THE

COUNCIL OF STATE DEBATES

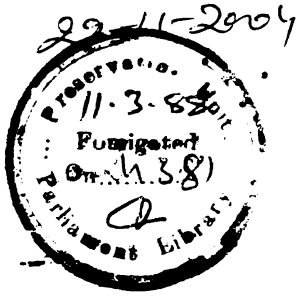
VOLUME II, 1932

(20th September to 19th December, 1932)

FOURTH SESSION

OF THE

THIRD COUNCIL OF STATE, 1932



DELHI : MANAGER OF PUBLICATIONS
1933

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COUNCIL OF STATE.

Tuesday, 27th September, 1932.

The Council met in the Council Chamber at Viceregal Lodge at Eleven of the Clock, the Honourable Mr. E. Miller, Chairman, in the Chair.

QUESTION AND ANSWER.

RETRENCHMENT EFFECTED SINCE THE REPORT OF THE RETRENCHMENT COMMITTEE IN DEPARTMENTS OF THE GOVERNMENT OF INDIA.

120. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : 1. Will Government be pleased to state what retrenchment has been effected since the Report of the Retrenchment Committee, in each of the separate departments of the Government of India ?

2. Will Government be pleased to state the principle on which this retrenchment has been effected ?

3. Will Government be pleased to state the percentage of reduction in the higher posts in each department with a pay of Rs. 500 and above and those below Rs. 500 ?

4. Will Government be pleased to state what retrenchment has been made during the year in the different allowances under the Fundamental Rules ?

5. Will Government be pleased to lay on the table a full and detailed statement of the various retrenchments by departments ?

6. Will Government be pleased to state how many Europeans, Anglo-Indians, Indian Christians, Hindus, Muhammadans and Sikhs have been thrown out of employment in the Departments of Commerce, Industry and Labour, Public Works Department, Delhi, Railways, Education, Health and Military, as a result of this retrenchment ?

THE HONOURABLE MR. J. B. TAYLOR : Sir, with your permission I shall answer the six parts of the question together. Retrenchment is a continuing process and has not yet reached finality. Government are therefore not yet in a position to give definite replies to the Honourable Member's questions.

STATEMENT LAID ON THE TABLE.

NUMBER OF EUROPEANS, ANGLO-INDIANS AND INDIANS IN THE DIFFERENT PORT TRUSTS ON SALARIES OF RS. 500 AND OVER ON 31ST MARCH, 1932.

THE HONOURABLE MR. J. C. B. DRAKE : Sir, I lay on the table the information promised in reply to question No. 31 asked by the Honourable Sir Phiroze Sethna on the 20th September, 1932.

Statement showing the number of Europeans, Anglo-Indians and Indians as at 31st March, 1932, in the different Port Trusts carrying salaries of Rs. 500 and above.

Port Trusts.	Rs. 500—999.			Rs. 1,000—1,999.			Rs. 2,000 and over.		
	Europeans.	Anglo-Indians.	Indians.	Europeans.	Anglo-Indians.	Indians.	Europeans.	Anglo-Indians.	Indians.
Chittagong ..	4	1	..	3	..	..	..	..	..
Madras ..	6	1	1	6	..	..	2	..	..
Rangoon ..	16	6	2	41	1	2	5*	..	..
Bombay ..	25	1	5	27	3	2	5	1	..
Aden ..	4	..	..	6	..	..	..	..	..
Calcutta ..	22	3	4	47	1	..	10	..	..
Karachi	7	1	3	12	..	2	..	..	..

*Two appointments abolished after 31st March 1932.

†Officers on leave preparatory to retirement have been excluded.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

THE HONOURABLE MR. M. G. HALLETT (Home Secretary): Sir, I rise to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Sir, it is with some diffidence that I rise to make my maiden speech in this Council. My diffidence is increased by the fact that it is my duty to put before the Council a Bill which though short is of considerable importance to the criminal administration of this country. I do not claim to be a lawyer and possibly legal points may be raised. If so, I hope that those Members of this Council, who are more acquainted with legal procedure than I am, will deal with them. I speak as a layman, and I hope I shall make my points clear at least to the laymen in this House. I can claim also to have had some practical experience of the evils which this Bill is designed to meet, for within recent years I have held the post of District Magistrate, and the District Magistrate is frequently coming up against the difficulties of section 526 of the Criminal Procedure Code. I do not think it is necessary for me to deal at any great length with the question of how this section came to have its present form or to detail the form in which it stood in the previous editions of the Criminal Procedure Code. It is hardly necessary for me to refer to the discussions which took place in 1923, when the central Legislatures took

upon themselves the Herculean task of amending the Code of Criminal Procedure. It is unnecessary for me to refer in detail to the amendments that were made in this section during those discussions. My object will be to make it clear to this Council that the section as it stands is open to very serious objection in that it enables the accused, or a complainant for that matter, to delay seriously the trial of a criminal case. I shall try to show that a mistake was committed in 1923 and that the present Bill rectifies that mistake.

There is one preliminary point which I wish to make quite clear to this Council, for it is possible that this point was not sufficiently emphasised in 1923, and possibly, as the result of that, the section was finally passed in the form in which it now stands. I have also noticed that in some of the criticisms which have been received on this Bill, this point has been raised. My point is this. It is recognised in the criminal law of India as embodied in the Criminal Procedure Code that in certain circumstances it may be desirable in the interests of justice that a case should be transferred from the court in which it is pending. The grounds on which a transfer can be claimed are clearly set out in sub-section (*1*) of section 526. This Bill does not in the least affect that sub-section. Nor does it affect the right of " any party interested in a case," to quote the words of the section itself, that is to say, the right of the complainant or the accused to apply to the High Court for a transfer on any of the grounds which are specified in the first sub-section of this section. That very important right is also not affected in the least by this Bill, and no attempt has been made to change sub-sections (*3*) and (*4*) of this section. These provide that the High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative. Sub-section (*4*) lays down the method by which application shall be made.

I now come on to those portions of the section which we desire to amend. The only portions which are being changed are sub-sections (*5*), (*6A*) and (*8*) and (*9*). The main change, however, is in sub-section (*8*), and the other changes are merely subsidiary to the changes made in that sub-section. What is the effect of that sub-section as it stands at present ? An accused can at any time during the pendency of the case, from the time when the first witness is called for the prosecution till a Magistrate is about to deliver judgment, say to the Court by which he is being tried, " I intend to apply to the High Court for a transfer of this case from your file ". He need not adduce any reason ; he need not specify the grounds on which he intends to make that application. As soon as he makes that statement, all discretion is taken away from the Court, and the Court is bound to adjourn the case for—I quote the words of the section—

" such a period as will afford a reasonable time for the application to be made and order to be obtained thereon."

In the case of places far remote from the seat of the High Courts that may mean a delay of two or three weeks. This, however, is not the only or even the main objection to the section as it is. The accused or the complainant can state his intention to the Court many times during the pendency of the case, and on each and every occasion the same procedure applies, that is to say, the

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Court is deprived of all discretion and has to adjourn the case for a reasonable time. Further, and this is perhaps the worst part of the section, there is no obligation whatever on the party which has notified its intention of moving the High Court to take any such action. He may notify his intention and then merely wait. He thus secures an adjournment, possibly for some rather improper purpose, and he need not go to the trouble or expense of moving the High Court at all. In my experience as a District Magistrate I have come across far more cases in which an accused has secured an adjournment in this way and has failed subsequently to make any application to the High Court than cases in which he has actually made any such application.

I find too that this opinion of mine has been corroborated by a report of the Government of Bengal in 1928 when it was pointed out that out of 69 cases in which an adjournment had been obtained in this way the High Court was only actually moved in eight of those cases. An accused may have various reasons for endeavouring to delay the trial of the case. The Honourable the Law Member gave his own experience of a case in which he himself had been employed. The case was a simple one and should have been completed in four or five days. The case actually took 3½ months because of the tactics adopted by the accused. The reason for these tactics was—as frequently happens, thanks to this section—that the accused wanted to get at the witnesses for the prosecution. Fortunately in this case he was unsuccessful because the case depended on documentary evidence. I may quote a similar case from my own experience. A Municipal Tax Collector was prosecuted for embezzlement of municipal funds. The case was perfectly simple and straightforward, but he succeeded in obtaining five or six adjournments under the provisions of this section, and he had been particularly active in obtaining adjournments because he knew the Magistrate before whom he was being tried was being transferred from the district. The Magistrate was transferred without completing the case. The case then went to another Magistrate. I came across it two or three months later and the accused was adopting the same tactics and the case had lasted at least 1¼ years or possibly longer. In that case the accused was not trying to tamper with the witnesses, but just think of the time and money that was wasted on a simple case merely because the accused did not choose to allow the Magistrate to complete the trial.

I have given my own expereience, but Honourable Members may like to hear some of the opinions which we have received both from the High Courts of India and also from Local Governments. The most striking condemnation of this section is given by Mr. Justice Lort-Williams of the Calcutta High Court of Judicature. This is an extract from his judgment:

"Since the enactment of the amended section, notifications have been given in most cases with the sole object of compelling the Magistrate to grant unnecessary adjournments against his will and proper judgment, or simply to retaliate upon him, out of spite, on account of some real or fancied grievance. And applications even when made honestly and seriously, are made upon the most absurd grounds, such as that the Magistrate has excluded, or included certain evidence, or has sat late, or refused adjournments, or bail, or otherwise has exercised the discertions given to him and performed the duties imposed on him by law but has done so in some way not altogether pleasing to the applicant. Even the tone of his voice and the expression of his face have been urged as grounds for transfer."

There have been similar condemnations of the section by Judges of the Allahabad and of the Madras High Courts, but I need hardly trouble the Council with reading them in detail. Local Governments and local officers have been equally condemnatory of the existing law and complaints were put forward very soon after this amendment was made in 1922 or 1923. The Government of Madras pointed out that:

"The privilege granted therein is being abused as the amendment can be used by unscrupulous persons to retard the course of justice."

Similarly the Government of Bengal reported that the section is abused by parties who want either to win over or to intimidate the witnesses. A similar complaint was made by the Punjab Government. I have seen a report of a case in which the accused was under trial for over a year and a half and at the end of that time he absconded.

I think I have said enough—and these quotations I can multiply a hundredfold if the Council so desires—to show that the section as it stands is open to serious abuse. Delays are always dangerous in criminal cases, are harassing to the parties and also to the witnesses. Adjournments are obtained under this section as it stands often for the purpose of tampering with witnesses, often with the object of harassing the opposite party and putting him to unnecessary expense in the hope of tiring him out and exhausting his resources; sometimes applications for adjournment are made merely with the object of delaying an inevitable conviction, and in such cases, as I have mentioned, there is great loss of time and of money to Government. It is not only the prosecution who may suffer in these cases but also it may happen that the accused suffers very severely. Again I may quote an extract from the judgment of Mr. Justice Lort-Williams:

"What is perhaps a worse blot upon the sub-section is that it enables a vindictive complainant, by adopting similar tactics, to harass and ruin an innocent person who has been accused and is upon trial but who for similar reasons can never be acquitted except with the complainant's consent."

Finally, this procedure puts the Court in such a very ignominious position that the accused or the complainant can dictate to the Court as to by whom, when and where the case shall be tried.

I think I have explained sufficiently fully the mischief which this Bill is designed to meet. Before I discuss the remedy proposed, there is one subsidiary point to which I must refer. When the Code was amended in 1923, a clause was inserted which it was hoped would prevent the abuse of the privileges granted by this section. It was provided in sub-section (6A) which was inserted at the time that if the High Court found an application to be frivolous or vexatious, it could order the applicant to pay by way of costs to any person who has opposed the application any expenses reasonably incurred by such person in consequence of the application. That safeguard, however, in the form in which it was provided has proved ineffective. To the layman it might appear to be sufficient, but actual practice has shown that it is not. It has been criticised by Mr. Justice Lort-Williams as being wholly illusory. It does not of course meet the cases to which I have referred which are only too frequent in which the accused or complainant does not actually go before the High Court, but even in cases in which the High Court has been moved, it has not been

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found possible to impose costs which really could compensate the opposite party for the trouble and inconvenience to which he had been put or which would tend to deter people from making frivolous and vexatious applications, although that was the intention of the section. It was held in fact by a High Court that if the application was opposed by a salaried law officer of Government no costs shall be given as no expense had been incurred in consequence of the application.

What then was the remedy proposed in the Bill as introduced in the Assembly ? It provided that this special procedure of compulsory adjournment will only be applicable in the case of a notice given before the trial actually begins. It was thought that in most cases when a transfer is justified the party concerned should be aware of the reasons for it at that stage. It further provided that the case should not stop immediately. It merely provided that the Court should not proceed to the stage at which the accused has to disclose his defence until a reasonable time has elapsed to enable him to obtain an order, that is to say, that the Court should proceed to record the prosecution evidence and it was hoped by this means to avoid the mischief which I have described of tampering with witnesses. It appeared to Government that such a provision was fair both to the prosecution and to the accused. The accused still retains his ordinary powers under sub-section (*3*) of section 526 to move the High Court at any stage of the proceedings. But, under the Bill, as introduced, unless he notifies the Court before the commencement of the trial the Court would not be under any obligation to adjourn the proceedings. By this means, the initiative would be restored once more to the Courts where I venture to think it certainly ought to reside. A further provision of the Bill sought to meet the point which I have mentioned before, regarding compensation for frivolous and vexatious applications. This section was redrafted so as to make it quite clear that the High Court could grant compensation.

When the Bill was under consideration in the Legislative Assembly, the main criticism of it was that it might cause a certain amount of hardship, that there might be cases when a party to a case was justified in, and had good grounds for, moving for a transfer during the pendency of the case. Circumstances might arise during the case which gave rise to a *bona fide* apprehension in the mind of one party that he would not get an impartial hearing. The section accordingly was revised and instead of providing that the compulsory adjournment should only take place if the application was made before the case was started, it was provided that there should be an adjournment if any party interested intimates to the Court at any stage before the defence closes its case that it intends to make an application under this section. Having made that concession to meet hard cases, it was necessary also to impose certain safeguards. In particular it was necessary to put a stop as far as possible to *mala fide* notifications and to prevent a party to a case obtaining an adjournment on a pretext of moving the High Court and then failing to do so. That, as I have explained, is the most frequent course of action. It was necessary also to prevent a party to a case making more than one application. To meet the first point, *i.e.*, to put a stop to cases in which no application is made to the High Court, it has been provided that the Court may

direct the party to execute a bond which can be forfeited if he fails to carry out his expressed intention of moving the High Court. The bond is limited to Rs. 200, which is a very reasonable and barely adequate amount. It is also to be noted that the accused or the complainant, if he is called on to execute this bond, does not have to give any surety. He is thus saved any trouble or possible harassment by looking round for someone to stand bail for him. To meet the second point, it has been provided that the Court shall *not* grant a second adjournment. A further amendment, which was made during the discussions in the Assembly, was that instead of allowing the High Court full discretion as to the amount of compensation to be granted if they found applications to be frivolous or vexatious it has been provided in the Bill that the compensation should be limited to Rs. 250. I myself should have preferred to have left the question of the amount of compensation entirely to the discretion of the High Courts, for the High Courts of this country can certainly be trusted not to abuse a power of that kind. Apart from that there is no need to take objection to the clause. A compensation of Rs. 250 will considerably help the injured party and will, I hope, serve to deter dishonest litigants from putting forward frivolous applications. The Bill as it comes before us will thus, I hope, prevent the evils which arise from the present section. It will expedite the trial of criminal cases and will tend to prevent any miscarriage of justice. It will not, however, in any way deprive a party to a case of the right he at present enjoys of moving the High Court for a transfer. It will give him full time to do so once during the pendency of the case. It must also be noted that the ordinary power of the Court to grant an adjournment under section 344 of the Code for any reasonable cause is not in any way affected and in fact, after discussion in Select Committee, a clause was inserted to make that point perfectly clear and definite. It is also to be noted that the High Courts still have power to stay proceedings even though the law does not compel the Court to grant an adjournment. These provisions all help the honest litigant. The clause will, however, penalise the dishonest litigant, for if he applies for an adjournment to secure a transfer and does not move the High Court, if he merely tries to delay the case by this trick, he will be liable to forfeit the bond of Rs. 200 which he has executed ; while if his application is found by the High Court to be frivolous or vexatious he will be liable to compensate the opposite side.

Those in brief are the provisions of the Bill now under consideration. I trust that this Council will agree that a mistake was committed in 1923, that a definite evil exists, that both judicial and executive authorities throughout the country have emphasised that evil, and that this Bill will, we trust, rectify that evil. (Applause.)

THE HONOURABLE DIWAN BAHADUR G. NARAYANASWAMI CHETTI (Madras : Non-Muhammadan) : Sir, I rise to support the passage of this Bill. At the outset, I venture to point out that it was very unfortunate that when the 1923 Act was on the anvil, this Council should have thought fit to reject the amendment passed by the Legislative Assembly which sought to remove, at least to some extent, the abuses resulting from the conferment of the right of compulsory adjournment on the accused. However, as the amending Bill has been passed by the Legislative Assembly, after a keen scrutiny of its

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provisions in the Select Committee, I should think, we should without much ado accept this Bill.

I confess that the details of the Bill are admittedly technical, and not being a lawyer, I cannot enter into or expatiate on the subtleties of the law in question. But, one thing is abundantly clear, from a perusal of the opinions of various Judges and eminent lawyers, that the right of compulsory adjournment conferred on the accused by the Act of 1923 has led to grave abuses. It has resulted in many case in the obstruction to the proceedings of the Court by the accused at any time he chooses, and not infrequently on the most frivolous and absurd grounds. I would quote here the opinion of the late Honourable Mr. Justice Coutts Trotter, an eminent Judge of the Madras High Court, in this connection, which was published at page 92 in Paper IV, circulated to this Honourable House before the amendment of the Act in 1923 was passed. His Lordship said :

"I regard the suggested safeguards against frivolous applications for transfer as wholly inadequate. The proper remedy in my opinion would be to abolish the right altogether. It implies a distrust of the magistracy on the part of the legislature, which, however well-founded when the Code was drawn up originally, is not warranted now. It undermines the authority of the magistracy by opening the door to reckless and baseless charges of partiality and corruption against its members and it enormously increases the facility for that procrastination and adjournment which are the bane of Indian legal proceedings. In my three years' experience as an Indian Judge (the opinion was given in 1918), I have not yet come across an application for transfer which appeared to me to have any substance in it and I should have thought that a plain case of partiality could be set right on appeal or revision."

Even today, at least four of the Honourable Judges of the Calcutta High Court share that view. I would quote the opinion of the Honourable Mr. Justice Lort-Williams in this connection. He observes :

"Various attempts have been made from time to time by Judges to mitigate some of the absurdities of the position created by this section. However praiseworthy these attempts have been made to make the section sensible, in our opinion, they were not justified by its terms * * * *. The abuses made possible by the section cannot be cured in these ways. The only remedy is by way of amending legislation which we trust will be undertaken at the earliest possible moment. It should be provided that no application for transfer will be heard unless it is made sufficiently early to allow time for the orders of the High Court to reach the Subordinate Court before the day fixed for the trial * * * * * * * .

Very often, the accused stops with securing the adjournment and does not go to the expense of moving the High Court at all, and he need not under the existing law adduce any reason.

Recounting from personal experience, the Honourable the Law Member said in another place that a case which ought to have been finished in four or five days took three and half months on account of the accused using the right of compulsory adjournment and desisting every time from moving the High Court. Such action protracts the proceedings and deviates the course of law. I would go further and say that it defeats the very purpose of law For instead of the normal procedure of the Magistrate trying the accused, the accused is given an opportunity—I should say endless opportunities—of trying the Magistrate before the High Court.

This Bill, Sir, seeks to remove these abuses, to dispense justice in a speedier way eliminating all unnecessary and vexatious delay and to reconcile the ends of justice with the rights of the accused. That being the wholesome object of this Bill, I heartily welcome it, and I hope the House will pass it.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : Sir, though I have not been in actual touch for many years with the administration of criminal justice I feel I can claim to speak on this Bill on account of my long professional connection. This Bill seeks to make a very significant change in the administration of criminal justice in this country. In an important provision of the Criminal Procedure Code it aims at substituting dispensation of speedy justice for dilatoriness and frivolous excuses on which criminal trials have been postponed from time to time. This Bill, though a simple one, is a very important measure. Honourable Members must have noticed that as it emerged from the Select Committee it has been much modified from the original cast of the Bill. I should personally have preferred if the Bill as originally introduced had been put on the Statute-book, but unfortunately, to meet the idiosyncrasies of many lawyers and people who cavil over trifles, Government in the Select Committee had to give way, and a compromise measure has been produced. In order to understand exactly the grave alterations we are proposing in this Bill it is necessary for a moment to consider the position of the law as it stood in 1884 and after that period. For a long period between 1884 and 1923 when the amending Act XVIII of 1923 was introduced, the practice of asking for adjournment in criminal cases was not very objectionable. At that time it was essential that the application should be made before the commencement of the hearing and the Public Prosecutor or the complainant or the accused, as the case may be, must express his intention to make an application to the High Court for transfer of the case and the trying Magistrate had discretion in allowing a reasonable time, and in many cases he recorded evidence up to the conclusion of the prosecution evidence or the framing of a charge and before the disclosure of the defence. The law then stood on such basis. But in 1923 an important alteration was made. I do not propose to weary the Council with the chequered history of this section. I may tell you, however, that it has formed the subject-matter of discussions of a very important Committee, which was known as the Lowndes Committee—he was one of the ablest of Bombay lawyers, and was the Law Member of the Government of India and presided over that Committee. The whole of the Criminal Procedure Code was considered by that Committee, and this provision was also considered at that time. But after the Bill was tossed about in the Assembly and the Council of State with vicissitudes of fortune, the Bill ultimately known as Act XVIII of 1923 was passed. Unfortunately, that Act went beyond all possible expectations. That Act provided that if an application for transfer was made at any time in the course of an enquiry or trial or before the commencement of the hearing of an appeal, the Court shall adjourn the case or postpone the appeal. Honourable Members will see from this that the trying Magistrate has no choice whatsoever under the Act of 1923. Instantly an application is made or the intention is notified to make an application to the High Court, the Magistrate automatically becomes *functus officio* and so far as the trial of that case is concerned, he has no discretion. He has no power. He is simply a tool in the

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hands of the litigants. The accused or the complainant can lead a Magistrate by his nose and stop all proceedings in that trial. The result was that this power was so much abused for years together and the administration of criminal justice in this country was so often terribly and tremendously defeated that the Government found it impossible to continue with such a state of affairs and it was found absolutely obligatory to amend that measure, and the new Bill which is now before Honourable Members is the way in which the Select Committee have modified the provisions and this Bill is now before the Council. The present Bill in other words proposes to restore the position as it stood before 1923.

I shall only briefly refer to the gross injustice, to the gross abuse and delay caused by the operation of the Act of 1923. In the first instance, under that Act when an application was made the Magistrate had no jurisdiction to inquire whether the application was a *bona fide* one made for the purpose of furthering the cause of the accused or the complainant as the case may be or that it was a genuine application made with the genuine object of approaching the High Court for the purpose of making a transfer or that it was a frivolous and a vexatious application made to frustrate and delay the dispensation of justice. The Magistrate was powerless in the matter and no sooner an intention to apply for a transfer was expressed he was bound to grant the application and the further corollary of such a law would be noticed in the fact that the accused or the complainant as the case may be was not competent to make one single application only, but he was permitted to make an unlimited number of applications from time to time, with the result that ordinary cases which could have been finished in four or five days often took months to dispose of, and the result was that the work of the Magistrates was so much clogged and impeded and so deliberately obstructed in this manner that it became hopeless for trying Magistrates to manage their criminal files. But not content with this the absurdity of the old law of 1923 contained in the fact that no guarantee of any kind, no condition of any kind, was required from the accused person that he would as a matter of fact make an application to the High Court; no such guarantee was permissible. In fact he could make an unlimited number of applications and there was no obligation, legal or otherwise, on his part to approach the High Court. You can easily realise to what extent the abuse can be aggravated in a joint trial by unscrupulous accused persons. You will see to what ridicule and contempt the law of the country is subjected to by a measure of such description. In nine cases out of ten the accused person never approached the precincts of the High Court and Honourable Members might perhaps inquire what was an accused person to gain by making such applications and delaying the conclusion of the case in which he was either on bail or as an under-trial prisoner in jail. To lawyers the explanation is obvious. This was done with two objects. The first object was that no sooner an accused found in a trial that evidence was going against him, that hostile evidence was being recorded and he found that he could not break that witness by cross-examination, he thought the only way was to break the next witness who would come to corroborate the evidence of the prior witness. With this object in nine cases out of ten in order to gain time to corrupt and tamper witnesses this sort of practice is resorted to and I am very sorry to say that in many cases dishonest practitioners

also encourage and support that practice. This is one main cause. The other important cause is this. The accused against whom adverse evidence was recorded if he only heard the news or rumours of the transfer of that Magistrate he would deliberately go on times out of number making a series of applications in the hope that in the meantime the trying Magistrate may be transferred to some other district and he may have the pleasure of a *de novo* trial. There are other reasons also which actuate accused persons in asking for similar transfers and I do not propose to weary the Council with any further description of such reasons. Now, in order to avert this danger and to ensure speedy trial the present Bill has been brought forward and the most important clause of the Bill is clause 2 (*c*) and nobody can possibly say that this clause as framed is likely to cause any injustice or inconvenience or hardship to an accused person. I am only sorry, as I said before, that the Bill as first introduced has not been approved by the Select Committee and placed on the Statute-book. Under this amended clause if any party interested intimates to the Court at any stage before the defence closes that he intends to make an application under this section, the Court shall upon his executing, if required, a bond without sureties of an amount not exceeding Rs. 200 that he will make such application within a reasonable time to be fixed by the Court adjourn the case for such a period as will afford sufficient time for the application to be made. In fact this provision seeks to substitute discretionary power with certain limitations for compulsory power to transfer the case. That is all the difference. However, the main point in this clause, Honourable Members will notice, is that the application must be made before the defence closes its case. Once the defence has closed its case, no transfer could possibly be given. Proviso to this clause makes it perfectly clear that the Court will not be bound to adjourn the case upon a second or subsequent application. Now the existing practice has rather so tarnished the fame of the administration of criminal justice in this country that the alteration of law is not only requisite but essentially necessary. I have heard a great deal said both in the press and in the other House that the passing of this Bill is going to cause considerable hardship to accused persons, that it would curtail their rights, legal rights and privileges, and that it will end often in failure of justice and the conviction perhaps of honest persons. I can assure Honourable Members that I have no apprehensions of any kind in that direction. On the other hand, I feel perfectly convinced that the substitution of the present law will have a wholesome effect on the administration of justice in this country. It will ensure speedy trials and it will result in no inconvenience, or hardship to any accused person under trial.

It must be remembered that this law does not in any way take away the powers of the High Court for granting a transfer. The Act of 1923 which had the effect of stopping all proceedings in Courts at the will of the accused was one of the methods by which the accused could apply to gain time but there are other effective provisions in the Code of Criminal Procedure under which the High Courts have full rights and powers to transfer any case when a proper case has been made out. In the first instance, under clause 3 of this very section which is sought to be amended, the accused retains his ordinary right to move the High Court at any stage of the proceedings. Again a

[Sir Maneckji Dadabhoy.]

trial Court is also empowered to postpone or adjourn the trial of any case under section 344 and I may briefly recall that section to Honourable Members:

" If from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by a warrant remand the accused if in custody."

The provisions of this clause are wide enough to prevent the perpetration of an injustice in solitary cases. Then again, there is the provision of 561A which gives further protection. That is the inherent power of the High Court. But the High Court will not exercise its inherent power when there is an express provision of law and therefore there is adequate protection in that connection too.

Then, Sir, the High Court's powers are absolutely untouched by this Bill. The power is given to the High Court under the Charter Act, section 15 to transfer any case from any Court to any other Court. Powers are given to the High Courts under Letters Patent to transfer cases from one subordinate Court to another subordinate Court. And there is also section 439 of the Criminal Procedure Code. And in addition, as Honourable Members are aware, there is also section 107 of the Government of India Act. The revisional jurisdiction of the High Court is uneffected and can exercise all powers whether this Bill is passed or not. In face of all these many provisions and facilities it is almost nonsensical to say that the rights and privileges of the accused will be curtailed and they will be subjected to any hardship.

Sir, this Bill has been brought forward by Government not on theoretical grounds, but on proof of actual experience and after mature consideration. I must say that this measure ought to have been brought by Government long ago. The Government is responsible for the delay in introducing a salutary measure of reform. This measure has been brought forward on the unanimous recommendation of eminent Judges of the various High Courts and also on the strength of the unanimous recommendations of all provincial Governments. A measure like this therefore needs no recommendation and I have not the slightest doubt that this Council will unhesitatingly give its adherence to this measure and its full measure of support.

THE HONOURABLE KHAN BAHADUR CHAUDRI MUHAMMAD DIN (East Punjab : Muhammadan) : Sir, the present system of criminal justice in India is most complicated for this country and results in inordinate delay. Any attempt to simplify the system should have the whole-hearted support of this House. Justice delayed is justice defeated. The other day on the floor of this House the Honourable Mr. Hallett told us that the Government of India had already spent 16 lakhs on the Meerut case and we know that the end is not yet in sight. Section 526 of the Code of Criminal Procedure as it stands at present has been the cause of serious delays and many evils in the criminal administration of this country and the amendment proposed by the Government of India to check the abuses is to be welcomed. I therefore support the Bill.

THE HONOURABLE MR. M. G. HALLETT : Sir, as might have been anticipated, the Bill has received support from all quarters of the House. There is no need for me to say more.

THE HONOURABLE THE CHAIRMAN : The question is :

"That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. G. HALLETT : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Wednesday, the 28th September, 1932.