decisions of the District Magistrates. With these words, Sir, I support the amendment that has been put forward by the Government.

The HONOURABLE SIR MALCOLM HAILEY (Home Member): I do not desire to reply to the whole of the debate. The subject has now been threshed out and I think we know each other's points of view. I merely wish to take one or two points on which I must reply to statements made in the House. For instance, the Honourable Saiyid Raza Ali suggested that my figures were not complete as a basis of argument, for I had only given the average number of cases in which persons were ordered to give security under Chapter VIII of the Criminal Procedure Code. They did not provide any material for judging how many of these persons were likely to appeal. I have not given such figures because we have no material. I have attempted to find out, but the only figures we have anywhere is the total number of appeals to District Magistrates and that

[Sir Malcolm Hailey.]

includes all appeals from second and third class Magistrates as well as appeals in security cases. I gave the House the only figures we had, and suggested that the House might draw its own inference as to the number of appeals that were likely to be brought before Sessions Judges. There would have been little additional value, if I had given the number of cases as separate from the number of persons, as the Honourable Saiyid Raza Ali asked. My experience is that you do not as a rule unite a large number of persons in one proceeding.

The HONOURABLE SAIYID RAZA ALI: My experience is to the contrary.

The HONOURABLE SIR MALCOLM HAILEY: I can only appeal to the other Members of this House whether they have known very large numbers of cases in which, as he says, ten persons have been put together in one *badmashi* charge. Then, as regards the opposition which certain Local Governments are said to have offered to the proposal to entrust these appeals to Sessions Judges, Saiyid Raza Ali said that only two Local Governments gave their opinion against the proposal, namely, Madras and the Punjab. He drew some deduction—exactly what it was I was unable to gather—from the fact that the Punjab opposed it and that I had once been connected with the Punjab. I will only content myself with the fact that he somewhat destroyed the value of his previous deduction by saying that Madras had also been opposed to it. In Madras, the problem somehow or other seemed to him to turn on the rivalry between Brahman and Non-Brahman. Well, I can give him something which will prevent his falling into the same error again; this case was not discussed at all by the Local Governments. The Local Governments did not write on the subject of the extension of appeal to the Sessions Judge. The point on which the Local Governments gave their opinion—Saiyid Raza Ali can verify what I say from the papers before him—was the proposal to give an appeal from the refusal to accept a surety,—quite a different matter. Now, Sir, once more, as regards these figures, whether the District Magistrate has so much leisure or not, whether he is overworked or whether the Sessions Judge is overworked, I merely ask the House to realise the fact that our Bill in any case have the effect of allowing appeals to the District Magistrate in section 107 cases, so that his work will be largely increased. We have no experience of what extra appeals would be likely to be brought in section 107 cases. And finally, Saiyid Raza Ali confessed to some philosophic doubts. In the ordinary affairs of life, when somebody begins to insinuate philosophic doubts, we know that he has not his facts safe, or that he cannot rely on argument derived from reason, or that he has some suspicion, often unworthy, but in any case difficult to defend. In the present case there is no doubt that Saiyid Raza Ali had that unworthy suspicion, and that it is the only ground for putting forward his philosophic doubt. He thought that Government's real motive was based on its unwillingness to take away from the District Magistrate his authority in regard to law and order, or to diminish the power of the Executive. If he will again glance at the amendment he will draw very much the same conclusion as Sir Leslie Miller, for it will be seen that all we do is to say that an appeal shall lie to the Sessions Court, but that where the Local Government cannot afford it—that is our main ground—from the first we have stood on that—it shall order that these appeals shall lie to the District Magistrate.

The HONOURABLE SAIYID RAZA ALI: Leave it to the Provincial Legislatures.

The HONOURABLE SIR MALCOLM HAILEY: We leave it to the Executive Government, because the latter is after all in the best position to know exactly what it can afford. If the Local Legislatures desire to influence their Government in this direction they know how to do it, and have only to show their readiness to provide the resources necessary to increase the number of Sessions Judges. As I say, we have from the first taken our stand on financial grounds. I am willing to stand on that ground, here and elsewhere. I will only say this, that we cannot as a Central Government, and I would add we cannot as a Central Legislature, lightly and for any reason—I am not now going into the reason—for any reason lay on the Local Government a burden which their finances are not in a position to bear. It is for this reason that we have to leave it open to them to leave these appeals with the District Magistrates instead of taking them to the Sessions Judges.

2 P.M.

The HONOURABLE THE PRESIDENT: As far as I can see the amendment now before the House only differs from the amendment passed by the Legislative Assembly in the addition of the proviso " Provided that the Local Government . . . ." If that is so, I shall obtain the opinion of this House more directly by putting the first question in this form that this proviso do stand part of the amendment made by the Legislative Assembly. I will read the proviso.

" Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session."

The question is that those words stand part of the amendment.

The Council divided.

(When the division was on).

The HONOURABLE THE PRESIDENT: A question has been raised as to the vote given by the Honourable Raja Moti Chand. Will he declare Aye or No, or not voting?

The HONOURABLE RAJA MOTI CHAND: Not voting.

AYES—22.

Akbar Khan, Major Nawab.	Lal Chand, Lieut.
Amin-ul-Islam, Mr.	Miller, Sir Leslie.
Baker, Mr. C. M.	Moncrieff Smith, Sir Henry.
Barron, Mr. C. A.	Muzammil-ullah Khan, Nawab.
Butler, Mr. M. S. D.	Rampal Singh, Raja Sir.
Chadwick, Mr. D. T.	Sarma, Mr. B. N.
Cook, Mr. E. M.	Shafi, Dr. Mian Sir Muhammad.
Crerar, Mr. J.	Tek Chand, Mr.
Dadabhoy, Sir Maneckji.	Thompson, Mr. J. P.
Forrest, Mr. H. T. S.	Vasudeva Raja, Raja.
Jha, Dr. G. N.	Zahir-ud-din, Mr.

NOES—9.

Chettiyar, Mr. S. M. A.	Raza Ali, Mr.
Lalubhai Samaldas, Mr.	Sinha, Mr. Sukhbir.
Muhammad Hussain, Mr. Ali Baksh.	Srinivasa Sastri, Rt. Hon. V. S.
Naidu, Mr. V. R.	Zulfiqar Ali Khan, Sir.
Ram Saran Das, Mr.	

The motion was adopted.

The HONOURABLE THE PRESIDENT: I put the further question that in place of the amendment made by the Legislative Assembly this House do propose the following amendment:

"That for clause 109 of the Bill the following clause be substituted, namely :—

'109. For section 406 of the said Code the following section shall be substituted, namely :—

Amendment of section 406, Code of Criminal Procedure, 1898.

406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

Appeal from order requiring security for keeping the peace or for good behaviour.

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

(*b*) if made by any other Magistrate, to the Court of Session :

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided further that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123'."

The motion was adopted.

Amendments* Nos. 36 to 43 were concurred in.

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*36. In clause 109 (now clause 112), in sub-clause (*iii*) [now (*ii*)], for the word "sentenced" the word "convicted" was substituted.

37. In clause 111 (now clause 114), in the proposed section 415A—

(*a*) for the words "any of such persons in respect of whom an appealable judgment or order has been passed appeals" the words "an appealable judgment or order has been passed in respect of any such persons" were substituted;

(*b*) the words "and notwithstanding anything contained in the Indian Limitation Act, 1908, the period of limitation therein prescribed for the appeal shall run from the date on which the right to appeal accrued" were omitted.

38. For sub-clause (*iii*) of clause 114 (now clause 116), the following sub-clause was substituted :—

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

39. To clause 117A (now clause 119) the following was added :—

"and after sub-section (*5*) of the same section the following sub-section shall be added, namely :—

'(*6*) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (*2*) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction'."

40. In clause 126 (now clause 128), in sub-section (*1*) of proposed section 476—

(*a*) for the words "order the offence to be inquired into" the words "record a finding to that effect" were substituted;

(*b*) for the words "and may, if the alleged offence is non-bailable, send the accused in custody to or, in any other case, may take sufficient security for his appearance before such Magistrate" the words "and may take sufficient security for the appearance of the accused before such Magistrate or, if the alleged offence is non-bailable, may, if it thinks necessary so to do, send the accused in custody to such Magistrate" were substituted.

41. For clause 127A (now clause 132) the following clause was substituted :—

"132. (*1*) Section 489 of the said Code shall be re-numbered as sub-section (*1*) of section 489, and, in that sub-section as re-numbered, for the word 'fifty' the words 'one hundred" shall be substituted.

Amendment of section 489, Code of Criminal Procedure, 1898.

(*2*) To the same section the following sub-section shall be added, namely :—

'(*2*) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly'."

The HONOURABLE MR. LALUBHAI SAMALDAS: I beg to move:

"That in clause 145 of the Bill in the proposed sub-section (8) of section 526 the words 'prior to the accused entering on his defence' be omitted."

The Bill as passed by us and sent to the other place was altered there. The section as it stood was altered in the following manner. I refer to 44 (*b*):

"In the same clause in sub-clause (*iii*) in the proposed sub-section (8), for the words 'trial or inquiry' the words 'inquiry or trial prior to the accused entering on his defence' were substituted."

Before the Bill was amended in the Legislative Assembly the accused had the right of asking for a transfer of his case even after the case had been begun and had continued for some time. Under the amendment as finally carried in the Assembly the words "trial or inquiry" were changed to "inquiry or trial prior to the accused entering on his defence." If I understand aright, this amendment was made when many Members of the House had gone away to attend some other function and it was in a thin House that the amendment was pressed by Government and carried. (*Cries* of "No.") That is my information, and I hope I am correctly informed. If the House had been full this amendment would not probably have been carried. As it is it takes away from the accused the power of asking for a transfer at any stage which the Bill as it stood then did give. It is only right that if the accused finds after he has entered on his defence that the attitude of the Magistrate or the trying Judge is against him he should have a chance of asking for a transfer of that case from that Magistrate or trying Judge. It is only in the interests of justice that I ask Government to accept my amendment, because by accepting my amendment no public interests will suffer and I believe it will be acceptable to the Assembly also. I hope the Government will see their way to accept it.

The HONOURABLE SIR HENRY MONCRIEFF SMITH: Sir, Government is supporting the amendment moved by my Honourable friend, but not because Government thinks that the amendment of my Honourable friend is going to improve the Bill very materially. The matter is a small one and, as the Honourable the Mover said, it was carried in a thin House in the other place. He was wrong in saying that it was pressed by Government. It was an amendment put forward by a non-official Member to which Government lent its support but it appears that there was some feeling on the part of non-official Members, that the amendment was one which ought not to be made. There is an advantage in curtailing the

42. In clause 132 (now clause 136), in sub-clause (*iii*)—

(*a*) for the words "following sub-section" the words "following sub-sections" were substituted;

(*b*) after the proposed sub-section (*3*) the following sub-section was added:—

"(*4*) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered; and";

(*c*) in sub-clause (*iv*), the proposed sub-section (*4*) was re-numbered (*5*).

43. In clause 136 (now clause 140), in the proposed section 514A, for the words "becomes under this Code" the words "under this Code becomes" were substituted.

[Sir Henry Moncrieff Smith.]

time up to which applications for transfer should be made. It was suggested in the other House as an argument in favour of the amendment just now before us that it was only when a charge was framed that the accused came to know that he had the Magistrate up against him and it was from that time onwards that the justification for an application for transfer arose. I merely mention this to make it clear that this is not the idea of Government in supporting this amendment and I am quite sure it is not the idea of my Honourable friend.

The HONOURABLE SAIYID RAZA ALI: The words mentioned in the amendment were inserted in this clause on the motion of a non-official member in the other House and the attitude of the Government was that they did not oppose the amendment and as such it was carried. There is no need to make a long speech on the question at all. In fact we are all very glad that after all we have got an opportunity of justifying our existence as a revising Chamber. I have not the least doubt that the other House made a mistake and it is for us to set that mistake right and I am very glad that my Honourable friend Mr. Lalubhai Samaldas has availed himself of this opportunity. The other House sat for a month and more and yet their labours were not complete and we had to set their mistake right. I support the amendment.

The HONOURABLE THE PRESIDENT: The question is that in the amendment put forward by the Legislative Assembly this House do propose the following amendment . . . .

The HONOURABLE SIR HENRY MONCRIEFF SMITH: May I suggest that the motion may be put in the form that this House do not concur, so that we may give a negative vote. What we are really doing is dissenting from the amendment that the Assembly made.

The HONOURABLE THE PRESIDENT: How does the Honourable Member suggest that the motion should be made?

The HONOURABLE SIR HENRY MONCRIEFF SMITH: The motion is that the House do concur in this particular amendment. If the House expresses its dissent, our desire is achieved.

The HONOURABLE THE PRESIDENT: We are making an amendment to a particular clause. I understand that 44 (*a*) stands. I should like the Honourable Member to explain his point further. It is doubtless owing to transfer that I have not appreciated it.

The HONOURABLE SIR HENRY MONCRIEFF SMITH: My suggestion was that 44 (*a*) and 44 (*b*) should be put separately. 44 (*a*) we concur in. 44 (*b*) we do not concur in. Then we leave the Bill as it stood in this respect before the Assembly amended it. That I think is the effect of my Honourable friend Mr. Lalubhai Samaldas' amendment.

The HONOURABLE THE PRESIDENT: Then the Honourable Member has not drawn up his amendment in proper form.

The HONOURABLE MR. LALUBHAI SAMALDAS: I am sorry if it is so. I am not a lawyer, Sir.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): I should like to say this, that if we merely say that we do not concur in the amendment made by the Legislative Assembly, that in itself will not restore clause (*b*) as it stood in the original Bill. Have we not got to do something further in order to restore the original clause as it was?

The HONOURABLE THE PRESIDENT: I will put the question in this form:

"That this House do concur in the amendment 44 (*a*) made by the Legislative Assembly."

The motion was adopted.

The HONOURABLE THE PRESIDENT: I will put the second amendment in this form:

"That to the amendment 44 (*b*) made by the Legislative Assembly, this House do propose the following amendment, namely:—

"That in the proposed sub-section (*8*) of section 526, the words 'prior to the accused entering on his defence' be omitted."

The motion was adopted.

Amendment No. 44, as amended,* was concurred in.

Amendments† Nos. 45 to 49 were concurred in.

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*44. (*a*) In clause 141 (now clause 145), in sub-clause (*ia*), after the figure "(*5*)" the words "for the word 'convicted' the words 'so ordered' shall be substituted and" were inserted.

(*b*) In the same clause, in sub-clause (*iii*), in the proposed sub-section (*8*), for the words "trial or inquiry" the words "inquiry or trial" were substituted.

†45. (*a*) For sub-clause (*i*) of clause 144 (now clause 148) the following was substituted:—

"(*i*) Clause (*b*) shall be omitted".

(*b*) In sub-clause (*ii*) of the same clause, after the word "want" the words "where it occurs for the second time" were inserted.

46. In clause 150 (now clause 154), for the words "and not" the words "and the method of recovery of which is not" were substituted.

47. In clause 155 (now clause 159)—

(*a*) after sub-clause (*12*) [now sub-clause (*10*)] the following sub-clause was inserted:

"(*11*) for the entry in column 6, against section 403, the words 'Compoundable when permission is given by the Court before which the prosecution is pending' shall be substituted";

(*b*) after sub-clause (*14C*) [now sub-clause (*17*)] the following sub-clause was inserted:—

"(*18*) for the entry in column 6 against section 508, the word 'Compoundable' shall be substituted."

48. In clause 158 (now clause 162)—

(*1*) for sub-clause (*iv*) (*b*) [now (*iii*) (*c*)] the following sub-clause was substituted:—

"(*c*) the words 'and cannot be recovered by distress of the moveable property of the said (name of complainant)' shall be omitted";

(*2*) the word "moveable" in sub-clauses (*v*) (*b*) and (*v*) (*d*) was omitted.

49. After clause 159 (now clause 163) the following clause was inserted:—

Commencement.

"164. This Act shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint."

The HONOURABLE THE PRESIDENT: I shall be very glad to have the assistance of Members of the Government to explain how I should put amendment* 50.

The HONOURABLE SIR HENRY MONCRIEFF SMITH: I think, Sir, the matter is quite a simple one. The 50th clause of this list simply says that among the amendments made by the Legislative Assembly the clauses and sub-clauses of the Bill were re-numbered. What we have done here at this stage does not in any way affect that re-numbering of the clauses and sub-clauses, and therefore we can concur in the amendment made by the Legislative Assembly in that respect.

The HONOURABLE THE PRESIDENT: I am glad to have that assurance, and, on that assurance, I will put the question:

"That this House do concur in the amendment No. 50 as made by the Legislative Assembly."

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Wednesday, the 14th March, 1923.

* 50. That clauses and sub-clauses of the Bill were re-numbered in consecutive order.