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**THE
LEGISLATIVE ASSEMBLY DEBATES**

(Official Report)

Volume I, 1937

(25th January to 19th February, 1937)

FIFTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,

1937



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M89LAD

Legislative Assembly.

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MR. M. GHILASUDDIN, M.L.A.

MR. MATHURADAS VISSANJI, M.L.A.

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LEGISLATIVE ASSEMBLY.

Thursday, 11th February, 1937.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

AMENDMENT OF SECTIONS 30, 34, 34-A, AND 35.

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume discussion of the motion moved by Sardar Sant Singh to refer the Code of Criminal Procedure (Amendment) Bill (*Amendment of sections 30, 34, 34-A and 35*) to a Select Committee. As regards the complaint made the other day by the Honourable Member, Sardar Sant Singh, that there has not been an adequate circulation of his Bill by the Punjab Government, the office has communicated the complaint to the Punjab Government, but as yet we have received no reply.

Sardar Sant Singh (West Punjab: Sikh): Sir, I am very thankful to the office for taking this action in order to maintain the dignity of this House. When I was talking the other day on this Bill, I submitted that this Bill was in force in certain particular provinces mentioned in the section itself. I was then discussing the attitude of Coorg in this matter, and I quoted the opinion of the Chief Commissioner of Coorg that day. It was to this effect:

"In the circumstances explained by the Commissioner of Coorg, the Chief Commissioner would have no objection to the proposed repeal of sections 30 and 34 and the proposed amendment of sections 34A and 35 of the Criminal Procedure Code, so far as Coorg is concerned."

Then, there is the opinion given by the Additional Judicial Commissioner of the same province. He says:

"Sessions cases, I have no doubt, can be tried more quickly and at far less cost by 1st Class Magistrates, specially empowered under section 34, Cr. P. C. From the point of view of efficiency, the Magistrates probably have an advantage over Sessions Judges.

But Sessions Judges inspire more public confidence. This I would attribute to the difference in point of view between Magistrates and Sessions Judges."

This should be an eye-opener to those Honourable Members who spoke against the principle of the Bill last time when it was moved in this House. I have carefully read those speeches again and I find that great stress was laid upon this fact that less time is taken by the Magistrates in disposing of cases, and that there is no undue hurry in their disposal. But it was at the same time alleged that the Magistrates are more competent than the Sessions Judges, so much so that appeals from their convictions to the High Court have been less successful than those from the Courts

[Sardar Sant Singh.]

of the Sessions Judges. I will deal with this point later on when I deal with appeals, but at present I will only say that coming as it does from the highest administrator of law in this province, this opinion should have some weight with Honourable Members of this House. Further on it is said. . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member should not read these opinions at length, because they are in possession of all the Members. He can refer to them, if necessary.

Sardar Sant Singh: My submission is that I am reading some portions because it was stressed last time when this Bill was before the House that the opinion from the provinces concerned was against this Bill

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not read the entire opinion, because it is in possession of all the Members. Brief references or quotations would be sufficient

Sardar Sant Singh: In this connection, the one important point, which I made in my speech last time, was that it is of greater importance to the country that the persons who are being tried should feel confidence in the trying Magistrate. It is not enough to say that justice is being done; the real point, which all the law courts should try to impress upon the persons who come before them as accused, is that the accused should feel that justice is being done to them. An autocrat or a police magistrate may say, "Can you deny that the man was really guilty or really did this act?" It is all right so far as it goes. He may be guilty, but the question is whether the procedure laid down by the Legislature has or has not been followed. Does or does not the accused feel that he was given the necessary facilities to advance his defence or his point of view before the Magistrate? Trials are being held in Russia today of very important cases in which persons are being charged with offences involving capital punishment, but can anybody here pretend that the way in which these trials are being conducted there has inspired confidence in the civilised world? I will say, decidedly not. What is more important is the way in which the courts conduct themselves.

Then, the more important point in the province of which I am speaking at present is, how many Magistrates have been conferred these enhanced powers in this province. Dealing with Coorg, the Commissioner says:

"The Chief Commissioner of Coorg, in his Notification No. 56, dated 13th June, 1921, withdrew the powers conferred under Notification No. 61, dated 12th December, 1891, on the District Magistrate of Coorg to try as a Magistrate all offences not punishable with death."

He goes on to say that as there is no Magistrate who is empowered under this section, that province would not object to the repeal of section 80, Cr. P. C.

The next province which can utilise this section is Ajmer Merwara. Here, too, the Judicial Commissioner advocates this Bill and he gives an opinion which I will not read; but I want to read that portion of the Additional District and Sessions Judge's opinion where he says that this power is exercised by the Magistrates only in the case of habitual offenders; and

the more important cases of manslaughter or abduction of women under aggravating circumstances are not tried by these Magistrates. So this province uses this power to a very limited extent. * * *

Coming to Sind, the opinion given by the Government of Sind as regards the conferring of this power upon the Magistrates is like this: that in Sind only two District Magistrates, namely, those of Thar Parkar and Upper Sind Frontier, have been invested with power under section 30 of the Criminal Procedure Code throughout the province of Sind; and, then, it is stated that these powers are quite necessary in a province like Sind, where conditions in some tracts are so savage and primitive. May I ask the Honourable the Home Member in this connection whether he regards every district of the Punjab as coming under this description of being savage and primitive? Even in these two districts, in a later opinion received from Sind, the Government has said, "Thar Parkar and Upper Sind Frontier: under section 30 of the Criminal Procedure Code powers given were withdrawn in 1915 and none of the District Magistrates in Sind is at present invested with power under that section". So, the reproach is removed, and like a wise administrator Sind has got absolutely no District Magistrate with enhanced power under section 30. Next comes the province of Assam. . . .

The Honourable Sir Henry Craik (Home Member): I do not follow the order in which the Honourable Member is taking up these provinces: he has not taken them in the order in which they appear in the opinions paper.

Sardar Sant Singh: I am referring only to those provinces where section 30 Magistrates are in existence. There are several provinces in which the section does not apply. I am leaving those provinces aside for the time being—I will deal with their opinions later on: for the present I am confining myself only to those provinces where the power under this section can be exercised.

The Honourable Sir Henry Craik: Even so, you are not following the order paper. Powers are exercised in Delhi for instance, and in certain parts of the Central Provinces and the Punjab: you are leaving them all out.

Sardar Sant Singh: I have deliberately left Delhi and the Punjab for separate treatment. As regards the Central Provinces, I will come to it later on. But let me take Assam as I was dealing with it. At page 28, the House will find that in Assam the only Magistrates who are, at present, empowered under section 30 are the Deputy Commissioner of Khasi and Jaintia Hills and of Cachar for the trial of cases in the hill areas. In the plains districts very sparing use has been made of the section. In the last thirty years, Magistrates were given these powers only on two occasions: that is, in 1918 and again in 1920. This is the use made in Assam. Now I will take the Central Provinces. The Central Provinces is opposed to the principles of this Bill. The Government there has stated that the overwhelming majority of opinions received is opposed to any change in the present system. But let us take the opinion of the Honourable Judges of the High Court of that place. The Honourable Mr. Justice Vivian Bose, giving an opinion which probably might look as

[Sardar Sant Singh.]

going against the Bill, really favours the principle underlying the Bill. The very opening words of this opinion are:

"Cost must be the deciding factor. Sessions trials are usually more satisfactory because more time is spent over them. There is ordinarily a more experienced Judge and abler Counsel; also there are really two trials, one before the committing Magistrate and the other before the Sessions Judge."

Further on, the same Judge gives a very valuable reading of the situation in these words:

"But two factors which it would be unwise to ignore tell against these Magistrates, or against the system. The first is that there is widespread prejudice against them—unjustified perhaps, and possibly a good deal even interested—but it exists. The second is that the system is an anachronism in the sense that it is to be found only in a few of the Provinces and in none of the major ones. I think it is desirable to have as uniform a system throughout India as we can. On the whole I favour the Bill if the cost can be reasonably met, but not otherwise."

Here is an experienced Judge of the High Court telling us in the plainest terms that there is a prejudice against Magistrates who are given enhanced powers under section 30. The Honourable the Chief Justice of the High Court in one sentence disposes of this Bill, and that sentence is pregnant with meaning, and though he opposes the Bill, yet his language is really worth considering. He says this: "The Bill, in my opinion, speaks the language of the future, but for reasons of expense the time is not yet". Sir, nothing can be more complimentary than this that the Honourable the Judges do feel that this reform is most needed.

Sir Leslie Hudson (Bombay: European): But not yet.

Sardar Sant Singh: As regards not yet, I shall deal with it later when I come to deal with the question of expense, but so far as the principle underlying the Bill is concerned, I think there is no harm, at any rate I commit no sin if I bring forward the principle of the Bill to the notice of the country through this House.

Then let us turn to the United Provinces of Agra and Oudh, and the relevant portion of the opinion of that Province is as follows:

"I am to add that there appears to have been no popular demand for repeal of the section. The reason for this apathy is that so far as concerns the United Provinces the question of the retention or repeal of section 30 is not at present a live one. Its application is limited to Oudh and the Kumaon Division of the Agra Province, and formerly all Deputy Commissioners of Oudh and Kumaon were empowered under section 30 by virtue of their office. In the year 1914, the position was examined in the light of the Home Department's letter No. 601, dated the 15th May, 1914, and it was found so little use had been made of these powers that for practical purposes the section had become a dead letter."

This is another province where this section applies, and yet it has not been made use of for obviously sound, good, judicial reasons.

Similar, Sir, is the opinion of the Registrar of the High Court of Allahabad. He says this:

"To the best of my knowledge no Magistrate in Oudh has, for a considerable length of time, been invested with such extended jurisdiction."

This is about Oudh.

Then, Sir, I shall deal with the position in Bihar: That is a place about which the Honourable the Home Member, in his speech last time, made capital, and I want to show what the Honourable the Home Member then said:

"The Honourable the Judges of that High Court",—(referring to Bihar and Orissa),—"go even further and say without any possibility of contradiction that the present system is working very well indeed both as regards expeditious disposal and convenience to the parties.

It cannot be denied that there is sometimes a weak Magistrate. This is particularly significant, but even the work of the weak Magistrate is superior to that of the corresponding Assistant Sessions Judge. In fact, the work of these officers is uniformly superior to the work of Assistant Sessions Judges. That is the opinion in which the whole of the High Court concur. Now, how can you defend this measure after hearing what the High Courts have got to say on the point."

Probably my Honourable friend, the Home Member, thought that this was the last argument to crush this Bill out of existence, but I will for his gratification and information read something from the opinion of the Honourable Judges of this very Court which will show which way the wind is blowing, whether the real mind of the Judges speaks in his favour or in my favour. This is a province which has given the most hostile opinion to my Bill. No other province has given such a hostile opinion as this province, except the sister province of the Punjab, where reactionary laws prevail in preference to the rule of law. At page 21, 2nd column at the bottom of these opinions, is the opinion of the Honourable Justice Shaikh Fazl Ali. This is what he says:

"At least in theory, for serious offences the ordinary form of sessions trial must be preferred to a trial by a Magistrate, and perhaps many of us if we were ourselves in the position of accused persons",—*I would specially draw the attention of the House to this particular sentence*,—"if we were ourselves in the position of accused persons would rather be tried by the Sessions Court than by a Magistrate."

Now, what does it speak?

The Honourable Sir Henry Craik: Read on.

Sardar Sant Singh: Yes, I shall read the rest also, I shall not leave any portion of it. I was submitting, Sir, for the consideration of the Honourable Members of this House that if we are resting in our drawing rooms in arm chairs under electric fans enjoying all the luxuries which modern civilisation affords the rich man, we are quite safe when others are being tried by a Magistrate in whom they feel no confidence, but if we are the accused, we will not like that system. I remember when the Honourable Mr. Justice Ford during the course of a revision petition dealing in the question as to whether accused persons when arrested can consult a legal adviser or not, said: "If I am charged with such a serious offence as of murder, the first thing that I would do would be to send for my lawyer and consult him". In countries where the rule of law predominates over the rule of the executive—unfortunately this is not the case in our country,—the lawyer is the defender of the legal conscience of every man, whether high or low, but here the lawyer is a suspect in his own country. Why? Because the lawyer stands in the way of the executive carrying out their will in any manner they like. Now, what does this Judge say, Sir:

"It does not, however, follow that merely because the one form of trial is better than the other, the latter should be abolished."

The Honourable Sir Henry Craik: Go on, next sentence.

Sardar Sant Singh: I am going on.

"There are strong administrative reasons for retaining section 30 in the Code, and, in my opinion, no case has been made out for repealing it."

What reasons? Judicial? No. Reasons of inspiring confidence in the administration of justice? No. But what reasons? Administrative reasons. Am I here, a representative of the legal profession as I am, having been trained in the traditions of the rule of law—am I here to advocate the cause of administration, or the cause of the higher principle, the nobler principle, the transcendent principle, as I say, of the rule of law, and not the rule of the executive? I fail to see how the administrative reason could be advanced to oppose the principles underlying my Bill:

"I am told it has worked well in this province and I am not aware that it has given dissatisfaction in other places. I should, however, like to note that we should not be too harsh to our Assistant Sessions Judges. They have certainly a more judicial outlook"—*I am sure the Honourable the Home Member is following this opinion*—"than the average Magistrate and their only defect is that they are inclined to try criminal cases like civil cases which can be cured only by experience."

That is the opinion. Read between the lines of this opinion and you will see the innermost working of the mind of the Honourable Judge who gave this opinion. I am sure you will agree with me that his judicial conscience is in favour of my Bill, but his executive and administrative conscience is against my Bill.

The Honourable Sir Henry Craik: He says that "no case has been made out for repealing the section".

Sardar Sant Singh: That is the administrative conscience speaking. When his judicial conscience is speaking he says certainly that there is more confidence in the Sessions Judges than in the Magistrates. This opinion is supported by another Honourable Judge of the same High Court, Mr. Justice Wort. He concurs in the views expressed by Honourable Mr. Justice Fazl Ali.

The Honourable Sir Henry Craik: I must interrupt my Honourable friend. He does not concur. He simply says, "I have nothing to add".

Sardar Sant Singh: It is my misfortune that I understand the English language in one way, and the Honourable Member understands it in another way. This is from Bihar. In this connection I may say in passing that if the Bihar Province feels that the Assistant Sessions Judges are no good and section 30 Magistrates are better both in judicial ability and independence of character, I think the time should have come by now when the Bihar Government or the Honourable the Judges should have abolished the Assistant Sessions Judges and replaced them by section 30 Magistrates, but they have not done it. This finishes the list of those provinces in which this section is working, except three provinces,—the Punjab, the North-West Frontier Province and Delhi which is practically a part of the Punjab. I will begin with the North-West Frontier Province because to some that province seems to be a most backward one in its ideas, governed on principles which probably the other provinces look on with something

like contempt, and where the administration of justice one should have expected to be on the executive lines. But even in this province, I find a vein of dissatisfaction running among the judiciary with the present system as it works there. After giving the figure of violent crime in that province, the Government of that province say that they are opposed to this measure, but if we go through the opinions given by the various gentlemen consulted we find that a majority of the non-officials consulted are in favour of the Bill whilst officials are against it, and on what ground? Not on account of the principle underlying it, not on the ground that justice will be delayed as was tried to be made out here, but on the ground of expense. Probably, I was not strictly right when I said not on the ground of delay; the ground of some delay also is given. Let us look at the opinion of the Honourable the Judicial Commissioner, the head of the judiciary in that Province. While opposing this Bill the Honourable the Judicial Commissioner had to admit the force of facts. He says:

"It appears to me that the grant of special powers in this province has always been made too freely. At the present time I understand that there are no less than 27 stipendiary Magistrates and 5 Honorary Magistrates who are invested with these powers, and in view of the small size of the cadre of Magistrates, I think it scarcely needs pointing out that it is impossible to find such a large body of men with qualifications necessary to hear the most serious cases that are not punishable with death. It appears to me that if the number of Magistrates with special powers were radically reduced, the major objections to the present system would disappear."

What does this opinion mean? I leave it to Honourable Members to judge for themselves. The Judicial Commissioner then proceeds to suggest that too much work is given to these section 30 Magistrates with the result that the administration of justice is not satisfactory. That is my interpretation of what he says:

"I advocate that suitable Magistrates having been chosen to exercise special powers, they should hear cases under those powers and no other cases. If this suggestion be adopted, I think it probable that in the majority of districts one specially empowered Magistrate, apart from the District Magistrate and the Sub-Divisional Magistrate, would be able to cope with the whole of the work."

Then, the opinion of the Sessions Judge of Derajat, which the Honourable the Home Member will quote as going against the principle of the Bill which I advocate. No doubt, the opening words of the opinion are against me, but the body of the opinion is in my favour. He says:

"I must regretfully observe that in this Province the majority of the Magistrates exercising enhanced powers were not selected but were invested with enhanced powers as a matter of expediency. In a number of cases within my knowledge Magistrates exercising enhanced powers are not fit for even first class powers. They are young, inexperienced, and display a profound ignorance of the rudimentary principles of the law basis, being unable to express themselves with any degree of clarity in English."

Now, the Honourable the Home Member waxed very eloquent when he said that I was speaking in the wilderness, expressing nobody's opinion but my own and that there was no demand from the public that they are dissatisfied with the trial of these cases by these Magistrates. I present him this opinion, coming from a backward province and from no less a person than a Sessions Judge. Support comes even from unexpected quarters of this province. The District Magistrates (the head of the executive in every district), of Peshawar gives his personal opinion thus:

"I personally consider that sooner or later this Province will have to fall in line with the remaining provinces of India. In my opinion, however, that time has not yet arrived."

[Sardar Sant Singh.]

They may say that I am a bit too early in presenting this Bill, but they cannot deny that the principle of the Bill is very sound, and he gives a suggestion in the last paragraph of his opinion:

"For these reasons I would suggest that the proposed amendment be postponed until such time as the province is fit to receive it. There is much truth in the criticisms levied by the movers of the Bill against the inefficiency of Honorary Magistrates".

I need hardly point out that all the Bar Associations in the North-West Frontier Province are in favour of my Bill. This particular portion, which I referred to in my speech last time when I moved this Bill, that Magistrates with enhanced powers look for their promotion to the goodwill of the District Magistrates, and that they are afraid of the police going against them finds ample support from the Bar Association of the capital town of the North-West Frontier Province, Peshawar. He says:

"The speech of Sardar Sant Singh in the Assembly has a lot of truth in it and there is no doubt that Magistrates are generally afraid of the Police and work under the undue influence of Public Prosecutors. Cases of this type are innumerable and in the N. W. F. P. the state of affairs is particularly bad."

These opinions from the North-West Frontier Province clearly indicate that even this province is not satisfied with the nature of the administration of justice which is being carried on there.

Now, comes the most important province in which the Magistrates have been freely invested with section 30 powers. I mean the Punjab, my unfortunate province. Here you will find more than two or three Magistrates, out of a total strength of 5 or 6, are invested with section 30 powers. I wish the Honourable the Home Member had given us the total strength of the first class Magistrates in the Punjab, and I wish he had given us the figures as to how many of them are invested with section 30 powers, but this has not been done. Even now I will request him to kindly give us in his speech the total number of the first class Magistrates, and the number of those who have been invested with these powers, so that we may be able to judge whether discretion and care has been applied in giving this power to the Magistrates or not. However, in the Punjab we are limited to two opinions only, one of the Punjab Government and the other of the Honourable Justice Din Muhammad. The Honourable Sir Henry Craik, when speaking on this Bill, made a gratuitous remark upon the Members of this House when he said:

"Now, let me quote the opinion of a High Court Judge of Lahore, an Indian and a lawyer more eminent than any lawyer who has spoken this afternoon, a lawyer with a very long experience especially on the criminal side."

Now, I want to pay back my complaint to the Honourable the Law Member. I do not want to bring in personalities in my speech, but I know that this particular gentleman owes his position in the High Court to the goodwill which he earned rightly or wrongly of the Honourable Sir Henry Craik.

The Honourable Sir Henry Craik: On a point of order. I would like to have your ruling whether it is in order for the Member to make a reflection of that kind on a Judge of the High Court.

Sardar Sant Singh: I did not cast any reflection.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must withdraw. The Chair thought he was referring to the Advocate General or the Law Member and not to a judge of the High Court.

The Honourable Sir Henry Craik: May I, for the sake of lucidity, explain to you what the Honourable Member said. He said that this particular Judge of the Lahore High Court owed his position to the fact that he had earned my goodwill. That is a most improper reflection. The gentleman, in question, owes his position entirely to his legal ability and experience and to no other cause whatever.

Mr. President (The Honourable Sir Abdur Rahim): That is a reflection on a Judge of the High Court, and the Honourable Member must withdraw it.

(Cries of "Withdraw", "withdraw.")

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must withdraw it without any reservation whatsoever.

Sardar Sant Singh: What I am submitting, Sir, *(Cries of "Withdraw", "withdraw", "withdraw.")*

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must withdraw that expression.

Sardar Sant Singh: My submission is . . *(Cries of "Withdraw", "withdraw")*.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has given its ruling.

Sardar Sant Singh: I have heard your ruling, and I was just going to submit that what I intended to convey

Mr. President (The Honourable Sir Abdur Rahim): What you have conveyed already you must withdraw. *(Cries of "Withdraw", "withdraw")*.

Sardar Sant Singh: My submission is that I did not convey any reflection upon the High Court.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must express his regret for what he has already said.

Sardar Sant Singh: My submission is that it is not a reflection upon a High Court Judge.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has given its ruling that it is. *(Cries of "Withdraw", "withdraw", "withdraw", "withdraw.")* The Honourable Member knows that very well,—that he cannot make any reflection on a Judge of a High Court; and the Chair says that it has ruled that the Honourable Member's remarks do contain such reflection.

Sardar Sant Singh: I will certainly, Sir, withdraw if my words do convey that impression. I made no reflection upon a Judge of the High Court.

Mr. President (The Honourable Sir Abdur Rahim): Very well, then, the Honourable Member can proceed.

Sardar Sant Singh: With your permission, I would ask your ruling on this point whether, when an Honourable Member on the Government Benches conveys an idea that a particular person was more eminent as a lawyer than the Honourable Members of this House who had spoken, certainly I have a right to protest that the implications in that sentence . . .

Mr. President (The Honourable Sir Abdur Rahim): Any depreciatory remarks against a Judge of the High Court cannot be allowed in this House.

Sardar Sant Singh: I was submitting, Sir, that the Honourable the Home Member would have been probably more gratified, and this House would have more appreciated the position, if the opinion of all the Judges of the Lahore High Court had been circulated to Honourable Members. When I was speaking last time when introducing this Bill, I made it clear that from the conversations which the Honourable the Chief Justice had with the members of the Bar in various districts, the impression was given that he was in favour of introducing a system of sessions judges as an experimental measure. At that time the Honourable the Home Member said that my opinion was not based upon facts, because the Honourable the Chief Justice had given a different opinion in writing to him. That opinion, I then said, had not been published, and we had not been supplied with a copy of that.

Mr. President (The Honourable Sir Abdur Rahim): The opinion was not included in the opinions sent up by the Punjab Government? None of the other Judges' opinions were included?

The Honourable Sir Henry Craik: May I draw your attention to the fact that the letter from the Registrar of the High Court encloses the opinion of the Honourable Mr. Justice Din Muhammad and states quite explicitly that all the Honourable Judges have concurred with this opinion.

Sardar Sant Singh: I read this letter when my Honourable friend was not sitting in his seat last time.

Mr. President (The Honourable Sir Abdur Rahim): Apparently there were no separate opinions of other Judges. In that case, the Honourable Member must take this as the opinion of all the Judges.

Sardar Sant Singh: I did not conceal this fact, when I was speaking last time upon this Bill. I read this portion of the letter of the Registrar at that time, and I said that no separate opinions had been furnished to us; only this much appeared from the letter of the Registrar of the High Court, but separate opinions have not been furnished

Mr. President (The Honourable Sir Abdur Rahim): But separate opinions have not been furnished because separate opinions were not given. The other Judges concurred in what Mr. Justice Din Muhammad said.

The Honourable Sir Henry Craik: Sir, I happen to know the procedure. The usual procedure of the Lahore High Court, when legislative proposals are submitted for the opinion of the Honourable Judges, is that the Chief Justice generally asks one particular judge—any judge whom he considers qualified to give an opinion—to go into the proposals and write an opinion; and if the rest of the judges concur in that, they do not write separate opinions. Of course, if they desire so to do, they do so.

Sardar Sant Singh: May I submit that what I intended to convey was that these opinions had been received after the Bill was circulated. When I was making my speech during the circulation motion, my Honourable friend quoted the opinion of the Honourable the Chief Justice of the Lahore High Court. Presumably, he gave us to understand that he held, in his possession, the opinions of the various Judges of the High Court before this motion for circulation was adopted.

The Honourable Sir Henry Craik: I did.

Sardar Sant Singh: My friend says he did; in that case I think it was fair to us that such opinion should have been circulated and printed along with the opinions which were received later on.

The Honourable Sir Henry Craik: They have been circulated.

Mr. President (The Honourable Sir Abdur Rahim): What page?

The Honourable Sir Henry Craik: On page 3 of the Paper No. I. The Honourable Member made complaints that I was in possession of the opinion of the High Court before the motion for circulation was decided in this House. I admitted I was, and then he says that those opinions ought to have been printed, and I said they had been printed.

Mr. President (The Honourable Sir Abdur Rahim): He was perhaps referring to the opinion of the Chief Justice.

Sardar Sant Singh: Yes.

The Honourable Sir Henry Craik: The Chief Justice did not record any separate opinion.

Mr. President (The Honourable Sir Abdur Rahim): That is what he is suggesting.

The Honourable Sir Henry Craik: Well, he is wrong and misleading. If he tries to convey the impression that the Chief Justice submitted a separate opinion, I say that that impression is wrong.

Sardar Sant Singh: When the circulation motion was being moved, I derived this impression. However, that impression is now removed that no separate opinion was given by the Honourable the Chief Justice on this point but I should have expected from the remarks that have been made that the Honourable the Chief Justice would be asked whether the impression created amongst the members of the Bar was correct or was incorrect. But nothing has been done. However, as I was submitting, we have got only one opinion. From that opinion, with your permission, I would like to quote a few portions. The first point taken up by the Honourable Mr. Justice Din Muhammad is that this question of the abolition of section 30 magistrates should not be treated on an all-India basis. Why, Sir? There is no reason given. So long as the constitution is not changed, so long as we are living under the old Government of India Act of 1919, there does not seem to be any reason why a central subject should not be amended by this House. The next point taken by him is this. He says that the existence of such magistrates in the Punjab is necessary, because the number of cases, at present disposed of by these magistrates, is very large, and their nature varies. I quite see the point, and I will try to appreciate this argument of the Honourable Judge of the Lahore High Court. A large number of cases to be tried by Magistrates furnishes, according to him, the reason why the justice should not be administered, as it ought to be administered. Is that the reason that because there are a large number of cases, the procedure adopted should be quicker and probably more executive than judicial? If that is the meaning of the Honourable Judge I beg to differ from him. Then he says:

"They try most of the cases of culpable homicide not amounting to murder falling under section 304 (2), cases of abduction falling under section 366 or 366-A, cases of rape, or falsification of accounts, of aggravated forms of forgery, robbery, house breaking, etc. Besides, all cases of habitual offenders, where punishment up to the limit of seven years is considered adequate, are also disposed of by them."

From the nature of the cases mentioned—and he has given an almost exhaustive list of these cases—it is clear that these cases are of a very serious nature. But he goes on to say:

"These cases are not usually of a very complicated nature and are generally such as can be easily entrusted to any experienced magistrate of the first class but for the fact that enhanced punishment is called for."

The other reason is that these cases are not of a very complicated nature. I am very fortunate that I am addressing these remarks to you, Sir, as you have been so eminent and a distinguished Judge of the High Court and I am sure that you will appreciate me when I ask: "Are the cases of pure and simple murder of a complicated nature?" To any lawyer, it would appear that a murder case is of a simpler nature than these cases and why should we not invest these magistrates with power to try murder cases as well? There are no complications in murder cases. The reason why a superior court and a double procedure is prescribed in the Criminal Procedure Code of this country for the trial of these cases is not because they are of a complicated nature, but because the punishment is higher and the responsibility for conviction or acquittal of such offenders is greater and more onerous. You will appreciate me, Sir, when I say that the criterion for providing the double procedure in the Criminal Procedure Code is due to the fact that, if you want to restrict the liberty of subjects for a larger number of years, you must give him a trial from a

man who commands the confidence of the public for administering even-handed justice, otherwise there will be no sense in it. The whole scheme of the Schedule attached to the Criminal Procedure Code wherein the maximum punishment for each offence is prescribed and the column by whom they are to be tried is given. A simple student will be convinced that the higher the punishment the higher the magistrate who is required to try the case. That is the scheme underlying the Schedule. Now, here the opinion is based upon the fact that because the case is simple, it can be disposed of by a magistrate. To me it seems to be an opinion which is not based upon any sound reasoning at all. Further on, the Honourable Judge says:

"This will inevitably entail the cumbersome dilatory procedure provided for in the Criminal Procedure Code."

Here, the Honourable Judge seems to be labouring under the impression that the double procedure prescribed in the trial of sessions cases is a most undesirable form of procedure that has been prescribed by the Indian Legislatures. If the Honourable Members on this side agree with this proposition, I have nothing more to say and I will withdraw my Bill. Let the Honourable the Home Member take courage in both hands and bring forward a Bill repealing the provisions of the Criminal Procedure Code for the trial of the sessions cases. I will then agree with him that he is doing something which is consistent, and that he is dealing with the matter in a uniform manner. But let me tell him that this point was elaborately considered in 1928, when the Criminal Procedure Code was reviewed, and it was thought necessary and desirable by this very Government that the double procedure offers the greatest security to an innocent person who unfortunately happens to be charged with a heinous crime. If that was the case, I fail to understand why stones should be thrown upon the Sessions Judges in this way that because my Bill will require a double procedure, it should not be treated on its merits. Then the Honourable Judge says:

"Apart from the fact, that the delay thus caused may sometimes lead to miscarriage of justice, the double procedure will in itself prove very costly both to the administration and to the accused."

Here the implication is that the double procedure leads to miscarriage of justice. I make a present of this to the Honourable the Law Member who is not present in the House today. I wish he was here to defend this portion of the Honourable Judge's argument and offer a contradiction to him. The most surprising portion and I should say the most shocking portion of the opinion received is to be found later on when the Honourable Judge says:

"Further, the Assistant Sessions Judges will generally be recruited from the same class from which section 30 Magistrates are now appointed, which will mean that the same persons will exercise enhanced powers under the new arrangement with the additional disadvantage of committal proceedings being a necessary adjunct. The holding of these committal enquiries will prove an extra burden on magistrates first class also which in some districts may necessitate an increase in their number too. This proposal, therefore, is alike useless and impolitic."

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member, in discussing the opinion, must bear in mind that it is the opinion of the entire High Court. That is what the Chair understands to be the position. This opinion is the opinion of all the Judges.

Sardar Sant Singh: That is why I am quoting it to show that this opinion is based upon no rule of law; whether it is of the entire High Court or of a single Judge, I am not concerned with that. I am criticising the opinion as it is. I think the best reply that can be furnished to this opinion is the opinion of an equally competent Judge of a High Court of a different Province. Here is the opinion of a Sessions Judge of Chittoor, Madras Presidency. He says:

"In my opinion there is a real difference between the outlook or point of view of a District Magistrate and that of a Sessions Judge. I have been both. A District Magistrate's first care is the preservation of law and order and of a high standard of efficiency in the area for which he is responsible. In important or sensational cases especially he may find it difficult to free his mind of such considerations as the possible effects of an acquittal—for example in a case in which the integrity of police investigation has been seriously challenged."

I do not want to quote the whole of his opinion. Further on he says:

"This point may perhaps be expressed by saying that to a District Magistrate the end is more important than the means, though I am far from suggesting that the end aimed at is not always lofty or that the means are consciously admitted to be low. It is purely a question of relative importance, of emphasis. First class magistrates naturally share the District Magistrate's point of view. They tend to put their duty to administer well first and the rights of the under trial prisoner second..... The line of least resistance for a magistrate is to accept the police case, for that is a line most likely to please his superior officers, and it is also a smooth, easy and ready made path..... The position of a first class magistrate in India has been compared (*I think by Mr. Justice Page of the Rangoon High Court*) to that of a sheep upon a mountain forced to take shelter from the chill of the east wind and the fury of the north wind, both strangely enough blowing from the same quarter. The point of view of a judicial officer is so radically different from that of an executive official that the conflict is often painful when the same individual is called upon to exercise both functions."

I think that is a complete answer to the opinion of the High Court of the Punjab. If the two points of view are to be analysed in a calm, cool and judicial spirit, I think that most of the Honourable Members of this House will be inclined to agree with the opinion given by the Sessions Judge of Chittoor. I will now show for the satisfaction of my Honourable friend, the Leader of the European Group, that the greatest support that comes to me for my Bill is from the European community. I think after hearing that opinion, he will change his present views and will advise his followers to vote for my Bill. The European Association, Calcutta, says:

"My Committee is in favour of the repeal of sections 30 and 34 and the proposed consequential amendments which have for their object the removal of anomalies arising from altered circumstances in the areas affected and of bringing these areas under the same conditions as prevail in the rest of British India. My Committee feels that considerable social and economic changes have taken place in the areas affected since the year 1898 and they are in sympathy with the promoter of the Bill in seeking to draw attention to the need for bringing the judicial administration of these areas into line with present conditions with the popular desire for a uniform system of justice. My Committee have not overlooked the additional expenditure that would be entailed in setting up courts in these areas but they consider that this matter could have been discussed in the debate relating to the creation of such provinces as include the areas affected, and they cannot regard the added cost as a sufficient argument against a desirable improvement in the administration of justice."

I think this should afford a sufficient argument for the conversion of my Honourable friend, the Leader of the European Group, to my point of view. There is one more opinion coming from the Anglo-Indian quarters.

The Anglo-Indian and Domiciled European Association, Calcutta, says:

"The consensus of opinion received by this Association is in favour of the amendment of sections 30 and 34".

So, Sir, from the two important European Associations, I find support for my Bill.

Now, I come to another reason advanced by the Honourable the Home Member when opposing the motion for circulation on the last occasion. He said that on analysing the figures of successful appeals from the orders or judgments of section 30 Magistrates and from those of the Sessions Judges, it will be clear that the percentage of successful appeals from orders of Sessions Judges is greater than those from such Magistrates. He has quoted facts and figures in support of this argument. But I think I will be able to show by giving reasons that that does not furnish any argument in support of his contention. Let us take the principle which I advocate that the people are not satisfied with the administration of justice in such courts. Now, the way to judge whether the people are satisfied or not is not to look at the number of successful appeals but to look to the number of transfer applications that are made from the courts of the Magistrates and from those of the Sessions Judges. The dissatisfaction of the accused with the trial can be judged from the number of cases, both successful as well as unsuccessful, brought in the transfer court in order to get the case transferred from a particular Magistrate. Will my Honourable friend, the Home Member, quote such applications? So far as my own experience goes, and that experience extends now over 28 years, I can safely say without fear of contradiction, even from Captain Lal Chand who is listening very attentively to what I am saying, that there has been no case of transfer in recent times from the court of one Sessions Judge to another on the ground that the accused will not have a fair trial in that Sessions Court. I did not have to deal with a single case of such transfer in my 28 years of practice.

The Honourable Sir Henry Craik: I have seen them.

Sardar Sant Singh: Was there any from your court when you were a Sessions Judge? I hope not.

The Honourable Sir Henry Craik: No. The public had complete confidence in my court.

Sardar Sant Singh: I am asking definitely whether any affidavit was filed in the High Court that a Sessions trial be transferred from one Sessions Judge to another, because the accused did not feel that he would have impartial justice in that court.

Captain Sardar Sir Sher Muhammad Khan (Nominated Non-Official): There have been many.

Sardar Sant Singh: In the army, not in judicial courts.

[Sardar Sant Singh.]

On the other hand, in the courts of section 30 Magistrates you will find that in almost every ten cases one application for transfer is made. Is not this a condemnation of the system of trial by section 30 Magistrates? Take the figures for last year in the Punjab, and you will find that the people's dissatisfaction is made manifest by the number of transfer applications from such courts. That is the proper criterion to judge, whether the people are satisfied with the administration of justice in those courts. Then, take the number of such applications which have been successful and the number of transfers which have actually been made. Even then, I challenge anybody to contradict me with facts and figures when I say that not a single case will be found where the High Court has transferred a Sessions trial from one Sessions Judge to another on the ground that the accused will not have a fair and just trial from that court. There may be other grounds; for instance, the Judge may have expressed his opinion in a previous case. But that is no criterion, and to get a case transferred on that ground, is no reflection upon the Magistrate or Sessions Judge. But on the ground that the accused will not have a fair trial in the Sessions court there has not been a single transfer application. But on the other hand, from section 30 Magistrates a number of such applications for transfer are made on the ground that the accused will not have a fair trial. This is the only criterion. As regards the criterion which is given by the Honourable the Home Member that there are more successful appeals from the Sessions Judges than from section 30 Magistrates, my reply is very simple and should be very convincing too. This again will perhaps be construed as casting a reflection upon the integrity of the Magistrate, but as the point has been brought out in spite of my attempt not to use any phrase which may cause some reflection upon the integrity of the Magistrate. I am compelled to do so. My point is that the record made in a Magistrate's court is, more often than not, not a true record. The police the Public Prosecutor, the Prosecuting Inspector,—they get the better of the defence counsel. It is the Public Prosecutor who holds the sway over the court of the Magistrate. It is not an unusual thing to see that when a witness gives a reply which is favourable to the accused or to the defence, the Magistrate's pen stops short. He at once calls out, "No, no, the witness has not understood the question." The witness is cross-examined, and a question is asked in the language which the witness understands very well. But no sooner does the answer go in favour of the accused than the Magistrate's pen stops automatically.

Captain Rao Bahadur Chaudhuri Lal Chand (Nominated Non-Official): It is not so outside Lyallpur.

Sardar Sant Singh: It is well known in Rohtak, and my Honourable friend, Captain Lal Chand, knows it fully well. If he were once more to give up the habit of responding to "His Master's Voice" and speak out what he knows, I think he will bear me out completely that this is a fact. I know where his profession and where his better judgment is,—they are at two different places. However, the question is repeated to the witness and again he repeats the same answer. At once there comes an interruption from the Public Prosecutor, "No, Sir, he has not understood the question". Of course, the witness has understood the question according

to his own intelligence, but the intelligence of the Public Prosecutor is greater and more shrewd than that of the witness. That is why the Public Prosecutor sees some mischief in the question, and the question is repeated till the witness is made to realise that he is saying something which is against his own interest, and the question goes down afterwards

Captain Sardar Sir Sher Muhammad Khan: Where is the defence counsel?

Sardar Sant Singh: He is quite helpless. I wish our Honourable and new Knight from Jhelum were an accused in some case and I had the privilege of defending him (*Captain Sardar Sir Sher Muhammad Khan*: "I should not have you!"), and I should ask him to see how the trial is conducted in the Magistrate's Court. If any Honourable Member doubts this fact, I will offer him one simple experiment. Let him one day walk to a Magistrate's Court in Delhi, unknown to anybody, and see how cases are conducted there. I am sure that when he returns he will agree with Sir Ramsay MacDonald who said that the court of a magistrate was more like a fish market than a court of justice.....

An Honourable Member: Who is Sir Ramsay MacDonald?

Sardar Sant Singh: The Prime Minister of England some time back. However, Sir, the fact remains that the number of appeals that go from the court of a magistrate are not accepted to that extent as those of a Sessions Judge, because the record of a Sessions trial is more honest and more complete. I cannot do much better than offer my services to any gentleman here who wants to see the conduct of a trial in a court to accompany him to any court he chooses: I will demonstrate this fully to him. After all, my opinion has been borne out by some of the opinions that have been received in connection with the Bill that the reign of the police holds full sway in a magistrate's court.....

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Absolutely true.

Sardar Sant Singh: . . . more than it can possibly hold in a Sessions trial. Probably, they think that I am hostile to the present Government when I say these words. As a matter of fact in this particular respect, they ought to be grateful to me when I bring to their notice the evils of the administration of justice in courts.....

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Know to them?

Sardar Sant Singh: I really am in a very great difficulty in answering your question; but this much is certain that the administration of justice in the Punjab (because I have personal knowledge about that) does not inspire confidence in the public at large. I was submitting that the number of successful appeals is no criterion. Then there is another side of the question. The number of appeals from the magistrate's court are mostly to the Sessions court and not to the High Court: only those appeals go to the High Court where the punishment is higher than four years:

[Sardar Sant Singh.]

where the punishment is less than four years, the appeals go to a Sessions court and certainly when taking into consideration these figures which have been supplied to us by the Honourable the Home Member on this point, they are figures of High Court appeals only and not appeals to the Sessions Court. They are not a safe criterion. Again the successful appeals in the case of a Sessions trial are due to another factor, which is that in the Sessions court trial of more serious offences, mostly murder, takes place: the punishment is death—capital punishment—which is a very serious state of affairs. Naturally, the cases for confirmation as well as appeals from death sentences are heard by a bench of judges who scrutinise their appeals with very great care and also ability, with the result that any flaw is given benefit of to the appellants. Naturally the number of appeals are in excess which are accepted than the case of ordinary offences under section 4 where a single Judge of the High Court disposes of an appeal in lesser time than a single appeal is disposed of in a murder case. You cannot put both on the same footing, on the same level. Mostly.....

The Honourable Sir Henry Craik: Lastly?

Sardar Sant Singh: Not lastly. Yet, these appeals when they are rejected by the High Court form the basis of further mercy petitions to the Local Government and the Governor General in Council. This check or this second scrutiny by the executive affords another check that these appeals should be scrutinised with the greatest care by the High Court. Naturally you would not expect that the eminent Judges of the High Court placed in such a high position will deal with life and death questions so lightly as to decide the appeal without fully or carefully going through the police diaries. That is why the number of successful appeals in Sessions cases is greater than the number of appeals from ordinary magistrates' convictions.

I have dealt elaborately with the opinions from the provinces concerned; but the opinion of those provinces in which this section is not used is overwhelming. The one principle which I tried to enunciate last time when I spoke on this Bill was that to civilised administration it is more important that people should feel confidence in the judges of the land: not merely that justice has been done, but that the public feels that justice has been done in these cases. To this argument no reply has been vouchsafed by the Honourable the Home Member. What is pleaded is that the cost will be prohibitive, we would have to create more Sessions Judges and Assistant Sessions Judges, and we will give to meet extra expenditure in provinces where the budgets are already in deficit. I quite see that such an argument should be utilised in its full force by the executive to retain its hold upon the Magistrates and to continue to resist the separation of the judiciary from the executive; but really the separation of the judicial functions from the executive will introduce the rule of law in the country which will help the administration much more.....

Mr. President (The Honourable Sir Abdur Rahim): In the opinion of the Chair, the Honourable Member should not embark upon such a wide question as that.

Sardar Sant Singh: All right, Sir, I shall confine myself to the principles of the present Bill. The present Bill is a very modest attempt to introduce the principle of separation of the judiciary from the executive. The benefit to the State is expected to be much more than the cost involved in bringing about this necessary reform. The fear which is expressed by some speakers that the cost will be unbearable is not justified, in my opinion. For instance, in the Punjab there are very few districts in which two Sessions Judges do not sit,—one is a Sessions Judge and another is an Additional Sessions Judge. Of late, almost every District and Sessions Judge has got an additional Judge attached to him. Now, if those Additional Sessions Judges are made to work as Assistant Sessions Judges and the powers of section 30 Magistrates are abolished, and if Assistant Sessions Judges are given those cases to try, my submission is that the expense will not be so prohibitive.

Then, the second point which I want to make in this connection is that, after all, most of the opinions favour the introduction of this reform. Why not introduce it in a limited sense? After all, I am making this motion for the Select Committee where the point will be considered. We may decide in the Select Committee to lay down certain restrictions upon the free bestowal of those powers upon every Magistrate; we may lay down certain rules for the guidance of the Local Government in empowering these Magistrates with section 30 powers. We may, at the same time, limit the number of districts where these powers should be given, and we may also limit the number of Magistrates who should be so empowered. It will be open to the Select Committee to do it. What I want is that, as such Magistrates are in great abundance in the Punjab and in the North-West Frontier Province alone, there is no reason why we should not sit together and find out a way, if not for an entire repeal of the sections, but for a *via media*, by which the object of this Bill may be achieved, though partially. I am sure when I am saying this, it will be clear that the reform contemplated by the introduction of this measure is called for. It is even felt by those very Magistrates who are at present working as section 30 Magistrates. From personal conversations with many of the Magistrates and from personal discussions with them, I have got this impression that they do not like to be under the power of the police when they are exercising enhanced powers and sending people to higher terms of imprisonment. If this Bill had been circulated to those people, I am sure some of them at least would have expressed a desire to be relieved of these enhanced powers. Every Magistrate is not a slave to the police, nor is he a slave to the Public Prosecutor. They have got their independent judgment.—it must be said to their credit, but the difficulty is that they are placed in such a position as to be unable to resist the influence of the police, and that is a draw back in the administration of justice.

I hope, Sir, I have made my point quite clear. I have tried to meet the criticism that was levelled at this Bill, and I am sure that the House will agree to the motion that it be referred to a Select Committee.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (Amendment of sections 30, 34, 34A, and 35), be referred to a Select Committee, consisting of the Honourable the Law Member, the Honourable the Home Member, Mr. Akhil Chandra Datta, Mr. Lalchand Navalrai, Mr. Sham Lal, Sir Muhammad Yakub, Mr. M. Ananthasayanam Ayyangar, Mr. M. Asaf Ali, Dr. F. X. DeSouza and the Mover,

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with instructions to report before the 31st March, 1937, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Mr. Lalchand Navalrai: Sir, I hope I shall not make an attack of any kind which would not be liked by the Treasury Benches or which would affect any High Court Judge or any Sessions Judge or even a Magistrate. My reasons for not attacking any of them are not because that one cannot make those attacks or that one does not agree with what my friend, Sardar Sant Singh, has said, but because, I know, that they know all the courts for which such attacks are made, and it is no use telling them that over again. Sir, this Bill wants that a certain so called uncivilised provision should be civilised. What is wanted is that section 30 of the Criminal Procedure Code should be amended, or rather, it should not be made applicable even to those provinces in which it is being put into practice. Sir, the very fact that this section was restricted to only certain provinces shows that it was not intended that it should be applied to any part which should have normally the normal courts. But the first reason for repealing this section is that it was applied at a time when it was considered that the executive should have more power in their hands than the judicial Courts. The distinction, therefore, made was that in places where they wanted that they should have justice exclusively in their hands they got this section enacted and applied to those provinces, but that was a very old, old time. Those times have gone by and it cannot be said that now the section has not spent itself and should not die its natural death. This section was enacted at a time when the very Criminal Procedure itself was being enacted, but since then things have changed, the people have got advanced, and no primitiveness, or savagery, as stated by one of the Judges, exists now requiring such a section. Even if there be portions of India where there is that primitiveness, provisions like this should be done away with even in those places, because if they have a civilised law, it will make them civilised too. Otherwise, what chance are you going to give them to be abreast of the times or to become modernised?

The opinions also show that what I say is absolutely correct and that this section is not required on that ground. Another reason for keeping these powers is to give more power in the hands of the executive, to pass them on to the police and to the Magistrates who are at the beck and call of the Government. It cannot be denied that there is a difference between one and the same gentleman, exercising the powers of a Magistrate at one time, and then changing his mentality altogether as soon as he is put on the bench of a Sessions Court or Additional Sessions Court. I hope that some of the Honourable Members here who have acted as Magistrates in the beginning and then have been transferred to the judicial department can vouchsafe what I am submitting here, and I am sure there will be no contradiction to this. Therefore, why not apply one law absolutely to all people in India, and why should this old and obsolete section remain on the statute-book? At the time this section was enacted, there was probably a dearth of Sessions Judges, or there were not many Sessions Judges, or the Government could not afford to keep many Sessions Judges on account of the cost. But that also has vanished now. What do we find now? We have got not only one Sessions Judge in each district, but in some districts there may be even two Sessions Judges. Besides, we have got also Additional Sessions Judges—not one, but two or three sometimes, I am talking

of my own province Sind, and I think in other provinces also that may be the fact. Again, there are in addition Assistant Sessions Judges, and there are also first class Subordinate Judges acting as Assistant Sessions Judges. Can it be said with any justification that there are no Additional Sessions Judges available so that these powers should be given to the Magistrates? A first class magistrate when he is given powers under this section can punish a man up to seven years and he can try any offence which is not punishable with death. I submit in a district which cannot be said to be wholly uncivilised, and even if a portion of it is primitive—there if you have side by side magistrates trying such cases, and also Sessions Judges trying such cases, what will be the impression and confidence of the people? Are those going to courts so ignorant or so unintelligent that they will not know that they are going to a Magistrate's Court where they cannot get as much justice as in the Sessions Court situated in the same town and in the same place? Therefore, to create confidence in the people these sections must disappear, unless it be confessed that the intention to have this power is to leave power in the police to send up cases to such Magistrates as would not apply their judicial mind to them as much as a Sessions Judge or an Additional Sessions Judge would. But they do not say that at all. What they say is that in certain portions of the country a section like this is necessary. What are the reasons for it? Absolutely none, at any rate, none which can be accepted. I, therefore, submit that the grounds that are being given for keeping this section on the statute book do not exist and this section should be eliminated altogether from the Code.

As regards the question of cost, there is no extra cost at all. The Sessions Judges get their pay, and the Magistrates who are given these powers also get their pay, and what is the extra cost that would be incurred? Another thing. When the cases go to the Sessions Judges they have to be tried with the help of either a jury or assessors. The country is now prepared for having jury in every Sessions trial. Therefore, on that ground also these powers should not remain with these Magistrates. Then it is claimed that these powers are rarely exercised and are exercised by special Magistrates to whom these powers are given. For what reason are these powers given to these magistrates? I submit that it is only that due justice should not be given to these men. I will give you an instance, and that will satisfy the House that it is not on the ground of giving justice but on grounds of an executive nature. It is not these murder cases only, but cases, triable by a Court of Sessions under other sections, are also given to the magistrates to try. There are cases of this kind prevalent in the country and they are given to the special magistrates. How does that happen. A person is engaged as a spy. He gives information to the police that a certain man has got cattle in his house, which must be stolen property. The Sub-Inspector at once takes up a posse of police and raids the house at midnight or so. A man living happily with his family is awakened, they go to the cattle shed. The Sub-Inspector also takes with him two men like a *gadi* driver or a man belonging to the Excise Department. They find a number of cattle, bullocks, buffaloes, cows and so on. The Sub-Inspector at once confiscates all the animals. A list is prepared. Subsequently, the police brings the cattle to a pound, and the Sub-Inspector thinks out a plan as to how to justify this action. What happens is this. People all round come to know that there are certain cattle there. A man would go and say "I lost a bullock some

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years ago and this bullock resembles it." Then the Sub-Inspector records the first report and asks the man to bring two identifying witnesses. He goes home and brings two witnesses, either his brother or his cousin or a relative. They say that the bullock is stolen property. These are not imaginary cases. These circumstances have come out in actual tried cases, and if I may say so, I have conducted a few.

The Honourable Sir Henry Crick: What has all this got to do with the Bill?

Mr. Lalchand Navalrai: Just wait and see. I am coming to the question of the special magistrates how they come in the picture. These men go to the pound and say that the bullock belongs to the man. The Sub-Inspector records the statement of these two men. Now, a case has been made. After a few days, some other men come up and claim some more cattle. The charge sheet is then made that the man is a habitual dealer of stolen property whose case comes under section 401, triable by a Court of Sessions. Then what happens? Ask the Sessions Judges here. Are such cases sent to the Sessions Court. No. For that special magistrates are created under this section 90. Why? It would be obvious from the facts that I have placed before you that the case, if it came before a Sessions Court, would not stand for a moment. Then the man would get three or four years imprisonment at the hands of the magistrate who has been appointed by the district magistrate to try that case. Such cases have happened in a district like Dadu in Sind. This district was a part of the Larkana district, but now it has a separate District Magistrate and all other offices. An acting Sub-Divisional Officer who had to vacate his place and would revert to be a first class magistrate is usually deputed to try such cases. May I ask if such a person would be free from the influence of the police? Would he not, in order to become a permanent sub-divisional officer, try to please the police hiding his own conscience in giving punishments to these unfortunate people. Does the House like that a provision like this should remain in the statute book and be abused in this manner. It is the duty of the Government to see that such a provision is removed from the statute book.

I submit opinions have been called on this question, and I believe that the opinion of the non-officials that has been secured is absolutely in favour of the Bill, that is, in favour of this section being omitted from the Criminal Procedure Code. With regard to the official opinion also, it would be observed that it also, in many provinces, is in favour of the non-retention of this section. In that respect, dealing with my own province first, I would make a similar complaint as has been done by my Honourable friend, Sardar Sant Singh, that the opinions of all or at any rate of those that are very much affected or who know and have personal knowledge of the mischief are not secured.

Captain Rao Bahadur Chaudhuri Lal Chand: Where is the opinion of the under-trial prisoners who are affected by this Bill?

Mr. Lalchand Navalrai: I think you will find one perhaps in Rohtak. Well, Sir, what I contend is that it was quite necessary that the opinions of the Bar Associations and of the public, as well of those who have seen

these difficulties and would come forward and give their evidence or record their opinions of such instances as I have placed before this House should have been obtained. Now reading the Sind opinion, what I find is this. The Government of Sind say through their Secretary :

"I am directed to forward a copy of a letter from the Judicial Commissioner of Sind who was consulted in the matter and to state that His Excellency the Governor agrees with the opinion expressed by him."

Now, it is quite plain that it was the Judicial Commissioner alone who was consulted. Well, I would not say anything with regard to this except this that this officer has also remained as an executive officer for a long time, and merely to take his opinion and to base their report on that alone by the Sind Government would mean no eliciting of public opinion of Sind people. Now, Sir, even that opinion clearly shows that they almost do not want that this section should remain any more applicable to Sind. Well, Sir, what they think is stated thus :

"I am to add for the information of the Government of India that in Sind only two District Magistrates, namely, those of Thar Parkar and Upper Sind Frontier have been invested with powers under section 30, Criminal Procedure Code."

Now the Government of Sind say that there are only two District Magistrates who have such powers but then subsequently they have said, in continuation reported, that these two magistrates also do not hold these powers. Therefore, it is a proof which we have got that in Sind they do not require this section to exist any more. Why, then, should it remain on the Statute-book and the people be thus troubled at any time by being tried by this extraordinary procedure?

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can resume his speech after Lunch.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Mr. Lalchand Navarai: Sir, it is really surprising to see that not only is this side of the House vacant but a quorum could not be secured, so much so that the proceedings could not begin at the proper time. That shows that Government is not considerate in having refused to comply with the request of the Members who are outside the House. I was submitting, when the House adjourned for Lunch, that it is no use having this section on the Statute-book any more, and I was referring to the opinion given by the Government of Sind. I said that even the Sind Government was not wholeheartedly of the opinion that this section will serve any useful purpose, and I believe that the keeping of this section any more on the Statute-book is only to annoy the public and make it against the Government. While describing that there were two districts in which the power was given to the two District Magistrates, the Government of Sind

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further add that they have kept this enactment only to be used occasionally. This is what they say:

"Further, on occasions when it has been considered desirable, experienced and efficient Sub-Divisional Magistrates have been specially invested by the Local Government with powers under section 30 Criminal Procedure Code, on the recommendations of the District Magistrate and the Judicial Commissioner of Sind, for the trial of particular cases."

I cannot understand what those circumstances are under which they have to be exercised unless the circumstances are only those of which I gave an instance. Such instances are, by no means, singular, because there have been many occasions on which the acting Sub-divisional Magistrates, who have become out of their places because of the return to duty of the original incumbents, have been invested with these powers to try these people and send them to long terms of imprisonment. Therefore, I fail to understand why this section should remain in its application to Sind. Coming to other provinces I think the great fight seems to be between the Honourable the Home Member and Sardar Sant Singh with regard to the Punjab, but on account of the Punjab other provinces are also going to suffer. They may manage among themselves and send the people of the Punjab to the Andamans, which is a paradise according to the Honourable the Home Member. Why not send all of them to the Andamans rather than allow them to remain here to affect other people. Sir, the Government has got many powers. They issue Ordinances and they issue Regulations. So, if they think that there are really some people in the province of Punjab, who cannot be brought round or punished adequately under the ordinary law, let there be some Ordinance or Regulation for them when occasion arises. But, as has been pointed out by the Honourable the Mover of this motion, I hope such occasions will be very few if at all. Then, Sir, I must refer to the opinion of the Judicial Commissioner of Sind; I cannot leave it unchallenged. I submit that it was not wise on the part of the Judicial Commissioner to have said that, in Sind, there are tracts where the people are primitive and savage. I take great exception to that remark. He has gone with impunity in giving that opinion because no one else was consulted. If somebody else had been consulted, they would have retorted to show that Sind is not a country which would bear the remark of primitiveness or any savagery. He has got three Additional Judicial Commissioners as colleagues. Did he consult them? Is that the opinion of all of them. Even the Government of Sind do not say that the opinion is shared by the other three Additional Judicial Commissioners that are working with him. Those Judicial Commissioners, I am sure, would have given independent views in this respect. The Judicial Commissioner says:

"I think that this power is necessary in a Province like Sind."

I cannot understand the insinuation contained in the words "Province like Sind". Is he thinking Sind to be a desert? Sind is a much advanced part of India. There are aeroplanes and several other amenities which that Province enjoys. I submit that it is scurrilous to say that Sind is a primitive country or that any people are savages. I take exception to this. There is no tract where the people are wild or savage or ancient. If only the Judicial Commissioner would refer to the meaning of these two words, he has used, he would himself find that we are not living there in a forest with wild people and savages. In this respect the opinion of the Judicial

Commissioner does not weigh at all. However his opinion is later on softened which itself is a confession. He says:

"but it is a power which I think should be exercised with the very greatest care and discrimination and that a Magistrate should only be invested with these special powers in Sind, if the Judicial Commissioner concurs."

He wants to make himself the judge of the selection. This caution in itself means that there is no necessity for it and it is only obstinacy to say that this section should remain on the Statute-book. We have not got the opinion of any of the Sind Bar Associations. On almost all questions, I have seen the District Bar Associations are consulted. There are Bar Associations in every district, and if only they had been consulted, then the Judicial Commissioner would have been confronted with so many opinions. He calls Sind primitive. He does not say which part of Sind is primitive. There are eight districts and all of them have been given franchise under the new constitution. Is Sind a primitive place to which the Government have given the status of a separate Province? If they should consider Sind to be a primitive place, then they made a great mistake in separating it from Bombay.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Then why do you want subvention?

Mr. Lalchand Navalrai: It is to provide all the up-to-date amenities like aerodromes and other things from which the other parts of India also derive advantage. Even the Thar Parkar, the Upper Sind Frontier district, have got full franchise. Are there any tracts in Sind inhabited by wild people which have been excluded? In this House an Order was presented to exclude certain areas from the application of the constitution. Is Sind or any part of it excluded from the constitution? There is none. So there is no justification for giving any weight to the opinion coming from the Sind Government. The Judicial Commissioner gives his opinion and the Government of Sind simply forwards that opinion. Is that the proper way of eliciting public opinion? Then coming to Baluchistan, it may perhaps be said that there are some parts in Baluchistan which are inhabited by people who are not as intelligent as in other places. But they do understand things properly. I do not think there is any place in any of these provinces where people do not understand who a Magistrate is or who a Sessions Judge is, or what benefit they get from the Sessions Court, and what harm is being done to them by the Magistrates. I submit they fully know it. Then why should there be this invidious distinction made in giving justice to some people through the judicial Courts and to others through the executive authorities. In Baluchistan also I find

The Honourable Sir Henry Craik: This section is not used in Baluchistan.

Mr. Lalchand Navalrai: Therefore, I say that even in a place like Baluchistan where one can say with some justification that there are some unintelligent people to whom you could wish to apply executive weapons, you have not applied these powers. It is no use in applying it to other civilized tracts where people are very intelligent, and they know and understand the vagaries of the executive. They have to deal with this police

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every day, and they know how they are troubled by the police. Surely, the outside public will have some confidence only if you take them out of the hands of the police and place them in the hands of judicial officers who can appreciate evidence and decide cases on the evidence adduced before them and not on the report of the detectives or spies or police officers. In Baluchistan it is said that no use is, at present, made of section 30 of the Code of Criminal Procedure, and, therefore, no useful opinion on the provisions of the Bill could be given. Even in a place like Baluchistan it is not in use. Why should it have use in other places?

Then, I come to Coorg to which it applies. There the Chief Commissioner says:

"In the circumstances explained by the Commissioner of Coorg, the Chief Commissioner would have no objection to the proposed repeal of sections 30 and 34 and the proposed amendments to sections 34A and 35 of the Criminal Procedure Code, so far as Coorg is concerned."

This is a plain opinion. And when I refer to the Additional Judicial Commissioner's opinion

The Honourable Sir Henry Craik: Sir, on a point of order, I may respectfully point out that the speaker is using exactly the same arguments and reading out exactly the same extracts as were used and read by the previous speaker.

Mr. Lalchand Navalrai: I do not think the opinion of the Additional Judicial Commissioner was read out.

The Honourable Sir Henry Craik: Yes, it was.

Mr. Lalchand Navalrai: Then I will not use the whole. At any rate the opinion from Coorg clearly points out that there is a vast difference between the justice meted out by a Magistrate and by a Sessions Judge, and this opinion substantially supports my own argument.

Then, I come to Assam which is one of the places where section 30 applies:

"In Assam, the only Magistrates who are at present empowered under section 30 are the Deputy Commissioners of the Khasi and Jaintia Hills and of Cachar for the trial of cases in the hill areas. In the plains districts very sparing use has been made of the section. In the last 30 years, Magistrates were given these powers only on two occasions."

Does this justify the retention of this section and is it worth the Government's opposition on this point? Then it is said:

"With few exceptions non-officials support the Bill while officials oppose it."

The officials want to take advantage of the executive authority rather than judicial law. So they must oppose it; but the non-officials have to deal with the people who are affected and their opinion should prevail.

They consider that the retention of section 30 in this province is an anachronism, and that accused persons should always have the right to be tried by Sessions Judges aided by jurors or assessors, even if this costs more and means delay in the disposal of cases.

In giving pure justice, the cost should not be counted. Government spend money on things which do not appeal to the public. When there is a question of purity of justice the question of cost should not come in.

In Bombay the whole Presidency is not affected, and after the separation of Sind they give their opinion for the Bombay Presidency in itself. There they say that:

"as sections 30 and 34 of the Code of Criminal Procedure do not apply to any parts of the Presidency, Their Lordships do not wish to offer any opinion in the matter."

Then, I come to Ajmer-Merwara. Here the Judicial Commissioner actually advocates the Bill, as against the opinion of the Judicial Commissioner of Sind, who belittles Sind where he is himself lording. As regards the Judicial Commissioner of Ajmer-Merwara:

"He is of the opinion that though trial by a Magistrate is quicker and less expensive than trial by a Court of Sessions, a Magistrate is usually much less well equipped to deal with a complicated case than a Sessions Judge, and consequently his work cannot be very satisfactory."

That is exactly what is advocated on this side of the House.

Then, I come to the Bar Association of Ajmer. This opinion was not read by Sardar Sant Singh:

The Honourable Sir Henry Craik: We have all read it.

Mr. Lalchand Navral: It is this:

"The objects of S. Sant Singh's Bill for the repeal of section 30, Cr. P. C. appear to be two-fold:

1. To remove off the Indian Statute Book a piece of exceptional and differential legislation, obtaining in certain provinces.
2. To attain the separation of the judiciary from the Executive, in so far as the Bill goes."

On principle the Ajmer Bar Association support the Bill and they give their reasons. I will not read them, because if the Honourable the Home Member is so anxious to give his reply, I will not stand in his way.

Then, we come to Bengal. It will be seen that while the opinion of official bodies there is against the Bill, that of the non-official bodies is in its favour. If that side of the House is tired of seeing any more reports read, I will not read any more. I do not think, however, if I had this side of the House they would have allowed me to take this course. As I see, no useful purpose will be served as the Government is bent upon opposing this Bill I shall not take up any more time. But, I must say in the end that I have shown sufficiently that this section is an old and antiquated section, it has outlived its usefulness, and it should live no more. There is no dearth of sessions judges or additional sessions judges and assistant sessions judges, and even first class subordinate judges exercising these powers; and I submit there is no need for leaving judicial decisions in the hands of the executive. I have also submitted that no extra cost should be feared at all if any has to be incurred, but I say there will be no extra cost. At this moment we are considering the principle of the Bill, and whether it should be sent to the Select Committee. We are not asking the House either to accept or reject the Bill now. Therefore, I submit that the House should have the patience to leave the

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opinions that have been gathered to be considered by the Select Committee. From the consensus of opinions collected from officials on this Bill, it seems to me that they have admitted the principle of this Bill and that this section is of no use. I, therefore, submit that this Bill should be sent to Select Committee for their consideration.

The Honourable Sir Henry Craik: Sir, when speaking on the motion for circulation, I made it perfectly clear that Government must oppose this Bill and would do so at every stage; and I stated also that if, on that occasion, I did not divide the House on the motion before it, it was not to be implied from that that we did not propose to oppose the Bill in its next appearance before the House. This measure, which is one of a comparatively simple character, has now been debated in this House for, I think I am right in saying, three full parliamentary days, and I really think we have got to the stage where there is absolutely nothing new to say about it, indeed we have had in the speeches delivered today a great deal of repetition of arguments used and facts quoted during the discussion on the earlier motion. I, therefore, propose myself to be very brief.

When the motion for circulation was before the House the arguments against the Bill were forcibly stated in several speeches on this side of the House, notably those of Khan Bahadur Sheikh Khursheed Muhammad and especially those of Messrs. Macdougall and Leach from Burma, one of the provinces particularly affected. Since that date the Bill has been circulated for opinion, and I do not think that any impartial person reading the opinions can come to any other conclusion than that the overwhelming mass of opinion is strongly opposed to the Bill. We find that every single Local Government in India is against it. We find that in every one of the six provinces affected, the higher judiciary are also against it. The only shade of opinion which I find generally supports the Bill is the Bar Associations, and to be quite frank I do not think that amendments in legal procedure advocated by lawyers are generally in the direction of simplicity or clarification

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): May I know if this is a reflection upon the Honourable the Law Member? Can the Honourable the Home Member pass strictures upon the Honourable the Law Member on the floor of the House?

The Honourable Sir Henry Craik: The Honourable the Law Member, whose regrettable absence from amongst us today I much deplore, is, I think, perfectly capable of putting it across me outside the House if he considers it objectionable. I have read myself and studied the opinions with some care, and that is the conclusion to which I have come, that the overwhelming mass of opinion concerned is strongly opposed to the Bill. In spite of that, I was prepared to listen carefully to any fresh matter or fresh arguments that might have been put forward by the Mover of the Bill, and his supporter today. But quite candidly and without casting any reflection, I did not hear a single argument, any single consideration, that had not been put forward previously

Sardar Sant Singh: What about the transfer applications?

The Honourable Sir Henry Craik: We have only your word about that: you did not quote any figures about it

Sardar Sant Singh: I want you to bring out evidence, if there have been transfer applications.

The Honourable Sir Henry Craik: The complete poverty of the Honourable the Mover's case was very well illustrated when in reply, as a rebuttal of the unanimous opinion of the whole High Court of Lahore—and I may add of the whole High Court of Patna—two provinces which are very closely affected by this Bill—all he could quote was the opinion of an anonymous Sessions Judge in Madras, a province entirely unaffected by this Bill.

I will now touch very briefly on the opinion of the Punjab Government and the general public opinion in the Punjab. The Punjab Government's opinion stated that the point I made in the previous debate that there was no popular demand for this measure was corroborated by the proceedings in the recent budget session of the Punjab Legislative Council. A non-official elected member brought forward a cut motion in support of the principle of this Bill and the Local Government in their letter report that the Mover only found one supporter in the Punjab Legislative Council, and it quickly became apparent that the non-official members were indifferent, if not positively opposed, to the proposal. The Honourable the Mover in the opening part of his speech the other day dismissed that very lightly by saying "Oh; we know the Punjab Legislative Council: we know what goes on there; the Government Member simply says 'This will probably be considered when the new reforms come' and the motion is at once withdrawn". I have been a member of the Punjab Legislative Council for a good many years, an advantage which I do not think the Honourable the Mover ever possessed, and that is not my recollection of the kind of thing that went on there, and I think that is also the recollection of my friend on my right. Anyhow, I had the curiosity to look up the proceedings of that particular debate, and I find that no such promise even in the vaguest or most indirect way was made by the Government speaker. He opposed the cut in the most direct way on its merits and gave no promise whatever that the proposal might be considered at some vague future date. Out of the five elected members who spoke, the mover, as the Government letter says, had only one supporter. The other speakers all opposed the motion, one of them at any rate is the most consistent opponent of everything that the Government puts forward. But he strongly opposed this cut motion and ultimately the mover withdrew it. I think the Punjab Government were perfectly justified in saying that those proceedings show that there is no popular demand in the Punjab for this measure. In fact, Sir, this is a Bill which has no real support behind it, except the support of the Bar Association, and their advocacy of this measure is clearly not entirely disinterested. For example

Sardar Sant Singh: What about the opposition of the Magistrates? Is it interested or disinterested?

The Honourable Sir Henry Craik: There is a significant opinion that was forwarded by a legal gentleman in the North-West Frontier Province, which will be found at page 20 of Paper No. I. He argues at

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considerable length in favour of the Bill, but he rather lets the cat out of the bag in the last sentence of his opinion, where he says—"I think however that the time has come when efficient help is available to the Government if recruitment as Assistant Sessions Judges is made from amongst the trained and experienced members of the bar of over 10 years' standing on a reasonable scale of salary not involving a very large additional expense to the administration". He says this would not involve very large expense to the administration, and of course incidentally it would do a pretty good turn to the local bar.

Now, Sir, on this question of cost, so far as I remember,—and I listened as attentively as I could to the Honourable the Mover today,—he did not touch on it at all, but the subsequent speaker, Mr. Lalchand Navalrai, did touch on this question of cost, but I found very great difficulty in following his argument. As far as I could understand it, it was that there would not be any extra cost

Mr. Lalchand Navalrai: I said that should not matter and no more cost will be incurred.

The Honourable Sir Henry Craik: How the Honourable Member could suggest that, I simply cannot understand. If you are going to have, instead of a single trial by a Magistrate, committal proceedings followed by a trial in the Sessions Court, there must be obviously a great deal of additional cost

Mr. Lalchand Navalrai: That will not be waste.

The Honourable Sir Henry Craik: If my friend had listened to the estimate of cost that was put forward in the speech of Mr. Macdougall from Burma at the last Session, he would have remembered that Mr. Macdougall went into this matter item by item, and he gave figures, numbers and so on, and he came to the conclusion that the cost for Burma alone would be roughly in the neighbourhood of 4½ lakhs a year, not counting certain additional items which it was difficult to estimate

Mr. Lalchand Navalrai: Burma will take care of itself.

The Honourable Sir Henry Craik: Sir, I do not think it is necessary for me to detain the House longer. This Bill, Sir, as I said, would involve the provinces in very great expense. It would tend to delay and procrastination in the course of justice and, as I said, there is not the slightest evidence that there is any popular demand for it. I hope the House will reject this Bill.

Several Honourable Members: Sir, the question be now put.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is that the Bill further to amend

Mr. H. M. Joshi (Nominated Non-Official): No, Sir, the question is that the question be now put.

Mr. Deputy President (Mr. Akhil Chandra Datta): I am putting the question. Does the Honourable Sardar Sant Singh wish to reply?

Sardar Sant Singh: Yes, Sir.

Sir, we have heard of the tyrannies of the majorities, but we were not prepared to hear from the Honourable the Assistant Whip of the Government Benches along with a good paraphernalia behind him to say that the question be now put. Dr. Dalal too has come out with his surgical operation to finish this Bill prematurely. I knew, Sir, when I looked at this side of the House it was vacant, but when I looked at that side of the House whose conscience is in the official keeping, I knew that I had to face a majority, but I never thought that it would be a relentless majority

Sir Muhammad Yakub: Majorities are always relentless.

Sardar Sant Singh: You have yet to learn a good deal about majorities. However, I knew I would be called upon to reply to statements from the Treasury Benches, but not a single Member had the courage to get up and speak to meet the arguments I advanced before the House; not a single Member who has been a District Magistrate, and who has recently come here leaving his district duties to help us in the passage of laws.

Mr. Leichand Nawatal: To help us or obstruct us?

Sardar Sant Singh: To help us,—had the courage of his convictions to stand up and say that in his province this Bill was not wanted.

Captain Sardar Sir Sher Muhammad Khan: They have no time to waste.

Sardar Sant Singh: Our friend, the nominated representative of the military, has no time to waste, I wonder what he is here for. However, Sir, the strongest argument that I can now advance in favour of my Bill is that it has met with so little opposition from informed quarters. Even the nominated Member from the Punjab who waxed eloquent when I was not present in the House and made certain remarks against me is sitting quietly and laughing knowing that they want to kill my Bill, not by argument, or reason or logic, but by sheer force of numbers. I am quite prepared to meet them. It was suggested that I said nothing new. Well, Sir, I think I said many things new, and I shall again tell them what new facts and new arguments I adduced in support of my Bill. The first was the feeling amongst the litigant public that they will get unbiased impartial justice from a Magistrate is clearly demonstrated by the number of transfer applications made from such Courts. Here I hold out a challenge to all Members of the Government to tell me if, (say during the last one year, not to go back much further), they could point out a single application having been made to the High Court to transfer its sessions trial from one Sessions judge to another on the ground that they would not get a fair trial in that Sessions Court. I challenged my Honourable friends from the Punjab and from elsewhere to give me any figures. The Honourable the Home Member said that it was for me to quote the figures. I wish I were in possession of those facilities which

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the Honourable the Home Member enjoys on account of his office. My complaint is that the Punjab Government did not play the game even towards this Honourable House. Not a word has been said by the Honourable the Home Member in justification of the conduct of the Punjab Government. Why was not my Bill circulated? Why were not opinions obtained from those who were in a position to give such opinion? Is it not non-co-operation with vengeance with this House by the Punjab Government? I am more thankful to the Honourable the President than to the Treasury Benches, for having sent my complaint to the Punjab Government. This is a constitutional issue of the first importance. Is the Central Legislature going to have that co-operation from the Local Governments which the Central Legislature expects, or is it not going to have it?

Mr. N. M. Joshi: You asked for provincial autonomy and this is the fruit of provincial autonomy.

Sardar Sant Singh: Well, it means that when the Federal Legislature comes into existence the autonomous provinces will refuse to co-operate with this House. This is a serious reflection upon the dignity of this House, and I had expected that the Honourable the Home Member would come forward with some apologia or some explanation from the Punjab Government to offer to this House to soothen their feeling. But none is forthcoming. Probably they think that because these benches are vacant, because none of them can protest today, therefore they can take things easy, but I assure them, let the 23rd February come, let these benches be filled, and we will show them up to the world. Let the clouds of war thicken in Europe and we will tell these Johnnies sitting there and enjoying fat salaries what our co-operation means.

Sir Leslie Hudson: I rise to a point of order, Sir. Is the appellation "Johnnies" to the Honourable Members occupying the Government Benches parliamentary?

Sardar Sant Singh: I withdraw the expression in deference to my Honourable friend, Sir Leslie Hudson; I will say, these gentlemen,—(An Honourable Member: "Honourable gentlemen")—Honourable gentlemen. My submission is that the executive feels that they are in a position to treat this House or those who are present in this House with the greatest contempt, and I want to record my protest against that. Why Government Members have not spoken, why District Magistrates have not given their opinions today on this Bill is due to the fact that they do not want to debate this Bill fully in all its aspects but want to throw it out mercilessly through the sheer force of numbers. I therefore have to draw the attention of the whole country through you that this is a treatment which should not have been meted out to the few Members that are present here

Now, coming to the arguments of my Honourable friend, he has practically nothing to say to refute my points. Even this time he did not contradict me when I said that the Magistrates specially empowered under section 30, or even without section 30, first class Magistrates, are under the influence of the District Magistrate, and hence with the best of intentions they cannot administer even-handed justice in a judicial

spirit to any case that comes before them. My Honourable friend the Home Member states that the High Courts are against me. I tried to quote the opinion of some of the Judges that were favourable to my Bill.

An Honourable Member: Quote them again.

Sardar Sant Singh: I need not quote them again, but this time I am going to quote the opinion of a Judge of the High Court of Burma and I am going to quote from law reports judgments given in appeals by the High Court where they have upheld my complaint. The Honourable Mr. Justice Mya Bu said:

"I think that, due regard being had to the rights and privileges of accused persons, the system of having cases triable by the Court of Sessions other than those punishable with death tried by Special Power Magistrates is wrong in principle, and is one which trained lawyers have just grounds for regarding as highly unsatisfactory."

Can there be a greater condemnation in more explicit terms? Further on, the same Judge states:

"Special Power Magistrates are not men who have had any training as lawyers, and all the experience that they have gained has been acquired as Magistrates. Where under the ordinary law the sanctity, the independence and the efficiency of the Court of Sessions are required to deal with certain classes of cases Special Power Magistrates are a bad substitute."

This is an opinion from a Judge of a High Court.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

Every argument of mine is supported by him. He says:

"I fear that they (*referring to Special Power Magistrates*) cannot command the public confidence which should ordinarily be reposed in a Court trying heinous offences and invested with the power of sentencing convicted persons to as much as 7 years' rigorous imprisonment provided it is within the limit allowed by law for the offence."

Sir Muhammad Yakub: Mr. President, this morning, the Honourable Member has read the opinions of Judges and eminent lawyers at great length for about an hour. The debate is now closing, and, in his reply to the Honourable the Home Member, is he in order to read the opinions again? I should have thought that in giving a reply he would confine himself only to answering the arguments which were raised by the Honourable the Home Member.

Mr. President (The Honourable Sir Abdur Rahim): The Chair hopes the Honourable Member will confine himself entirely to answering anything that has been said by other Members.

Sir Muhammad Yakub: There were no other speakers.

Sardar Sant Singh: The Honourable the Home Member said that the Honourable the Judges of the High Courts are against my Bill. I quoted some opinions in the morning in my first speech showing that the Judges of the High Courts were favouring the principle of my Bill.

The Honourable Sir Henry Craik: I think the exact expression I used was, "almost unanimous" as regards Judges, and as regards Local Governments, "quite unanimous".

Sardar Sant Singh: I am coming to Local Governments later on, but as regards the Judges I quoted some opinion, and I am quoting a few more to show that the Honourable Judges are in favour of my Bill.

Mr. President (The Honourable Sir Abdur Rahim): Is it from the Punjab High Court?

Sardar Sant Singh: No. From the Burma High Court.

Mr. President (The Honourable Sir Abdur Rahim): I do not think the Honourable Member is entitled now to break new ground.

Sardar Sant Singh: I am not breaking any new ground, Sir; I am only replying to the observations that have fallen from the lips of my Honourable friend the Home Member.

The Honourable Sir Henry Craik: I am perfectly prepared to take it from the Honourable Member that there were some Judges of the High Courts who were not against the principle of the Bill.

Mr. President (The Honourable Sir Abdur Rahim): As the Chair has pointed out, all these papers are in the possession of every Member of the House, and it is not the practice to quote at length from them. The Honourable Member is perfectly justified in referring to expressions of opinion of High Court Judges and others, but it must be done within limits.

Sardar Sant Singh: My submission is that I am only quoting the relevant portion, not the whole opinion. I am quoting only one or two sentences from each opinion.

The Honourable Sir Henry Craik: The Honourable Member is trying to make a point which I am willing to concede.

Mr. N. M. Joshi: There are other Members who have got to be convinced.

Sardar Sant Singh: There are other Members who have got to vote on the division. I shall now refer to the opinion of the Honourable Mr. Justice A. H. L. Leach. A representative of the European Group spoke against my Bill and this Judge is probably some relation of his. This is what he says:

"The system under which criminal cases are tried by Special Power Magistrates instead of by Sessions Judges is a system which, in my opinion, should not be continued for a moment longer than can be avoided."

Then comes the opinion of the Honourable Mr. Justice Ba U. I pointed out that District Magistrates interfere with the administration of justice by the Magistrates. About this matter he says:

"Their apprehension that District Magistrates sometimes do interfere with the administration of justice by their subordinate Magistrates is in some cases in so far as Burma is concerned well founded. On two occasions the late Chief Justice had to administer a public rebuke to two District Magistrates."

Then, he refers to a case in 10 Rangoon 180 in which the Chief Justice said:

"Mr. So and so is both the Deputy Commissioner and District Magistrate of Pyawen and I agree with the view of my learned brother Sen, J. to whom an application for the transfer of these proceedings has been made"

The Honourable Sir Henry Craik: On a point of order. I understood you to rule just now that the Honourable Member must confine himself to replying to the arguments put forward on the other side. I said nothing at all on this subject.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is not replying to the speech of the Home Member alone. There may be other speakers who have spoken.

The Honourable Sir Henry Craik: I am the only speaker who spoke on the other side.

Mr. President (The Honourable Sir Abdur Rahim): Is that so? Then, the Honourable Member must confine himself to the points raised by the speech of the Home Member.

Sardar Sant Singh: In his speech, the Honourable the Home Member said that except for Bar Associations I found very meagre support from other quarters. I understood him to say that I have advanced no argument which requires to be traversed by him. I made it out when I began the reply that the Honourable Member has not cared to meet the arguments which I advanced. He only brushes them aside. I have advanced new arguments and I am giving in support of those arguments the opinions obtained by circulation.

Mr. President (The Honourable Sir Abdur Rahim): These opinions are really in the possession of every Member of the House, and the Honourable Member has quoted quite enough.

Sardar Sant Singh: That is right but what I want to submit is that I am not quoting the opinion as a whole. I am only quoting some portion.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has really no business to quote so many opinions at length.

Sardar Sant Singh: Then, Sir, I proceed to another point. The conduct of District Magistrates in interfering with the administration of justice has formed the subject of many High Court rulings.

The Honourable Sir Henry Craik: Again on a point of order. The Honourable Member is now touching on a subject which I never mentioned at all in my speech.

Sardar Sant Singh: If the Honourable the Home Member does not give any reply to any of the arguments I advanced, that does not mean that I have no right to point out to the House that those facts have not been touched upon by the Honourable the Home Member and to draw the conclusion that the Honourable the Home Member had no reply to make to these arguments.

The Honourable Sir Henry Crank: You are now making a reply to a speech which I have not made.

Sardar Sant Singh: The Honourable Member has no reply to give to these arguments.

The Honourable Sir Henry Crank: The Honourable Member is replying to the speech which he thinks I ought to have made.

Mr. President (The Honourable Sir Abdur Rahim): It is very difficult to define the limits within which a reply like this should be confined, but the Chair hopes the Honourable Member will not really go on repeating what he has already said. He is not allowed to do that.

Sardar Sant Singh: Very well, Sir. There is one point which the Honourable Member did not touch on. He said nothing about it and I hope that the Honourable Members of this House will take note of this fact that practically he had no reply to offer to these arguments.

Now, Sir, when the Honourable the Home Member stated that the opinions of all Local Governments are against this Bill, I again took exception to this. I quoted certain opinions of Local Governments in which they express the opinion that they will not oppose this. I gave some instances. Really, if you analyse the various arguments that have been received, you will find that public prosecutors, some of the District Magistrates and some of the Local Governments are against my Bill and also some High Courts are against my Bill, but others are in favour of my Bill. But there is one unanimity of opinion in my favour and that is that all the Sessions Judges and other judicial officers are in favour of my Bill. The Bar Associations are in favour of my Bill. Some of the District Magistrates also are in favour of my Bill.

Sir Muhammad Yakub: Have you not said all this in the morning?

Sardar Sant Singh: I am analysing them. Is it not a strange fact that not a single opinion of any Bar Association throughout India should be in favour of the executive authority? The Honourable the Home Member brushes it aside by saying that these Bar Associations are interested. May I not retaliate by saying that the executive wants to keep this power in their own hands? The District Magistrates do not want that the judiciary should be independent and self-respecting. Are they not interested in the same? If the Honourable the Home Member is willing to ascribe motives to members of the Bar Associations for giving their opinion, cannot the same motives be applied to District Magistrates and to other executive officers who want to keep the control of the judiciary in their own hands? Such jibes do not carry us much further, Sir. The Honourable Sir Muhammad Yakub was perfectly right when he said that the Honourable the Home Member was casting reflections on the domain occupied by his colleague the Honourable the Law Member. I am sorry that the Honourable the Law Member is unavoidably absent from the House today. (An Honourable Member: "He is sick".) Sir, the greatest tragedy is that the Honourable the Law Member should allow himself to fall into the lap of the Honourable the Home Member and be caressed thereby. (Laughter.) Sir, I am an advocate of the rule of law for this country and the Home Member is an advocate of the rule of the executive in this country, and

there we differ and strongly differ in our mentalities. What I submit, as I pointed out when I was speaking on the Press law debate in 1932 or 1933, is that the one thing which is very difficult to understand about this Government is why the Law Member permits his rule of law to be slowly and steadily taken away by the executive authority in all departments of life? The same is the principle here,—that by keeping up the old archæological remains of procedure in the criminal procedure of the country, we are blocking our own progress in this particular department of life. Sir, the Honourable the Home Member says that all the Local Governments are against it. May I ask him that if we leave the interested quarters alone, if we leave the Local Governments alone and if we leave even the Bar Associations alone as interested parties, what about the European Association of Calcutta whose representative there is our friend the Honourable Mr. Morgan?

Mr. Lalchand Navalrai: What do they say?

Sardar Sant Singh: You ought to read their opinion. What do the European Association and the Domiciled European and Anglo-Indian Association of Calcutta say? Sir, they support the principle of my Bill. What have you to say to that? I ask the Home Member—is that not disinterested opinion? What more disinterested opinion do you want in favour of my Bill? That is an opinion which you cannot describe as being one underlying which there is any motive excepting justice and fair play for all.

Mr. Lalchand Navalrai: Where is this opinion?

Sardar Sant Singh: I will hand you over the opinion. I have quoted it in the House already once. Then it was very cruel on the part of the Honourable the Home Member to brush aside the opinion of the Sessions Judge of Oittoor as coming from an anonymous Sessions Judge? Is it fair? The Honourable the Home Member took exception when I was trying to point out the need for this reform and he took exception to my remarks by saying that my speech betrays a mistrust of the judiciary. What about my friend the Home Member—a public servant serving under the same Government, and occupying no lesser a position than that of a Sessions Judge giving his honest opinion, and being called an anonymous Sessions Judge from far, far Madras?

The Honourable Sir Henry Craik: There is nothing defamatory about that.

Sardar Sant Singh: This is an apt illustration, if any is needed, to impress upon the House that this Government is relentless in cruelty to those of their public servants who happen to honestly differ from them in their views, and that they do not want that they should have liberty of expression of even an honest opinion so long as they are Government servants. Sir, he is not all alone in his opinion. If the Honourable the Home Member has gone through all the opinions, and I hope he has, he will find that the opinion of very independent provinces like Bengal and Madras is entirely in favour of the principle of my Bill. I did not care to read out all the opinions and I only read out those where the contrast was so clear and so bold that nobody could escape from the inference that the

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Bill commends a very sound principle of justice before the House. He claims that the overwhelming opinion is against it. I beg to differ from him. My contention throughout this morning has been as well as now that the Bill is supported in principle by an overwhelming body of opinion of even the executive officers. The only difficulty which is felt by the Local Governments and those who oppose my Bill is the difficulty of the expense and the cost that this reform will involve. The Honourable the Home Member said that I did not refer to the question of cost. If the question of cost is a deterrent factor in introducing this reform, then, I think, the best course will be to shut up the Courts and let the investigating police officer administer justice as well and finish the accused or the offender by one stroke of the pen. Simply go to the place where the offence is committed; let the police officer go there to find out whether the man is guilty or not and punish him there and then. I can assure you that this method of administering justice will save you lot of money. But why does he not advocate that? He is a trained I. C. S. and he has administered justice himself and he knows that this will not pay the administration and ultimately the administration will have to suffer for loss of confidence in the administration of justice. The loss of confidence in the judiciary of the province is a greater calamity than the economic depression which our friend, the Honourable Sir James Grigg, has to cure every year. May I ask the Honourable the Home Member if the cost is the consideration of the whole thing, why so much money is being spent upon us, a mere debating society, who give their views which carry no weight with the executive authority? Do you think that His Majesty's Government in England or the Cabinet here do not know what our powers are? And are we so ignorant as to claim that we are more powerful than is actually the case? We know what our worth is as Members of the Legislature and I can assure him that we are under no delusion, but this House is being run and this cost is being undertaken to know our views. Cost is not the only consideration which prompts you to summon us here from our homes to debate over matters. You know the importance of our views. You know what political good it does and it is for that political good that you incur the cost. I can say the same thing about the administration of justice. The political good that the administration of justice will do in the country is of far greater importance than the cost you will have to pay for that administration of justice. My friend said that justice is delayed and a quick justice is the best justice. May I ask him in all humility and may I ask my friends of the European Group if they are prepared to give up the trial by jury because it costs more? A trial by jury certainly costs more than a trial by a single magistrate. Some of the honourable gentlemen who have given their opinions have actually said that the jury is a nuisance. Will they care to give up the system of jury in order to avoid the cost? If they are, then I am also prepared to give up the Sessions Judges. Then, Sir, the question of cost comes again. If the arguments of the Honourable the Home Member are to be respected, it means that in order to avoid the cost they are prepared to sacrifice the judicial principles on the altar of finance. If they are so prepared, why don't they move that section 30 Magistrates should be in all provinces? Some of the honourable gentlemen who have given their opinion have said that they want section 30 Magistrates to be introduced in their provinces. I would like my friend Sir Leslie Hudson one day to come up and introduce a Bill that this par-

particular section should be amended and the names of the provinces of Madras, Bengal, Bombay and other provinces which are not included in the section should be included.

Sir Leslie Hudson: One of these days.

Sardar Sant Singh: I accept it. Next day I will expect my friend Mr. Morgan to get up and propose amendments of those sections to do away with the system of trial by jury in India. I will then like to see whether both these gentlemen will command the confidence of their voters to get elected to this House. That would be a nice and amusing experiment to make. It is all very well to say at the cost of a single province that you shall not be allowed to progress but that we shall keep our privileges as they are and we won't let you touch them. What I demand is a uniformity of system for the whole of India. If they think that the Heaven lies in giving enhanced powers to the Magistrates, let them share that Heaven with us. Why should they permit me to have that Heaven and not allow themselves to enjoy it? Sir, it is the man whom the shoe pinches who feels the pinch and not others. My whole case is this. If any fairness is left in this land, let that fairness be meted out to the principles of this Bill. I claim—and the Honourable the Home Member did not care to reply to this claim—that in the Select Committee a *via media* can be found, and a middle course can be discovered which may lead us to some compromise between the two extremes. At present too many Magistrates are invested with section 30 powers and I want that some sort of restriction should be placed. But the Government is not willing ever to accept that. There will be no cost involved but they are not prepared to do it. However, I think that I have done my duty by placing this Bill before this House for the second time. It was said—and this is the last point to which I would like to refer—that there is no public demand for this reform in the Punjab. I really fail to understand that, on the one hand, the Punjab Government refuses to get the public opinion upon the point and, on the other hand, advances the argument that there is no public demand. I should like to know how these two statements are consistent with each other. Apart from it, an impression is created that the Bills that are passed by the Central Legislature can be amended only by the Central Legislature. Sir, I have been a Member of this Honourable House for the last seven years and from the first day of my membership of this House I have moved the amendment of these sections and did I do so because I wanted to force a reform which was not demanded by the public? The claim of those who never come in contact with the public is ludicrous that they represent the public and not we whose whole day associations are with the members of the public. We are connected with the administration of justice. We meet all sorts of people and we know how justice is administered. We do not do our work with our eyes closed, but with open mind after reading the writings of the learned jurists of the West and daily reading the reports of the High Courts rulings. If we cannot make up our minds whether the reform is necessary, surely nobody else can. In the Punjab a cut motion was moved because one man from the South felt it his duty to bring it to the notice of the Council that there is demand for the removal of section 30 Magistrates. My Honourable friend says that he did not find any support in the Punjab Legislative Council. Of course he did not. Because most probably most of the Members were under the impression that this reform should come from the

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Central Legislature and not from the Provinces at all. There is no wonder now that with the institution of provincial autonomy, the demand will grow and I am sure that Members will take up this question and will fight for this reform.

In conclusion, I will say though I am losing this Bill, yet it does not mean that it will dishearten me at all. I have done my duty.

4 P.M. I did my duty in the last Assembly. I have done it in this too, and I hope to do it again when the opportunity comes. (Applause.)

Mr. President (The Honourable Sir Abdur Rahim): The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of sections 30, 34, 34A and 35*), be referred to a Select Committee, consisting of the Honourable the Law Member, the Honourable the Home Member, Mr. Akhil Chandra Datta, Mr. Lalchand Navalrai, Mr. Sham Lal, Sir Muhammad Yakub, Mr. M. Ananthasayanam Ayyangar, Mr. M. Asaf Ali, Dr. F. X. DeSouza and the Mover, with instructions to report before the 31st March, 1937, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Assembly divided:

AYES—12.

Abdullah, Mr. H. M.
Bajoria, Babu Baijnath.
Datta, Mr. Akhil Chandra.
Ghulam Bhik Nairang, Syed.
Joshi, Mr. N. M.
Lalchand Navalrai, Mr.

Mangal Singh, Sardar.
Morgan, Mr. G.
Muhammad Ahmad Kazmi, Qazi.
Parma Nand, Bhai.
Sant Singh, Sardar.
Yakub, Sir Muhammad.

NOES—37.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.
Aikman, Mr. A.
Anderson, Mr. J. D.
Bajpai, Sir Girja Shankar.
Bansidhar, Rai Sahib.
Bhide, Mr. V. S.
Chanda, Mr. A. K.
Chapman-Mortimer, Mr. T.
Craik, The Honourable Sir Henry.
Dalal, Dr. R. D.
Ghiasuddin, Mr. M.
Griffiths, Mr. P. J.
Hudson, Sir Leslie.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.
Lal Chand, Captain Rao Bahadur Chaudhuri.
Lalit Chand, Thakur.
Lloyd, Mr. A. H.

Mehta, Mr. S. L.
Menon, Mr. K. R.
Metcalf, Sir Aubrey.
Mitchell, Mr. K. G.
Mukherjee, Rai Bahadur Sir Satya Charan.
Nagarkar, Mr. C. B.
Naydu, Diwan Bahadur B. V. Sri Hari Rao.
Noyce, The Honourable Sir Frank.
Parkinson, Mr. J. E.
Roy, Mr. S. N.
Sale, Mr. J. F.
Scott, Mr. J. Ramsay.
Sher Muhammad Khan, Captain Sardar Sir.
Thorne, Mr. J. A.
Tottenham, Mr. G. R. F.
Verma, Rai Sahib Hira Lal.
Witherington, Mr. C. H.
Zafrullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

THE INDIAN ARMS (AMENDMENT) BILL.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I beg to move:

"That the Bill further to amend the Indian Arms Act, 1878, be referred to a Select Committee, consisting of the Honourable the Law Member, the Honourable the Home Member, Sardar Sant Singh, Sardar Mangal Singh, Mr. M. S. Aney, Sir Muhammad Yamin Khan, Dr. F. X DeSouza, Dr. N. B. Khare, Mr. Ghansham Singh Gupta, Babu Baijnath Bajoria, Bhai Parma Nand and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, though the Sikhs call themselves a minority community, they are a strong body of people belonging to a martial race who have been famous in past Indian history. Everybody knows what a Sikh is. As I was getting up to speak an Honourable friend asked me whether I am a Sikh and whether I should not have left this Bill to be moved by some Sikh Member here. I will therefore explain my position. This Bill refers to exemption being given to the wearing of kirpans. These kirpans are worn by the Sikhs as an emblem of their religion. Therefore they are very zealous about wearing them and keeping them in their possession. Then, besides the Khalsa Sikhs, there are two kinds of Sikhs which I have explained as follows in the last proviso of my Bill:

"Provided that no license shall be required by Sikhs both 'Kesadharis and Sahijdharis' for possessing or carrying Kirpans of any size."

I have explained these two classes of Sikhs as follows in the Statement of Objects and Reasons:

"There are two kinds of Sikhs in India, one who wear hair on the head and keep some emblems, and the other are Sikhs by faith called 'Sahijdharis' who are numerous in Sind."

Both of them have faith in the ten Gurus and in the Granth Saheb; and in Sind almost all Hindus are Sahijdhari Sikhs believing in the dictates, doctrines and precepts of the ten Gurus as well as in the Granth Saheb. I am one of them. The difference between them is only in carrying emblems; for instance, they put on a bangle, they have long hair and some of the Khalsas have a ring for the hair also. The Sahijdharis do not have these emblems but they have as good faith as the Kesadharis have.

The reason for introducing this Bill and asking for reference to Select Committee is given in the Statement of Objects and Reasons. When I introduced this Bill a long time ago, both Kesadharis and Sahijdharis were highly pleased, and they expected that the Kirpans would be exempted from the Arms Act. Then there is another thing which they want. In some provinces Government have exempted the Kirpans while in others they have reduced its size. So that there is no unanimity with regard to the size and that creates a good deal of trouble and inconvenience. The result is that many Sikhs who wear Kirpans of the size which is allowed in their province, as soon as they cross the border and go over to another province where that size is not allowed, they are arrested and prosecuted.

Captain Sardar Sir Sher Muhammad Khan (Nominated Non-Official): Do not all Sindhis wear Kirpans?

Mr. Lalchand Navalrai: They have them but they do not carry them.

Captain Sardar Sir Sher Muhammad Khan: Then what is the use of the Bill?

Mr. Lalchand Navalrai: If it is allowed to be carried they will carry it. The thing is that if in some provinces a Sikh were to go and make a declaration before the District Magistrate that he is a Sikh and believes in the doctrines of Sikhism, he is allowed to carry it. Then, again, the difficulty arises as to the size of the weapon. Therefore I have introduced the Bill and ask the House to see that equal justice is done to all Sikhs and that the exemption to wear kirpan is extended to all Sikhs, Sahijdharis as well as Kesadharis so that they could carry it about from place to place as it is a symbol of worship and has been recognised as such by Government. Once that has been admitted, the point is that both Kesadharis and Sahijdharis should be allowed to wear it without hindrance and, just as they do in the Punjab, be allowed to wear it in other provinces. Sikhs are spread all over India and they have to travel from province to province. In the Punjab the Sikhs are exempted; but if they take the kirpan and go a few miles beyond the border of the Punjab into Sind they are at once arrested. Further, in some provinces six inches is the length allowed for kirpans, and in some nine inches are allowed. If from one such province a Sikh goes to another, he is caught and prosecuted, and there have been actually cases in Sind of this kind. Sikhs have acquired lands in the Barrage colonies and they live with their families there. They have to go to the Punjab and whenever they go there they wear the kirpans, but when they return to Sind they have to get a kirpan of a smaller size. I say that is not justice.

Therefore I submit that this Bill should not be considered to be contentious at all; it only requires uniformity in the wearing of kirpans. In the Punjab, not only kirpans are allowed but even swords were allowed to be carried by some people. My friends from the Punjab will throw more light upon this matter. What my Bill seeks is this:

"In section 5 of the Indian Arms Act, 1878:

(a) after the words 'any arms', occurring in line 2, the words 'except Kirpans' shall be inserted;"

According to the section 5, arms are not exempted: if anybody carried them they are liable to punishment. I am asking that kirpans should be exempted and should be allowed to be carried. I have said further:

"(b) the following proviso shall be added at the end, namely:

'Provided no licence shall be required by Sikhs, both Kesadharis and Sahijdharis for possessing or carrying Kirpans of any size.'

The object of this Bill is to safeguard the interests of Sikhs in observing the dictates of their religion in the matter of possessing or carrying Kirpans, and to make the law in connection therewith uniform in the whole of British India. At present the rules made under the Act, in different provinces on this point, are divergent and conflicting, making it penal in one province to carry or possess this religious symbol of a particular size or form what is recognised as perfectly valid and legitimate in another. A Sikh and his religion are the same in any part of India. The symbol of his religion cannot change with the place, and to enforce such a change is active interference with religion. There have been many instances when a Sikh has been deprived of this mark of his religion and heavily sentenced for observing it, on crossing the boundary of one province into that of another. Nor is differential treatment of the same person in different parts

of his country justified by the local conditions. A Sikh is as good a citizen in one province as in another. Sikhs are spread over the whole of the country and freely move about from one end of it to another, being actively engaged in all walks of life and in all professions and crafts. In these circumstances it is necessary that the amendments proposed by this Bill be made into law. There are two kinds of Sikhs in India, one who wear hair on the head and keep some emblems, and the other are Sikhs by faith called "Sahijdharis" who are numerous in Sind. This Bill is intended to apply to both classes.

At present, I am only asking that the Bill should be referred to Select Committee and that the principle should be recognised, namely, the exemption of the kirpan of a similar size. Government has recognised it as a symbol and exempted it wholly in some places and partly in others. The only question is whether there should be uniformity; and the Select Committee will consider all the rules of the provinces and find out why there should be any difference. It is very necessary that this Bill should therefore go to the Select Committee who could then send the Bill back with a recommendation to the House. The point is so clear that I need not take up the time of the House further. In the beginning Honourable Members were not aware who a Sahijdhari Sikh is but I have now made it clear to the House. There is absolutely no difference between Sahijdhari and Kesadhari Sikhs except in the matter of carrying some symbols with them; and therefore there is no reason why they should not be allowed in other provinces to carry what they are allowed in the Punjab. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Bill further to amend the Indian Arms Act, 1878, be referred to a Select Committee, consisting of the Honourable the Law Member, the Honourable the Home Member, Sardar Sant Singh, Sardar Mangal Singh, Mr. M. S. Aney, Sir Muhammad Yamin Khan, Dr. F. X DeSouza, Dr. N. B. Khare, Mr. Ghansham Singh Gupta, Babu Baijnath Bajoria, Bhai Parma Nand and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Honourable Member has not mentioned here by what date the report of the Select Committee should be made.

Mr. Lalchand Navalrai: By the 31st March, 1937.

Captain Rao Bahadur Chaudhuri Lal Chand (Nominated Non-Official): Sir, I merely want to ask one question from my Honourable friend. Do these Sahijdhari Sikhs vote in Sikh constituencies or in general constituencies?

Mr. Lalchand Navalrai: The point is not whether they can vote in one constituency or in the other, but their religion and their faith are alike.

Captain Rao Bahadur Chaudhuri Lal Chand: What is the exact answer?

Mr. Lalchand Navalrai: There is no Sikh constituency in Sind.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, I rise to support this motion. Sir, the object of this Bill is to make the law in respect of the carrying of Kirpans uniform throughout India. At

[Babu Baijnath Bajoria.]

present, as I understand the position, the carrying of Kirpans by Sikhs is allowed in the Punjab, the North-West Frontier Province and Delhi, whereas that privilege is not allowed to them in other provinces except, I think, with a license

The Honourable Sir Henry Craik (Home Member): It is not allowed in Bombay except with a license.

Mr. Lalchand Navalrai: I think the length of the Kirpan is prescribed there.

The Honourable Sir Henry Craik: Sikhs must have a license to carry Kirpans which are more than 9" long in Bombay.

Babu Baijnath Bajoria: Well, Sir, carrying of Kirpans is a religious dictate according to the Sikh religion, and every Sikh must carry a kirpan. So in my opinion the restraint that is imposed on the community prohibiting them from carrying kirpans in certain provinces without a license is a direct interference with their religion. Sir, I have always advocated that there should not be any interference with the religion of any community in India, whether they be Hindus, Muslims, or Sikhs, and therefore I have no hesitation in supporting this motion. Sir, a Sikh is a Sikh whether he lives in Bengal or in the Punjab. Now, if a Sikh is allowed to carry kirpan in the Punjab and the North-West Frontier Province, I do not understand why the same privilege will not be allowed to them in other provinces. There is however one question which we have to consider, and that is, have they abused this privilege in the Punjab or in the North-West Frontier Province where they are allowed to carry kirpans without any kind of restrictions? If they had abused that privilege in those provinces, then there would have been some justification to say 'We won't allow you to carry kirpans in other provinces', but as far as I know, this privilege has not been abused. Sir, Sikhs, as we all know, are a very brave and martial race, and they are very loyal too. If carrying of kirpans is not dangerous in one province, I don't see any reason why it should be regarded as dangerous in other provinces. I don't understand why there should be divergent rules in regard to the carrying of kirpans by Sikhs. Supposing a Sikh travels from the Punjab to Calcutta carrying a Kirpan with him, what will he do with his Kirpan after he passes the Delhi station and reaches the United Provinces? Will he be permitted to carry his Kirpan, or he will have to throw it away. It must be very embarrassing indeed for the Sikhs to be placed in this position. Sir, I heartily support this motion.

Sardar Sant Singh (West Punjab: Sikh): Sir, may I request the Honourable the Home Member to let us know what the attitude of the Government is on this Bill?

Mr. President (The Honourable Sir Abdur Rahim): He will do it in his own time.

Sardar Sant Singh: Very well, Sir. It is hardly necessary for me to impress the importance of this question on the Honourable Members of this House, because it has been a burning topic in the Punjab from 1920 right up to this day. The point was raised several times when the Sikh

community had to come in conflict with the administration on this question. As the Honourable the Home Member comes from the Punjab and as he is fully aware of the history of the agitation that has been carried on in the Punjab for getting the Kirpan exempted from the provisions and rules of the Arms Act, I think it will not be necessary for me to go into the history of the question over again. There is no doubt that feeling on this subject is very strong, particularly in my community. During the last 7 years I tabled several times Resolutions, which were very kindly admitted by the Chair, and the point that there should be uniformity of rules for the possession and carrying of Kirpans in all the provinces of India was made, but unfortunately my Resolutions never had any chance in the ballot box. I am very unlucky in the ballot; my Resolutions never get any chance in the ballot box, but I have no complaint to make on that score; it is a chance, to which I am as much a victim as others probably are. However, the importance of the subject can be judged

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Your Bills come out from the Ballot Box all right?

Sardar Sant Singh: Because there are no other Bills. They always give notice later.

Sir, the importance of this subject can be gauged from the fact that Resolutions on this question had been moved not only by me, but by other Sikh Members of this House as well, and since my friend, Sardar Mangal Singh, came to this House, he has been tabling Resolutions and he has also given notice of a similar Bill to the one sponsored by my friend, Mr. Lalchand Navalrai. As a matter of fact, we do not expect any opposition from the Government on this point, particularly because facilities for the carrying of Kirpans have been given to all communities in the Punjab by a recent notification under rule 3 of the Indian Arms Act; the exemption for keeping a sword has been extended to all communities in the Punjab, in the districts of Mianwali, Dera-Ghazi-Khan, Muzzafarpore, Gurgaon, Hissar, Simla, Kangra, Rohtak, Jullundur, Gujranwalla, Attock, Lyallpur, etc. So far as the question in the Punjab is concerned, it seems to me to be a settled fact that not only the Sikhs but other communities in these districts and probably in most of the districts in the Punjab have been permitted to keep and carry kirpans anywhere they like. The history of the kirpan is that before 1920 the Sikhs were not permitted to carry kirpans of any length. The length was prescribed and beyond that length nobody could keep or carry a kirpan. In 1920 the restriction on length was removed.

The Honourable Sir Henry Craik: Is the Honourable Member speaking of the Punjab now?

Sardar Sant Singh: Yes.

The Honourable Sir Henry Craik: I do not think he is right.

Sardar Sant Singh: I think in 1920 the restriction upon the length of the kirpan was removed. I am speaking from memory, I am sorry I did not bring my papers on this subject with me today.

The Honourable Sir Henry Craik: My recollection is that there was never a statutory restriction on the length of the kirpan.

Sardar Sant Singh: I think it was under the rules.

The Honourable Sir Henry Craik: Not in the Punjab, so far as I remember.

Sardar Sant Singh: I am subject to correction.

The Honourable Sir Henry Craik: So am I.

Sardar Sant Singh: So far as my recollection goes, it was in 1920 that the restriction on the length of the kirpan was removed, and before that and during the War the restriction was to keep a kirpan of the length of nine inches.

The Honourable Sir Henry Craik: I am sorry to interrupt my Honourable friend. I do not think his recollection is correct. My information is that up till 1914 kirpans were arms under the Arms Act and were subject to restrictions as other arms. In 1914 the Punjab Government removed that restriction and since then kirpans have been exempted in the Punjab from the provisions of the Arms Act. So far as I know there has never been any statutory limitation to their length in the Punjab. It had been considered from time to time whether there should be any, but there never has been.

Sardar Sant Singh: I am thankful to the Honourable the Home Member for correcting me on that point. I was speaking from recollection only and I am glad that the wrong impression has been removed. However, then came the struggle in 1920 as to the meaning of the word kirpan. Kirpan was synonymous with the English word sword, but in some cases exception was taken with the result that several cases went up to the High Court and ultimately, probably in 1921, again I am speaking from recollection, the High Court gave the ruling that sword and kirpan were one and the same thing. Since then there has been no trouble except a small one which appeared in 1935, when under section 144 restrictions were laid upon carrying kirpans in the Lahore town. Even then, in order to give a correct idea as to the feeling of my community it will not be out of place to mention that in the Punjab exception was taken to that restriction, and actually people took kirpans in spite of the order under section 144 Cr. P. C. in order to demonstrate their feeling and certain respectable persons were convicted till the rising of the Court. This continued till the period of prohibition under section 144 Cr. P. C. came to an end. This was the feeling, which I hope will be appreciated in its true perspective as regards possession of kirpan and as regards the restriction placed upon its length. Now most of the grievances come from other provinces. The Shiromani Gurdwara Prabandak Committee, a statutory body under the Punjab Gurdwara Act, has been receiving complaints from several provinces as regards the prosecutions launched for possessing kirpans of greater length than nine inches.

The Honourable Sir Henry Craik: What provinces?

Sardar Sant Singh: Probably, the C. P. and Bombay.

The Honourable Sir Henry Craik: I am rather at a disadvantage, but according to my information Bombay is the only province where there is this limitation, possibly Burma too. But Burma will not be part of India in a few weeks.

Sardar Sant Singh: My Honourable friend, Sardar Mangal Singh, says, C. P. as well. My difficulty is I have not brought the papers with me today. I only rely upon my memory; after having studied this case a year ago, I am speaking now from memory—From Bombay the complaint came that the Sikhs were not permitted to carry kirpans beyond the length prescribed. Certain restrictions as to the length of the kirpan are prescribed by that Government. The prosecutions ended in the infliction of nominal fines, but still the restriction is there. This was the reason which led the Shiromani Gurdwara Prabandak Committee to order us to get these restrictions removed from the Statute-book. In certain questions—again I am speaking from memory—which I gave notice of in this House and which were answered by the Honourable the Home Member, the attitude of the Government was made clear that the Government did not want to interfere with the discretion vested in the Local Government. I think I am correct this time.

The Honourable Sir Henry Craik: I think so, but I cannot say.

Sardar Sant Singh: These are the replies received on the floor of the House. The only thing which we want to get removed by the introduction of the present Bill is that those professing the Sikh religion should be allowed to carry kirpans of any length throughout the length and breadth of India. After having conceded the principle that the Sikhs can carry kirpans, I think it is only a very small step to take forward and give us complete exemption. Though the concession to carry kirpan of all lengths is very small when looked at from the point of view of the Government of India, it has very great consequences to my community. In order to avoid a source of conflict which engenders nothing but bitterness between the executive Government and the Sikh community I think the Government should consider the position once more and help us in getting the concession which we have asked for from the Government. My Honourable friend, Captain Chaudhuri Lal Chand put a question to my Honourable friend, Mr. Lalchand Navalrai, as to what constituency, General, Muslim, European, or Christian, the Sahijdhari Sikhs belong.

I think Mr. Lalchand Navalrai did reply to that question but so far as I know there are no separate constituencies for the Sikhs in any other province except that of the Punjab, we are very proud of our Sahijdhari Sikhs in the province of Sind. I have had occasion recently to visit Karachi and I paid a visit to the devotions that were being carried on in a gurdwara at Karachi by the Sahijdhari Sikhs. Though our Sahijdhari brothers do not keep long hair but their devotion and their *bhakti* and their faith in the words of the ten Gurus, to whom we have the privilege of owing allegiance, is even greater than us in the Punjab. Therefore, Sir, as they are believers in the same tenets of religion as we are and worship the same Gurus and claim the same culture which we claim, there is no reason why a distinction should be made between the Sind Sikhs and the Sikhs of other provinces.

Captain Sardar Sir Sher Muhammad Khan: What is the definition of Sikh under the Gurdwara Act?

Sardar Sant Singh: If the new Knight from Jhelum were to confine his remarks to the Military Department alone, he will be doing a service not only to the House, but to himself as well. This smacks of irreverence especially from a Member coming from Jhelum. He knows what the Sikhs are, and we know what the Muhammadans are. We need not enter into the definition of Sikhs. We know that the Arms Act does not require a definition of Sikhs. So, his services in that direction are not required, probably by the Government even. We know what the Sikhs are.

Mr. N. M. Joshi (Nominated Non-Official): We don't know.

Sardar Sant Singh: I quite see the anxiety of Mr. Joshi to know what the Sikhs are, but not from a Punjabi. However, Sir, there is the other side of the question as well. Apart from the religious feeling which we claim entitles us to the exemption that we are requesting the Government of India to make, from a broader point of view too, in these days when arms and ammunitions have developed to a very great extent, kirpan should not be considered in the way in which it used to be in the early sixties and seventies of the last century. Here is a concession which the Government can easily make to avoid a conflict with a sensitive community like Sikhs of the Punjab. Therefore, agreeing as we do with the Government of India as to the principle underlying the Bill, I think there will be no difficulty for the Honourable the Home Member to agree with us. We can find out some way in the Select Committee where the necessary amendments can be made in order to provide uniformity of practice. In the end, before I sit down, I will once more appeal to the Honourable the Home Member who has served mostly in the province of Punjab and has come into close touch with the Sikhs and can understand the Sikh feeling in this matter much better . . .

The Honourable Sir Henry Craik: The Sikhs have no grievances in the Punjab?

Sardar Sant Singh: That is why I am pleading on behalf of the Sikhs in other provinces. Knowing the Sikhs as you do, I hope you will extend your sympathy to the Sikhs living in other provinces, particularly in Bombay and getting this concession from those Local Governments by issuing uniform rules or by amending the Indian Arms Act as the case may be in order to grant this request. With these words I support the motion for Select Committee.

Mr. President (The Honourable Sir Abdur Rahim): As regards the date of the report of the Select Committee, the Chair understands that there will be no non-official day before the 1st April?

Mr. Lalchand Navalrai: I have seen that myself.

Mr. President (The Honourable Sir Abdur Rahim): Then, leave that out—the portion regarding the date.

Mr. Lalchand Navalrai: Very well.

Sir Muhammad Yakub: Mr. President: My attitude to this Bill is this. As Sardar Sant Singh has pointed out, the Punjab High Court has ruled that a kirpan is a weapon like a sword and I entirely agree with the ruling of the High Court. I think that a kirpan is like a sword. I also agree with Sardar Sant Singh that there should be no distinctions between one community and another, and one province and other. I submit that in provinces where swords are allowed to be carried without any license—and kirpans are included and must be included within the term "swords"—everybody should be allowed to carry a sword or kirpan as he likes; but in those provinces where persons are not allowed to carry swords without license no distinction should be made. We have just been told that before 1914 even in Punjab kirpans were not allowed without a licence. In 1914 which, we know, was the time of the Great War and the Government was in great need of soldiers from the Sikh Community; therefore, probably, I think as a concession to the Sikhs, or in order to persuade the Sikhs to join the Army, this concession was allowed to them and I do not grudge it. What I say is that kirpans should not be treated exclusively from any other arms. If swords are allowed to be carried in any province, then kirpans should also be treated in like manner but kirpans should not be made an exception because of the religious tenet of any particular community. It is very good to say that the Government should not interfere with the religion of the people of this country but we find that at the request of other communities Government has interfered with the religious rights of the people of some communities. For instance, it has been held by numerous High Courts that according to Muslim law Mussalmans are at liberty to do sacrifice in any town, in any city and in any place but still we find that, for reasons of administrative exigencies. Muslims are not allowed to do sacrifice in certain towns and in certain places. Even in Delhi, Muslims cannot perform sacrifices in their own houses. They have to carry the animal to the slaughter house. So this is an interference with religion and all this interference has been made at the representation of one community or the other. Therefore, it is not right to say that, for the sake of one community, there should be one set of rules and for the sake of another community there should be another set of rules. I say that if in any province Government allows swords to be carried without license, then the kirpans should also be included in the definition of swords but if in any province, on account of administrative difficulties, swords are not allowed to be carried without license, there should be no exception for the kirpans. One thing more, Sir. One Honourable Member, who spoke in support of the motion, said—"we have never heard that this power of carrying kirpans was abused". I think, Sir, that this is not right. During the last Shahidgunge agitation in Lahore, and generally in the Punjab, we were told that when there was a communal riot kirpans were freely used by the Sikhs, and, probably, it was for this reason that the Muslim papers and the Muslim public of the Punjab made a claim that if the Sikhs are allowed to carry kirpans in the Punjab without a license, Mussalmans should also be allowed to carry swords without a license in order to defend themselves, and it was probably in pursuance of this demand on the part of the Mussalmans of the Punjab that, under the rules now, Mussalmans in the Punjab are also allowed to carry swords without any license.

The Honourable Sir Henry Craik: That is not quite correct. There is
5 P.M. no prohibition. Anyone can carry swords.

Sir Muhammad Yakub: What I mean to say is that the grievance of the Mussalmans in the Punjab was that while the Sikhs were allowed to carry an arm all the time, Mussalmans were not allowed to carry swords and therefore they fell victims to attacks on the part of the Sikhs during the Shahidgunge riots and it was on account of this that

Sardar Sant Singh: May I interrupt my Honourable friend? He is wrong. At the time of the Shahidgunge agitation, Mussalmans had already been permitted to carry swords without a license. It was much earlier than that that the permission was granted.

Sir Muhammad Yakub: I stand corrected; probably it may have been on the occasion of some other communal riot in the Punjab, where the grievance was made by the Mussalmans that they had to go armless while the Sikhs were allowed to carry kirpans with them. So what I mean to say is that I do not want to oppose this Bill, nor do I think that it is necessary for me to support it, but what I want to submit is that there must be uniformity of treatment. If kirpans are allowed to be carried without a license, then swords should also be exempted; but if swords are not exempted in any province, then kirpans should also not be exempted, only on the ground that a handful of Sikhs living in Bombay or Burma have a grievance about it. Religious considerations should not interfere in matters like this

Mr. President (The Honourable Sir Abdur Rahim): The House stands adjourned till eleven o'clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Friday, the 12th February, 1937.