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# PROCEEDINGS
# OF
# *THE INDIAN LEGISLATIVE COUNCIL*

***ASSEMBLED FOR THE PURPOSE OF MAKING***

# LAWS AND REGULATIONS

## VOL. LVII



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**PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1915.**
**(5 & 6 Geo. V, Ch. 61.)**

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The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Thursday, the 13th March, 1919.

PRESENT:

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.I.E., G.C.M.G., G.C.B.E., Viceroy and Governor General, *presiding*, and 61 Members, of whom 53 were Additional Members.

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## CRIMINAL LAW (EMERGENCY POWERS) BILL—*contd.*

**His Excellency the President**:—"Before we proceed with the discussion of the further amendments standing in the paper, I should like to explain to the Council the procedure I intend to adopt. The Bill will be considered clause by clause, and when the amendments, if any, in respect of a clause have been disposed of, the question will be put that that clause or that clause as amended, as the case may be, stand part of the Bill. I see there are no amendments on the paper relating to the preamble. The question therefore is that the Preamble of the Bill as amended by the Select Committee stand part of the Bill." 11 A.M.

The motion was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I make a formal motion that clause 1 stand part of the Bill?"

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I beg to propose the following amendment:—

That after sub-clause (2) of clause 1 the following sub-clause be inserted:—

'(2a) This Act shall not come into force till six months will have elapsed after the formation of new Legislative Councils in accordance with the Reform Scheme. Provided, however, that if anarchical and revolutionary crimes become prevalent in any part of British India before that, the Governor General may, with the consent of the Legislative Council, make a declaration to that effect in the Gazette of India and introduce any provisions of this Act or, if necessary, the whole Act in such part.'

[*Mr. Kamini Kumar Chanda; Sir William Vincent; Mr. V. J. Patel.*] [13TH MARCH, 1919.]

"I do not wish to make a long speech in moving this amendment. It is clear from the wording of my amendment, whether the Council will accept it or not, what my object is. We wish to see the effect of the reforms before this Bill is put into operation. What I say is, that even if you pass this Bill, do not bring it into force in any part of British India before we have had some experience of the reforms. Should however in the meantime in any part of the country you see there is a recrudescence of these crimes, then you can introduce the provisions of this Act. Of course, I wish to have one proviso added, that is to say, that the Act should be brought into operation with the consent of this Council. It is rather unusual to consult the Legislative Council before taking action of this kind. My argument is this. This law is an extremely extraordinary one and you are empowering by this measure the executive with judicial powers. Therefore, in such a case I think, there will be no harm if you depart from the usual practice and consult the Council in this matter. With these words, my Lord, I place the amendment before the Council."

**The Hon'ble Sir William Vincent**:—"My Lord, I am afraid that for the reasons given yesterday at some length in connection with Mr. Banerjea's amendment, the present amendment cannot be accepted. We do not know when the reforms will come into operation. We all hope that they will not be delayed, at any rate, for very long, but we cannot possibly consent to adjourn this Bill or postpone the date on which it shall come into operation for an indefinite period of that kind. It is true that the Hon'ble Member has inserted a proviso which in his judgment would meet an emergency, but I would point out to the Council that the wording of that proviso does not correspond at all with the wording of the Preamble to Part II. If Hon'ble Members have the Bill before them and refer to the Preamble to Part II they will see that this is so. I would also point out that that proviso omits all reference to Part IV of the Bill upon which the Government lay considerable importance. I suggest that this amendment is really tantamount to double legislation by this Council. If the measure was of such a nature that it could be deferred until the Reform Scheme came into operation, we should not have brought it forward at this moment.

"The procedure which the Hon'ble Member proposes would also involve frequent reference on details to this Council. I refrain however for the present from dealing with the constitutional position of this Council as it is raised more definitely in a later amendment. I regret that I must oppose the amendment brought forward by Mr. Chanda."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I have nothing more to add to what I have already said."

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I beg to move that in clause 1 (3) for the words 'three years' the words 'one year' and for the words 'of the termination of the present war' the words 'this Act comes into force' be substituted.

"I do not think it is necessary to make a speech in support of this amendment. If an emergent measure is required, I think it would be enough if you keep it in force for one year from the time it comes into force instead of three years as stated in the Bill. With these words I place this amendment before the Council."

**The Hon'ble Sir William Vincent**:—"My Lord, there are two other Hon'ble Members who have moved similar amendments. May I suggest that they should speak if they wish to move them before I speak?"

**The Hon'ble Mr. V. J. Patel**:—"I move, your Excellency, my amendment. I beg to move that in clause 1 (3) . . . .

**His Excellency the President:**—"It will be convenient, Mr. Patel, if you move your amendment now, but if you like to speak it will practically cover the same ground. Do you wish to speak?"

**The Hon'ble Mr. V. J. Patel:**—"I shall speak later."

**The Hon'ble Rai Bahadur B. D. Shukul:**—"My Lord, I have nothing more to add to what the Hon'ble Mr. Chanda has said."

**The Hon'ble Sir William Vincent:**—"The effect of this amendment, my Lord, would be to leave the Government powerless to deal with this revolutionary crime for an indefinite period, and to give them powers for one year only. If we consented to wait for three years, we should be practically admitting that there was no urgent necessity for this legislation. I have already explained to the Council the reason why it is urgent. The Government have already reduced the period for which the Bill is to be in force to the minimum which they think possible, and there are indeed many who think that three years is an inadequate period. Government cannot accept an amendment to reduce the period further or to postpone indefinitely the date on which the Bill will come into force. I really myself am not quite sure as to the meaning of the first part of the Hon'ble Member's amendment, as he says for the words 'three years' the words 'one year' and for the words 'termination of the present war' the words 'this Act comes into force' be substituted. To interpret that I had to refer again to the previous amendment which had just been put to the Council, and I concluded that the Hon'ble Member meant that the Bill was not to come into force until six months had lapsed after the formation of the new Legislative Council."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, there are two points involved in this amendment. The first is that one year should be substituted for three years. With regard to this I would say that the difficulty the Hon'ble the Home Member has urged will be met if the amendment is accepted. If a real necessity is felt by Government after one year to renew this Act, they will not find it difficult to renew it. But three years seems to be a long period in the view of those who have urged this amendment in the Council. The substitution of one year for three years does not mean that at the end of one year the Government will be powerless and will not have sufficient weapons in their armoury to deal with revolutionary or anarchical crime. But if the existing weapons should prove insufficient, it will be open to the Government to bring up a short continuing measure before the Legislative Council and pass it, as has been done on other occasions at one sitting of the Council, because the Government will have a majority even when the Reformed Councils come into existence, so far as one can see.

"My Lord, there is the other part of the amendment, namely, that for the words 'of the termination of the present war' the words 'this Act comes into force' be substituted. The Hon'ble the Law Member himself observed, in speaking on the previous amendment of Mr. Chanda, that the date of the termination of the present war is an indefinite and yet undefined period. Well, for that very reason the amendment now before the Council should commend itself even to him. We do not know the date from which the termination of the war will be determined. Instead of using that expression, if it is said 'from the date on which this Act comes into force', we shall know for what period the Act is passed."

**The Hon'ble Sir William Vincent:**—"May I put a question to the Hon'ble Member? I do not quite understand the date to which the Hon'ble Mr. Chanda refers when he speaks of the Act coming into force unless it is

specially laid down in the Act; it is a matter of interpretation and I read this amendment with the previous one."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I understood the words to mean the date on which the Bill would be passed, or rather the date on which it would receive the assent of the Governor General. That is how I understood it. The expression 'from the date of the termination of the present war' is at present indefinite and it will prolong, in fact, the duration of the Act by at least several months, whereas if the period is to run from the date on which the Act becomes law, the period will be what the proposal of the Government evidently on the face of it would mean—three years from the date on which it becomes law."

**The Hon'ble Sir George Lowndes:**—"My Lord, there is very little to say in answer to the Hon'ble Pandit except that the date of the termination of the war, though at this moment an indeterminate date will be fixed by a Bill which has already come before this Council in accordance with the declaration of the date of the termination of the war by His Majesty's Government. There will therefore be no indeterminate date from which the Bill will come into force. My Hon'ble friend Sir William Vincent has said that he wishes to have this Act in force when the Defence of India Act comes to an end, and there is no intention to use this Act till after the termination of the war. As to the period for which the Government have, after mature consideration, decided that the Act must be in force, we think that a period of three years from the termination of the war is the shortest period for which it is any use having legislation at all."

11-14 A.M. **The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, as it will appear from the remarks of my Hon'ble friend Pandit Malaviya which I accept, the one year would be one year from the date the Bill was passed."

The amendment was put and negatived.

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move that in clause 1(3) for the words 'three years' the words 'one year' and for the words 'termination of the present war' the words 'passing of the Reform Bill in Parliament' be substituted. The clause, as it is proposed to be amended, will read thus:—It shall continue in force for one year from the passing of the Reform Bill in Parliament. Now, my Lord, it has been suggested that one year is rather a short period. I put it to the Council to consider whether there is really any sense in making it three years. I consider three years an arbitrary period, and so also is one year. We feel that the period of three years is long and that when the period of one year is over, you can always come to this Legislative Council and as my friend the Panditji observed, you can get through an amending Bill in one day and have the period extended if the necessities of the case require it. Another point that I wish to make is that the Act should be in force from the date of the passing of the Reform Bill in Parliament. At present, as your Excellency knows, there is no urgency about it. Let the Act be passed if you want to pass it, but let it come into force after the passing of the Reform Bill in Parliament.

"With these few words, I move my amendment."

**The Hon'ble Sir William Vincent:**—"My Lord, the Hon'ble Member proposes that the Bill should not come into force until after the passing of the Reform Bill in Parliament, and, as I understand, he advocates this course on the ground that the measure is not an urgent one. I have spoken at length on this subject at two successive meetings of this Council endeavouring to make it clear that, in the opinion of Government, the measure

was of the greatest urgency and yet the Hon'ble Member asks me to postpone the operation of the Act until after the new Councils will have come into being, when, according to the generally expressed opinion of this Council, the need for such legislation will really be less. That, I think, is not consistent with the arguments previously put forward. He further asks that the Bill should then remain in force for one year only. We fixed the period of three years as the minimum period within which we could hope for this movement to settle down. We are satisfied that a period of one year is not sufficient, and we do not think that it is desirable to renew a discussion of the character of the present one every year in this Council. The debates on the present Bill will indicate how difficult it would be really in practice to follow the course advocated by the Hon'ble Member of passing a measure in one day. For these reasons I must oppose the amendment."

**The Hon'ble Mr. V. J. Patel**:—"I have nothing more to add."

The amendment was put and negatived.

**The Hon'ble Rai Bahadur B. D. Shukul** * :—"I have nothing more to add to what has already been said by the Hon'ble Mr. Chanda and the Hon'ble Panditji. I think, too, that three years is rather a long period and that one year is quite sufficient. If you have to extend it then, it will come before the Council and there will be no difficulty. That is all."

* Moving his amendment that in clause 1(3) for the words "three years" the words "one year" be substituted.

**The Hon'ble Sir William Vincent**:—"I have nothing to add except to make one remark which I ought really to have made before and which, with your Excellency's permission, I shall make now. It was said we ought to employ this Act only after the conclusion of peace. I am quite prepared to give an assurance to this Council that we will issue no notification under it until peace is declared."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"I have nothing more to add, my Lord."

The amendment was put and negatived.

The motion that clause 1 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 2, as amended by the Select Committee, stand part of the Bill."

**The Hon'ble Rao Bahadur B. N. Sarma**:—"Your Excellency, I beg to move that in clause 2 (*1*) the following definition be inserted:—

'' Revolutionary movement' means a movement directed to the overthrow by force of His Majesty's established Government in India.'

"I submit, my Lord, that the Council should lay down what in their opinion is meant by a revolutionary movement, and the question is one of extreme importance. I take it that the Government in the framing of this Bill had largely in mind the ideas floating before the Rowlatt Committee when they formulated their proposals. It may be that the expression revolutionary movement is so clear or ought to be so clear to any understanding that there is no need for any accurate definition thereof, but I hope to be able to convince the Government that the matter is not quite so simple, and that the Legislature ought to attempt a definition thereof if it is possible to do so. I have taken it that the Government want to suppress any movement that is intended to bring about a revolution in the country by the overthrow of

the established Government by means of force not by means of constitutional agitation, and I thought that the Rowlatt Committee also had a similar intention. Speaking of the movement in Bengal they say at page 15 :—

'Barindra's object in returning to Bengal was, as he subsequently stated, to organise a revolutionary movement with the object of overturning the British Government in India by violent means.'

"I take it, therefore, that the object that is aimed at is the overthrow or overturning of the British Government in India by violent means or by force. The risk of avoiding defining the meaning of revolutionary movement is that we leave to the individual idiosyncracies of the various Provincial Governments or the members in charge of the Government of India at any particular time to understand what is meant by a revolutionary movement. If there is a movement in India which the officers consider to be far too progressive to have any chance of practical realisation in the early future, and that agitation to achieve that ideal would be accompanied or is likely to be accompanied by wrong methods, the Government may straight away say this is a revolutionary movement, on the mere chance of some individuals in the pursuit of a high ideal, which according to the officials may not be capable of immediate realisation, being likely to resort to unlawful methods. I have only to read the proceedings of the Madras Legislative Council on the 24th May, 1917, which are popularly believed were to a certain degree influenced by a circular issued by the Home Department of the Government of India, to convince the members of the Council that the fears that I express here are not altogether of an imaginary character. Questions were put in this Council as to whether a circular was not issued by the Government of India in the Home Department inviting the attention of Provincial Governments to the initiating and propagation of movements such as the Home Rule movement calculated to put ideals in the minds of people, which are of a visionary character and which may be likely to be attended by wrong methods. As I have put it, I have absolutely no objection whatsoever and nobody can have any objection whatsoever to wrong methods, to incorrect methods, to improper methods, to violent methods, being put down with a stern, strong hand at any time whatsoever, but it is the danger that the officials may think that a particular movement may be propagating or preaching a distant ideal which would or may be accompanied by wrong methods on the part of individuals, it is that which I am deprecating. Of course the circular was not placed on the table, but several persons who were supposed to have seen it, or who said that they had seen it, have published statements in the newspapers which, as far as I know, have not been corrected, that the Government of India took alarm at the propagation of these movements, I mean especially the Home Rule movement and His Excellency Lord Pentland, winding up the proceedings of the Legislative Council on the 24th of May, 1917, alluded in specific terms to these distant ideals being a source of trouble and also deprecating the employment of wrong methods.

"In so far as that speech is concerned, with the warning given against the employment of wrong methods I have not a word to say, but I respectfully submit that the rest of it is a warning to Legislatures as well as to the Government of India. Here is what His Lordship said :

'Here and now it is impossible for us to say what reforms in this respect will be proposed for India at the close of the War.'

He was deprecating any agitation during the course of the war to secure reforms for India.

'Whatever they may be, they will fall far short of the proposals to which I have alluded.'

That is the Congress ideals, although later on there was a Press Communiqué saying that exception was not taken to the Congress ideals as such.

'Yet there is no sign of the relaxation of this agitation and the educated classes in India are being led to expect that which will not come and in some cases that which they know will not come. It is obvious that this situation contains elements of misunderstanding, of difficulty and possibly of friction.'

He then goes on:

'For any such difficulties the leaders of this agitation and all who support and sympathise with them will be directly responsible. Against all advice and warning they have initiated and persist in this agitation at a most unsuitable time.'

Then the speech warns against the employment of incorrect methods, but it is the last portion that I want to emphasise:

'And on behalf of my Government I call upon all who hear me or read these words for their support in any action that the Government may be forced to take to discourage these unwise and dangerous methods.'

I will again repeat against that I have no objection

'. . . . and the extravagant aims which they are designed to further.'

Therefore, my Lord, any movement, a legitimate movement which the Government of Great Britain has recognised to be a legitimate movement moving towards self-government as rapidly as circumstances permit,—any movement of that character which may be out of harmony with the existing state of things, may be honestly construed by zealous officers as a movement fraught with danger to the country. If you do not define the term 'revolutionary movement' it may mean a movement so far in excess of the present conditions, or so far in advance of the present conditions, as to revolutionise the existing state of things. Thus if we have the present bureaucratic government, where everything is done by the Government, a change of that into self-government will be distinctly revolutionary. Would not a person working for a revolutionary movement of such a character come within the term 'revolutionary' unless the Legislature defines and limits the scope and meaning of the words? It is that object, and that object only, that I have in view in moving this amendment. The words I have chosen may not be happy, and it is for the wisdom of the Legislature to devise any other words if they think that the object I have at heart has to be achieved. But I think the words I have chosen are apt and will serve the purpose which I have in view. I therefore respectfully move that this amendment may be accepted."

**The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, I beg to support the amendment that has just been put before the Council by my friend the Hon'ble Mr. Sarma. It seems to me that it is consistent with the avowed object of this Bill and with the declared policy of Government which is responsible for this measure. The expression 'revolutionary movement' is not an expression of law. It is a phrase of political language, and it seems to me, my Lord, that it would really be extremely useful if you could give some sort of a definition for the guidance of Courts of law. My Hon'ble friend Mr. Sarma has pointed out the dangers lurking in the Bill if you do not give any positive definition of an expression like that. I do not suggest for a moment that it will be deliberately abused; but that it may be abused I do not think anyone can say is an impossibility. Therefore, in order to enable the Courts to come to correct conclusions, and also to assure the public mind that the proper test is being applied by the Executive Government in taking action under a measure like this, it seems to me that it is very necessary that you should give some sort of an explanation. The Hon'ble Mr. Sarma's amendment seeks to define the expression here as a movement which is directed to the overthrow by force of His Majesty's established Government in India. My Lord, I think that it brings out very well the meaning of the expression, so far as it is capable of being defined in connection with this Bill, and it is consistent with the Government's policy. I therefore very strongly support this measure." 11-31 A.M.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I wish to support this motion. As a matter of fact I was thinking of sending notice of a similar amendment, but I found that my list was already too long and I therefore refrained from doing so. When I found my friend the Hon'ble

Mr. Sarma contemplated putting down an amendment to this effect, I encouraged him. He asked me if the Calcutta High Court anywhere defined revolutionary movement. I said I do not think it is possible for a High Court to frame a definition, and I think it is very necessary that this should be done here, so that there may be no difficulty hereafter in construing the Act."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My Lord, I support the amendment. I would draw attention to the phraseology that has been used in the Preamble of the Bill where the object of the Bill is defined to be dealing with 'anarchical and revolutionary movements.' The Act is called the 'Anarchical and Revolutionary Crimes Act,' which is more definite than 'movements.' Then the word 'movement' occurs in section 3 of the Bill—'If the Governor General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted . . . .' In view, therefore, of what my friends the Hon'ble Mr. Sarma and the Hon'ble Dr. Sapru have said, it seems very desirable that the expression 'revolutionary movements' should be made more definite and clear. The use of the word 'Crimes' in the title of the Act suggests a solution which may be acceptable to the Government. If you substitute the word 'crimes' in place of the word 'movements' the object will be gained . . . .

**The Hon'ble Sir George Lowndes**:—"My Lord, I rise to a point of order. We have no amendment to that effect. The Hon'ble Member is not supporting the amendment before the Council, but moving an entirely different one."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"Without moving an amendment, I am perfectly within my right to support, with arguments, any amendment that is before the Council. That is what I am doing. I know as well as the Hon'ble the Law Member that I have not given notice of any such amendment. I draw attention to the language used in the Bill in support of the argument which I am placing before Council in support of the amendment of my friend the Hon'ble Mr. Sarma; and I say if the word 'crimes' were used instead of 'movements,' that would have been consistent with section 1 of the Act where the title of the Act is defined. As this has not been done, it becomes very necessary that in order to prevent any such conflict of opinion arising as is apprehended, 'revolutionary movement' should be defined. My Lord, as my friends the Hon'ble Dr. Sapru and the Hon'ble Mr. Sarma have pointed out, revolutionary movements may be of a perfectly innocuous character, absolutely unconnected with any crime; and nobody knows better than my English friends, whose literature and history have frequently had to deal with revolutionary movements of different characters, that it would take people somewhat by surprise if they were asked to take it that revolutionary movements meant only criminal movements. Unless the phrase is defined, it is liable to be misconstrued, and there is danger of that misconstruction leading some petulant Governor to take action under the Act which will not be justifiable and which will not commend itself to any sensible man. We have in the history of the past few years very unhappy experiences of how expressions used for one purpose have been misconstrued and used for other purposes. The language of the Defence of India Act Rules has been so misconstrued in the opinion of a number of people. Therefore I submit, my Lord, that there should be no room left for doubt and dispute, and for an apprehension in the public mind that at a time when political agitation may assume virility and vigour some petulant Governor might feel nervous and might take action under the provisions of this Act.

"That is not what your Excellency intends should be done; that is not what I take it your Excellency's Government intends should be done. Therefore, the request is absolutely reasonable that the matter should be placed beyond doubt by defining revolutionary movement as has been suggested by the Hon'ble Mr. Sarma."

**The Hon'ble Sir George Lowndes**:—"My Lord, one is almost tired of reiterating both in this Council and outside it that this Bill is not aimed at constitutional agitation of any sort or kind. I hope that this may be the last time when it may be necessary to reiterate that statement in the discussions on the Bill. Then, with regard to this amendment and what has been said on it. These words were inserted in the Bill at the express and unanimous request of all the non-official Members forming part of the Select Committee, of which my Hon'ble friend the Pandit was one.....

**The Hon'ble Pandit Madan Mohan Malaviya**:—"May I rise, my Lord, to a point of order. I am not sure that my friend is right in saying what he has said. We wanted that the scope of the Bill should be confined to revolutionary and anarchical crime; we understood that that would be done; I am not sure that we wanted the word 'movements' to be put in there. When the modified clause was put in, there was no discussion upon it."

**The Hon'ble Sir George Lowndes**:—"I am only dealing with the question of the word 'revolutionary.' The Hon'ble Pandit appears unable to understand that there is no amendment with regard to the word 'movement.' It might have been more reasonable if he had asked for a definition of 'movement' than for a definition of 'revolutionary'; but we have no amendment to that effect. These words 'revolutionary' and 'anarchical' were, I repeat, put in at the request of the non-official Members of the Committee, of whom my Hon'ble friend the Pandit was one, and he did not suggest in the Committee, nor did any Member of the Committee suggest that it was necessary to define the word 'revolutionary'. And for very good reason. It was quite recognised in the Committee as has been stated by my friend, Dr. Sapru, that 'revolutionary' is not a legal term at all. It is not an expression of law; it is not a technical expression in any way, nor do we use it or seek to use it in this Bill in any but its popular and dictionary sense. We do not insert definitions of a word in a Bill under any circumstances if it is merely the popular sense in which it is used; we leave that to be ascertained from the dictionary. My Hon'ble friend, Mr. Sarma, appears to me to be on the horns of a dilemma. Either he uses the word in the ordinary dictionary meaning in which case we may leave it to be looked up in the dictionary, or he uses it in some special sense which was not the amendment accepted by Government in Select Committee. It was definitely accepted in the Select Committee by Government at the request of Hon'ble Members in the ordinary dictionary meaning of the word, and it is that meaning on which we rely now. There is no good attempting to attach volume after volume of Murray's dictionary to a Bill like this; it will not help any one. When a Judge or any one else—even a 'petulant Governor'—wants to know what the word 'revolutionary' means, he can go to the dictionary and look it up there, and then possibly the petulant Governor may fall into an error, because the dictionary would tell him that it either means an attempt to overthrow the established government of a country or the motion of a celestial body in moving round a particular orbit. If the Council really thinks that there is any danger of even a petulant Governor being led into error by those two variations in the dictionary, there may be something to be said for the amendment. But in the circumstances, I regret Government must oppose this amendment."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"I would ask the Hon'ble Member if he has heard of the revolution in Japan in 1868."

**The Hon'ble Sir George Lowndes**:—"I am afraid if my Hon'ble friend asks me, I must say I have not heard it called that."

**The Hon'ble Mr. Srinivasa Sastri**:—"Your Excellency, I had the honour of sitting on the Select Committee, and I was one of those who recommended the adoption of the word 'revolutionary'. I was not

unaware at the time of the meaning of the word in the ordinary sense. But it is now pointed out by the Hon'ble Mr. Sarma that it might include peaceful revolutions. My Hon'ble friend, Pandit Madan Mohan Malaviya, is not perhaps quite right to call what took place in Japan in 1868 a revolution; it is often called the restoration. But it had the character of a revolution in one sense, and people, if we are to accept the ordinary dictionary sense as the Hon'ble the Law Member advises us to do, would be found frequently using the word 'revolutionary' in innocent ways, absolutely unsuggestive of anything criminal. For example, in recent political debates in India, the Montagu-Chelmsford report has been often described as revolutionary; the Congress-League scheme was described by even a larger number of people as revolutionary. Many opinions that we express here without suggestion of the Penal Code at all are described as revolutionary. Talk of the republic in England would certainly be revolutionary in the ordinary dictionary sense, but I have not heard yet of any people who talked of republican institutions in England being marched off to the jail. Nor have I heard still, although perhaps a very strict censorship is established over the cable, of the recent Sinn Fein movement having been yet caught, held up by the police, because it has not done anything more than peacefully sitting down. . . . .

**The Hon'ble Sir George Lowndes**:—"My Lord, I think the Hon'ble Member ought to know that the Sinn Fein movement has not only been found to be revolutionary but, I believe, a large number, I think over a 100, of Sinn Feiners, are at this moment interned in Ireland or in England."

**The Hon'ble Mr. Srinivasa Sastri**:—"On account of the recent talk of Sinn Fein revolution?"

**The Hon'ble Sir George Lowndes**:—"Yes."

**The Hon'ble Mr. Srinivasa Sastri**:—"That is certainly news. In these ways, omitting the last point about Sinn Fein, it seems to me that there is a danger, which, I am very sorry to say I did not think of at the time I sat in Select Committee, of the word 'revolutionary' being taken to apply even to suggestions of radical political reform which has no basis whatever in or connected with anything anarchical. I suppose a strict lawyer would say that when we use the word 'revolutionary' alongside of the word 'anarchical,' it would be impossible for such an interpretation to be put upon it. But, occasionally, people may use the word in that sense and I see nothing harmful in defining the word 'revolutionary,' so that it might apply only to those movements which are sought to be carried out by the application of force. Supposing, for example, it were possible by a mere majority opinion almost universal, overwhelming us, to establish a very different form of Government to that which is now established, it might be revolutionary in its character, certainly will be according to the dictionary sense, but it need not be necessarily such as to call for the application of any criminal law. It is to avoid that, I think, that Mr. Sarma desires to define the expression 'revolutionary movement' as that which is sought to be carried out by the application of force. I see no particular harm in doing it. On the contrary, I see some advantage, and therefore, although I sat in the Select Committee and was responsible for the use of this word without asking for a definition of it, I think now I might change my mind, which is not legally trained, and support the amendment moved by Mr. Sarma."

11-45 A.M. **The Hon'ble Mr. Surendra Nath Banerjea**:—My Lord, I desire to associate my self with the remarks that have fallen from the Hon'ble Mr. Sastri. I was one of those who asked for the insertion of the term 'revolutionary and anarchical'. The Hon'ble Member in charge of the Bill at once accepted my request, and we have to record our acknowledgments for this and many other concessions of the same kind. The point did not arise at the time, it occurred to nobody that this word 'revolutionary' movement

might be used in the sense in which it has been suggested and inasmuch as a difficulty has arisen, I think it ought to be met. There is no harm in accepting the amendment of the Hon'ble Mr. Sarma in inserting a definition, as the matter is now under consideration. It does not in the least interfere with the scope or character of the Bill, but makes the object more clear, more transparent. I trust the Hon'ble the Home Member will see his way to accept the amendment of my Hon'ble friend."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :—"My Lord, I associate myself with what has fallen from the lips of the Hon'ble Mr. Sastri and the Hon'ble Mr. Banerjea. But there are one or two points to which I would like to draw the attention of the Hon'ble the Law Member. It is perfectly true that the Government in this Council has declared in express terms that this Bill is intended to put down anarchical and revolutionary crimes, and that intention has been embodied in certain parts of the Bill. The Hon'ble the Law Member, however, is, I am sure, perfectly aware of the ruling which has been given, I believe, also by their Lordships of the Privy Council, but most certainly by the Indian High Courts, that a declaration by the Hon'ble Member in charge of a Bill or speeches delivered in the Legislative Council during the debate on the Bill are utterly irrelevant to the construing of the Statute when it comes before a court of law. The advantages of making the language absolutely clear and placing the real intention beyond all possibility of dispute are obvious. We know full well that expressions even clearer than these have been differently construed by different High Courts. That being so I also appeal to the Hon'ble the Home Member to accept the amendment. After all it is calculated to place the intentions of the Government beyond all possible doubt."

**The Hon'ble Mr. M. A. Jinnah** :—" My Lord, as my Hon'ble friend Mr. Shafi has said just now, no amount of speeches on behalf of the Hon'ble Member in charge of the Bill will avail for one single moment when we come to a court of law to construe the Statute. The Hon'ble the Law Member showed a great deal of annoyance on this point and said: 'We have no desire to interfere with constitutional movements.' There is no need for indignation; we know that the Government have said that over and over again. There is no need for repeating it. We know that you say you do not wish to interfere with political movements. But the Bill is now before the Council and we are responsible for this Bill which is going to become law, and therefore, my Lord, we cannot take too much care in considering every single clause in this Bill before it leaves the Council. Then the Hon'ble the Law Member says that in the Select Committee Non-official Members on the one side and the Government on the other side have agreed to this. But if you have agreed to this, is not this Council or any Member entitled to point out something new and say 'although you have agreed to a particular phraseology, yet there is a flaw in it?' Is this Council merely a machine? Because in the Select Committee the Government, on the one side and those who were appointed Members of the Select Committee have agreed to a certain clause, is it not open to us to point out that there is some flaw? Is this the answer?.....

**The Hon'ble Sir George Lowndes**:—"I think my Hon'ble friend has misunderstood me. I did not mean to suggest that. In the Select Committee we accepted the dictionary sense of the word. It was a compromise on this basis and nothing more."

**The Hon'ble Mr. M. A. Jinnah**:—"That is what I object to; this is not a question of a compromise; this is going to become a part of the law of this country; it is not a question of compromise. What you have to do is to make your intention clear. Is this clause right or is it not? That is the question that the Council has got to consider. Some may

have had the privilege of being on the Select Committee, every member of this Council cannot be, but we are entitled to say 'here is a flaw and we press on you that that should be put right.' I attach no importance to your compromise. I do not wish to add a single word to the reasons that have been already advanced in support of the amendment. I hope the Government will see that there is no answer to this point."

**The Hon'ble Sir George Lowndes** :—"The argument has been advanced by the Hon'ble Mr. Shafi and the Hon'ble Mr. Jinnah that statements made in this Council are not binding on the Courts. I agree. But can they point out to me any clause in this Bill under which the words 'revolutionary crime" will come before a Court?"

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :—"My Lord, I am prepared to answer that. If the Hon'ble Member will turn to the preamble he will find the following :—'Whereas it is expedient to make provision that the ordinary criminal law should be supplemented and emergency powers should be exerciseable by the Government for the purpose of dealing with anarchical and revolutionary movements.' Then in clause 3 it is said 'If the Governor General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted.' In several parts the Hon'ble the Law Member will find these words 'revolutionary movements' repeated in various places, and they have a very important bearing on the various sections and the consequences will be such.....

**His Excellency the President** :—"I think the Hon'ble Member should not make a speech when he is asked a question."

**The Hon'ble Rao Bahadur B. N. Sarma** :—"My Lord, I have here the 'Concise Oxford Dictionary' and it would be well if we had this point settled, as once the Government has resolved on a particular course of action, it is hard to get it changed."

**His Excellency the President**:—"I cannot see, Mr. Sarma, that anybody has taken his authority from that book."

**The Hon'ble Sir William Vincent**:—"My Lord, this is obviously a matter of drafting in which the Government must be guided by the advice of the expert department. Apart from the question of this compromise—there really was no compromise, but a suggestion which we accepted.—Apart from that and on the merits I can see no adequate reason for making any change in the clause as drafted. It is a little surprising that, as we had a number of lawyers on the Select Committee, some member of the Committee did not raise the point then. If this had been done we could have had it further examined. It would be a little more considerate to Government if points of this kind were raised in Select Committee rather than afterwards. I do not want to put it higher than that or suggest that a member of the Committee is precluded from raising the point later. On the general question I submit that to the man in the street the meaning of the word 'revolutionary' is perfectly clear. Moreover, if Hon'ble Members will refer to the Bill they will see that it is throughout used in connection with the term 'anarchical.' I do not think in such circumstances it is capable of any misinterpretation. Further, if I may refer again to the Bill, Hon'ble Members will see that it can only be applied to criminal movements and wherever you get the words 'revolutionary movement' there is immediately afterwards a reference to offences. For instance, if you look at Part I it says: 'If the Governor General in Council is satisfied that in the whole or any part of

British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent.' That indicates sufficiently what the character of the revolutionary movements mentioned in the Bill are if indeed any further explanation were necessary. Part II says: 'If the Governor General in Council is satisfied that anarchical or revolutionary movements which are . . . .

**The Hon'ble Mr. Surendranath Banerjea** :—"There is a disjunctive 'or' between the words 'anarchical' and 'revolutionary'."

**The Hon'ble Sir William Vincent** :—"I am not speaking of the disjunctive, but I refer to the reference to offences which follows. 'If the Governor General in Council is satisfied that anarchical or revolutionary movements, which are, in his opinion, likely to lead to the commission of scheduled offences are being extensively promoted in the whole or any part of British India,' and so on. In Part III again, the wording used is the same as in Part I. In these circumstances, having regard to the use of the word 'anarchical' and the reference to offences which follows, I cannot see myself that there is any possibility of this word 'revolutionary' being misinterpreted. The only suggestion of actual misinterpretation that I heard was when it was said that the word 'revolutionary' was sometimes used even in criticisms of the Reforms Report or such documents as the Congress and Moslem League Reforms Scheme. My Lord, the word revolution may be loosely used by partisan newspapers, but it does not follow that responsible authorities will so interpret it, or that they will not interpret the language of the Bill with much more care and accuracy.

"The only other matter to which I need refer is one raised by the Hon'ble Mr. Shafi. He said that what was said in Council was of no importance. Courts would have no regard to speeches made here in interpreting the Act. That, I believe, is a perfectly correct statement. I myself should be prepared to accept it at any rate. But what was pointed out, and what I think he did not quite understand was that throughout this Act, there is no question of the Court deciding whether a movement is revolutionary or anarchical. I take the very clauses cited by the Hon'ble Member. (Clause 3.) It begins: 'If the Governor General is satisfied that, in the whole or any part of British India anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent, he may make a notification . . . .

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :— 12 P.M.
"It shall be open to an accused person when he is called upon before the Court to say that the offence which he has committed has nothing to do with any revolutionary movement."

**The Hon'ble Sir William Vincent** :—"My Lord, I am attempting to read the clause in the Bill from which these words are used, and I submit that from clause 3 it is evident that the authority to decide under that section whether a movement is revolutionary or anarchical is the Governor General in Council and not the Court; the position is the same in regard to all the other sections. I do not think it has ever been suggested—and I hope it will never be suggested—that the Government of India is not bound by authoritative statements made in this Council. I know that whenever we have or are supposed to have diverged at all from any undertaking, Hon'ble Members are ready enough, if I may say so, to accuse us of having done so wrongly. It is only a few minutes ago that I gave an undertaking not to issue a notification bringing this Act into force before the conclusion of the war, and I should like to know whether Hon'ble Members think that that is not an undertaking which is binding upon Government. Part II again begins thus: 'If the Governor General in Council is satisfied that anarchical or revolutionary

movements' and so on. Here, again, there is no question at all of the Courts. Part III is exactly the same again 'If the Governor General in Council is satisfied.' Therefore, my Lord, the only persons who will decide the meaning of these particular words are the executive authorities. I do not think it can be urged for one moment that the interpretation suggested by the Hon'ble Mr. Sarma can be applied to this word by the Government, and the Courts will not have to interpret it at all."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I am generally a very great optimist and therefore expend perhaps unnecessary energy and enthusiasm in an unreal debate, but I shall not for the moment lose my optimism but will still try to persuade the Government to think of a possible change if reason be shown in that direction. What are the grounds, your Excellency, upon which the opposition of the Government to my amendment is based? The grounds are (1) The Select Committee has not suggested it and that these words were more or less adopted in deference to their wishes; and (2) it is unnecessary to insert any definition. Mark, my Lord, there was not one word said that the adoption of the definition that I have suggested would cripple the Government in any way, would divert legislation from its proper object, or would in any way handicap the objects which the Government have in view. All that has been said is that it is superfluous; and we give you our word of honour, we do not mean any such thing, and therefore why do you ask for superfluous words to be inserted in this artistically drawn up Bill. I submit, my Lord, even the artistic taste may perhaps be sacrificed a little to satisfy, rather to remove, the fears entertained by so many Hon'ble Members inside the Council and by many people outside this Council. Let that alone. But are we really correct in assuming that the definition of the word 'revolution' that has been suggested as being a dictionary definition is a correct one, or that it is the only meaning? I find that even Murray gives the meanings of the word 'revolution' as 'alteration,' 'change,' 'mutation,' 'an instance of a great change or alteration in affairs or in some particular thing'. Of course, no doubt he follows it by saying 'a plot to over-throw an established Government in any country or State by those who are previously subject to a forcible substitution of a new rule or form of Government' I find above that 'an instance of a great change or alteration in affairs or some particular thing". That is, a revolutionary movement may mean under the definition given in Murray's dictionary, a movement directed to bring about a great change or alteration in affairs or in some particular thing. We have at present only 6 or 7 per cent. of officers in the military services. If we ask for 50 or 60 per cent. it is a great, violent change having very important effects; therefore it is a revolutionary movement. So in almost every department any change of a very drastic character would be a revolutionary change, and any movement directed towards that change, towards obtaining that change, would be a revolutionary movement even according to my reading of Murray's Dictionary. It may be that my poor intellect cannot quite grasp what an English dictionary meant for its readers to grasp, but there is that meaning.

"If it is capable of that meaning, as it may be, that dictionary definition ought not to be employed too long and too largely for the purpose of saying no change shall be adopted. The attention of the Council has already been invited to the fact that in section 20 and various other sections the words 'revolutionary movement' are employed disjunctively, distinctly from anarchical movements. So a movement may be strictly constitutional, but if it is revolutionary in the sense I have suggested, it is open to the Governor General in Council to proclaim it as coming within that definition. I submit, my Lord, especially as the aid of judicial courts has been denied to us, there can be no harm in accepting the Government at their own word and saying 'put in that definition which would give us an assurance that it is what you mean." There can be no harm in that. I therefore hope that the Government will not be annoyed by our putting forward amendments intended to bring out the sense clearly in the way in which they ought to, although perhaps it may be unnecessary to do so. This is a matter of very great importance and umbrage

can be taken under the vague use of such terms for doing things which perhaps the authors of this Bill do not contemplate."

The motion was put and the Council divided as follows :—

*Ayes—18.*

The Hon'ble Mr. S. N. Banerjea.
" Raja of Mahmudabad.
" Dr. T. B. Sapru.
" Pandit Madan Mohan Malaviya.
" Mr. S. Sastri.
" Mr. R. Ayyangar.
" Mr. B. N. Sarma.
" Mir Asad Ali, Khan Bahadur.
" Sir Dinshaw Wacha.
" Mr. V. J. Patel.
" Mr. M. A. Jinnah.
" Sir Fazulbhoy Currimbhoy.
" Maharaja Sir M. C. Nandi.
" Khan Bahadur Mian Muhammad Shafi.
" Sardar Sundar Singh.
" Mr. G. S. Khaparde
" Rai B. D. Shukul Bahadur.
" Mr. K. K. Chanda.

*Noes—33.*

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
" Sir Sankaran Nair.
" Sir George Lowndes.
" Sir Thomas Holland.
" Sir William Vincent.
" Sir James Meston.
" Sir Arthur Anderson.
" Sir Verney Lovett.
" Mr. H. F. Howard.
" Sir James DuBoulay.
" Mr. A. H. Ley.
" Mr. W. M. Hailey.
" Mr. H. Sharp.
" Mr. R. A. Mant.
" Maj.-Genl. Sir Alfred Bingley.
" Sir Godfrey Fell.
" Mr. F. C. Rose.
" Mr. C. H. Kesteven.
" Mr. D. de S. Bray.
" Surg.-Genl. W. R. Edwards.
" Mr. G. R. Clarke.
" Mr. C. A. Barron.
" Mr. P. L. Moore.
" Mr. M. N. Hogg.
" Mr. T. Emerson.
" Mr. E. H. C. Walsh.
" Mr. C. A. Kincaid.
" Sir John Donald.
" Mr. P. J. Fagan.
" Mr. T. J. Marten.
" Mr. W. J. Reid.
" Mr. W. F. Rice.

The amendment was therefore negatived.

The motion that clause 2 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Mr. V. J. Patel**:—"My Lord, the amendment I have the honour to move is that Part I be deleted. The object of this Part is to secure the speedy trial of certain offences. That is the only object for which this particular Part seems to be proposed. Now how is this object to be secured? In the first place, instead of laying the complaint in the ordinary way before the Magistrate, you have a provision to lay it before a Chief Justice. In the second place, you have the special tribunal to try the case. Thirdly, there is to be no jury in such cases and fourthly, there is to be no appeal. This is how it is proposed to bring about a speedy trial of certain offences. In ordinary trials, as we understand them, we have in the first place the police investigation, then the inquiry before a Magistrate, thirdly, the trial before a Court of Sessions, and, fourthly, the appeal to the High Court. This, it is 12-16 P.M.

alleged, takes a good deal of time, and as it is necessary that in certain cases there should be a speedy trial, this Part is proposed to be introduced. Well, here, the authors of the Bill seem to have lost sight of the powers Government already possess. Besides the ordinary procedure, they have got the Criminal Law Amendment Act, 1908. And what are its provisions? You have in the Criminal Law Amendment Act already a provision for a special tribunal consisting of three judges. I invite the attention of this Council to section 11 of the Indian Criminal Law Amendment Act (XIV of 1908), which says:—

'All persons sent for trial to the High Court under this Act, shall be tried by a special bench of the court composed of three judges.'

The trial before the Sessions Court is altogether dispensed with, and such trial is to take place before the special tribunal consisting of three judges of the High Court. Then the section proceeds further and says:—

'No trial before the special bench shall be by jury.'

So that you have another provision, as you have in this Bill, namely, that such trials shall be by the special bench only without the assistance of a jury. So, as I say, the only difference that I can find, reading the provisions of the Criminal Law Amendment Act of 1908 and the provisions of this Bill, is that a procedure for commitment proceedings is retained under the Criminal Law Amendment Act, while there are no commitment proceedings under the provisions of this Bill. With regard to these commitment proceedings, however, I beg to draw the attention of the Council to section 4 of the Criminal Law Amendment Act, which lays down that 'the accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during such inquiry, nor shall any person have any right of access to the court of the Magistrate while he is holding such inquiry."

"So that the commitment proceedings contemplated by the Criminal Law Amendment Act are merely *ex parte* proceedings occupying as little time as possible. Instead of laying the information before the Chief Justice, as proposed in the present Bill, you have only to lay it before a Magistrate. The Magistrate then examines witnesses for the prosecution and at once commits the case direct to the High Court, and the trial takes place before the Special Bench consisting of three judges without any jury. Then again, there is no provision for appeal in the Criminal Law Amendment Act. So that, all the conditions, namely, the absence of a jury, the absence of an appeal, and the trial by a special tribunal, are satisfied, excepting, as I say, the provisions regarding commitment proceedings, which are under the Criminal Law Amendment Act merely *ex parte*.

"You will ask me why then did the Rowlatt Committee recommend this measure? My reading of the Report of the Rowlatt Committee gives me the impression that the Rowlatt Committee seems to have lost sight of the fact that the commitment proceedings under the Criminal Law Amendment Act are *ex parte*. I will invite the attention of the Council to paragraph 181 on page 145 of the Rowlatt Committee's Report. First, they talk of juries:

'We think it necessary to exclude juries and assessors mainly because of the terrorism to which they are liable. But terrorism apart, we do not think they can be relied upon in this class of case. They are too much inclined to be affected by public discussion. We could give instances which have come before us, where we think there have been miscarriages of justice owing to the causes above mentioned. We may further point out that the trial of such cases without jury or assessors was introduced by the Indian Criminal Law Amendment Act, 1908.'

"Then they go on and say—

'As regards the procedure and the absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up. Furthermore, the delays involved by commitment

proceedings (and those are the words to which I would particularly invite the attention of the Council) and the double examination of witnesses increases the chance of the witnesses being intimidated, add to the hardships involved in their attendance with the consequence of making them less ready to come forward, and also afford time for them to forget the facts'.

"So it seems to me that the Rowlatt Committee apparently thought that during the commitment proceedings under the Criminal Law Amendment Act, witnesses would be cross-examined and then they would again be cross-examined before the special bench of the three High Court Judges. That is really not so. Under the Criminal Law Amendment Act, the procedure is that the commitment proceedings are to take place *ex-parte*; the accused is not to be present, no pleader will appear, the accused has no right of even any access to the court. That being so, there will be no delay as the Committee seems to think, and there will be no double cross-examination of witnesses as the Committee suggests. The only advantage the accused has under the Criminal Law Amendment Act is that by this procedure of having the witnesses examined before the Magistrate he exactly knows, when he is tried before the High Court, what the charge against him is, what the evidence against him is. As soon as the case is committed to the High Court, according to one of the sections, copies of the depositions recorded by the Magistrate are to be given to the accused. So he exactly knows what case he has got to meet. That advantage is now proposed to be taken away; beyond that I see no difference. I know there is one more provision in the proposed Bill, namely, that the accused may be examined as a witness on oath if he expresses his desire to the court to be so examined. The Part is intended with a view to securing speedy trial of certain offences, but the provision regarding the examination of the accused is calculated in my humble opinion to lengthen the proceedings rather than secure speedy trial, because, if the accused is cross-examined, new matters may be brought to light, with the result that the prosecution might ask the court to examine further witnesses on behalf of the Crown to meet those new matters, and the accused might also request the court to call witnesses on his behalf in regard to such matters.

"Anyhow, the object with which the Part is proposed to be enacted will be frustrated by the provision regarding the examination of the accused. I therefore think that this Part is absolutely unnecessary in view of the powers which the Government already possess, unless of course it is simply introduced for the purpose of inserting a provision for the examination of an accused person. I trust, therefore, that the Government will rest content with the powers which they already possess under the Criminal Law Amendment Act—powers which are really very drastic and one should have thought the time had arrived for a repeal of that Act. There is thus absolutely no case made out for the enactment of the proposed Part, and I trust Government will drop it."

**The Hon'ble Sir Verney Lovett**:—"My Lord, I only rise to explain that the last sentence in the second clause of paragraph 181 of the Rowlatt Report, which says—

'We may further point out that the trial of such cases without jury or assessors was introduced by the Indian Criminal Law Amendment Act, 1908',

in no way governs what follows. The next clause is entirely separate and merely goes on to say that the Committee considers that commitment proceedings should be avoided. It gives the reason why. The last sentence of the second clause in no way governs the third clause."

**The Hon'ble Sir James DuBoulay**:—"My Lord, the Hon'ble Mr. Patel has made my case easier by arguing simply that these provisions are already practically on the Statute-book and therefore are unnecessary. He has not attacked the provisions themselves, and it is not therefore necessary for me to go into any great detail as to the reasons for which we require Part I. 12-30 P.M.

"We want to set up special tribunals only in the case of these revolutionary and anarchical movements. In places where scheduled offences are prevalent, a special procedure is to be followed with the object of avoiding lengthy proceedings; and our reason for desiring this is the excessive prolongation of the trials which have occurred in certain conspiracy cases, of which many examples must be in the minds of Hon'ble Members of this Council. I need only mention the Alipur Conspiracy case, the Howrah Gang case and the Barisal Conspiracy case. In each of those cases from the time the accused came before the Magistrate to the time judgment was passed by the Court to which the trial was committed there was an interval of more than a year . . . .

**The Hon'ble Mr. V. J. Patel**:—"Were all those cases tried before a Special Bench or before the Ordinary Bench?"

**The Hon'ble Sir James DuBoulay**:—"Some before the Special Bench, and some before the ordinary Courts. The abuses of such prolonged proceedings are fairly obvious, and the Rowlatt Committee who went into this matter very carefully arrived at the conclusion that the delay involved by these dilatory proceedings and the subsequent appeal should be avoided. They gave very good reasons. I need not quote them all, but in paragraph 181 which Mr. Patel has already referred to the following will be found:—

'It is of the utmost importance' they say, 'that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up'.

Very often it is a very unwholesome excitement among students and others who may be interested in these trials. The Committee specially refer to the delays involved by commitment proceedings and the double examination of witnesses; they point out that this not only increases the chance of witnesses being intimidated, but adds to the hardships involved in their attendance, with the consequence that they are less ready to come forward, and further likely to forget the facts of the case on which they are going to give evidence.

"There is the argument, which we must all sympathise with, that you must not have a speedy trial at the risk of a miscarriage of justice. But, I think, it would be casting an unmerited slur on the ability, the intelligence and the fairness of the Judges of our High Courts if Hon'ble Members endorsed those arguments by supporting this amendment. We all want justice, but it is preposterous to suggest that in the special tribunals which this law will set up, we shall have anything else. I find it difficult to believe that there is anybody in this Council who does not believe that there are very serious evils in these delays in the administration of justice; and I find it equally difficult to believe that there is anyone here who does not feel that something ought to be done. And here we have the strongest possible Committee, composed of men whose instincts and training all tend to make them set their faces like a rock against anything in the nature of injustice, making a proposal of the nature we have embodied in the Bill. We have adopted their proposal and we have made some small modifications in the Select Committee, and these will come up for discussion hereafter when the other amendments are taken up for consideration. But it seems to me that this Part I, though it may be open to modification in points of detail, embodies a vital principle of the Bill. I submit that the Council have already expressed their opinion on this principle of the Bill when they agreed to refer it to the Select Committee, and that they would be stultifying themselves now if they supported this amendment."

**The Hon'ble Mr. M. A. Jinnah**:—"It seems to me, my Lord, that the Hon'ble Member who spoke on behalf of the Government has not appreciated the point of Mr. Patel's amendment. Mr. Patel's point, as I understood, was this. The Act of 1908 which was avowedly passed for this purpose, as the Preamble shows: 'An Act to provide for the more speedy trial

of offences.....dangerous to the public peace'. Therefore the object of that Act was, firstly, speedy trial. The object of the first Part of the Bill now before the Council is also speedy trial. The Hon'ble Mr. Patel does not quarrel with that at all. The Hon'ble Mr. Patel says 'You have already got a Statute which is called the Indian Criminal Law Amendment Act, 1908, and if your object is to have a speedy trial, or I will put it in this way, my Lord, a speedier trial, if you please, why don't you amend the Statute which is already in existence?' That is the point. The Hon'ble Mr. Patel as I understand him says that instead of doing that you have practically reproduced that Statute, with some modifications. One would have thought, my Lord, that the proper course, the simplest course, was to amend that Act if you want a speedier trial. If that alone was the object of the Government, I am sure, my Lord, that in this Council with regard to that object the Government would have received a great deal of sympathy and support. But I cannot really understand what is the object of the Government in repeating Statutes. You have got one already on the Statute-book, you want to have another."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My Lord, I support the amendment which has been put forward by the Hon'ble Mr. Patel. One advantage, to which attention has not been drawn, of the existing law to which reference has been made, namely, Act XIV of 1908, is that it is stated in the first clause of it that the Act will apply to the Province of Bengal, Eastern Bengal and Assam, and that the Governor General in Council may by notification in the Gazette of India extend the whole or any part thereof to any other Province. My Lord, from all we have heard and read, it would seem that if any justification can be pleaded for passing an Act of the nature proposed, though we dispute that there is such justification, it is to be found in the state of things in Bengal. Now this Act XIV of 1908 is already in force in Bengal. It has not yet been shown that there is any necessity for extending this Act to any other province. I do not mean to say that I am satisfied that there is necessity for enforcing such an Act in Bengal; but assuming that there is, it has not been shown that there is any necessity for applying such an enactment as is proposed in any other province. Secondly, several of the most important provisions of Act XIV of 1908 are the same as those which it is proposed to re-enact in Part I of the Bill before us. For that reason also it seems unnecessary that Part I should be re-enacted. It has been said that section 3 of the present Bill prescribes the conditions in which it is proposed that the enactment should be extended or applied to a particular province. But the language of the Preamble of Act XIV of 1908 is wide enough to cover cases that are likely to be taken up under the proposed enactment.

"My Lord, the next point on which I wish to say a few words is one which has already been mentioned by my other friends who have spoken before me, that is, the question of a speedy trial. I once more submit that it is not the right thing for the Government to desire a speedy trial. My Lord, I referred yesterday to the Prevention of Crimes Act of Ireland of 1882. That was an Act passed when two foul murders had taken place in Phœnix Park, and the whole of the United Kingdom had been stirred to its depths by the wickedness of the crimes. But even at such a time the Act which was passed by Parliament to deal with such crimes, sought to provide for a fair and impartial trial. It did not seek to provide for the speedy trial of offences. 'A fair and impartial trial' are the words which are used in the Act itself. I cannot think, my Lord, why the Government should not shudder to think of the consequences of a speedy trial when such a trial may end in the obliteration of a fellowman from existence. I submit, therefore, that it is bad enough that there should be one Statute like Act XIV of 1908 on the Statute-book. It will be doubly bad to add one more Statute of the same character to the Statute-book, particularly when the objects served by the two Statutes would be almost entirely the same. My Lord, if the Government will consider this aspect of the question, I hope it will yet see that it is moving

in the wrong direction. There is no doubt one difference. Act XIV of 1908 provides for the speedy trial of certain offences, but yet it does not do away with commitment proceedings. Commitment proceedings are to be had when the Local Government or the Governor General in Council thinks that proceedings in respect of any offence mentioned in the Schedule thereto—and the Schedules also are very much similar to the Schedule proposed here—should be tried according to the provisions of Part I of Act XIV of 1908. They are to make an order in writing to that effect, and on receipt of such an order the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to inquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule. Witnesses are to be examined by the Magistrate on oath, any statement which the accused may voluntarily tender is to be recorded. If the Magistrate is satisfied that a *primâ facie* case has been made out against the accused, he is to frame a charge against the accused, and make an order directing that the accused be sent for trial to the High Court where a Special Bench of the Court consisting of three judges is to be constituted to try the case. Now, my Lord, commitment proceedings were also to be gone through under the Irish Act. It was left to Sir Michael O'Dwyer to suggest in the communication which he made to the Government of India in 1914, that commitment proceedings, as well as the provision for appeal, should be eliminated. The Ordinance that he suggested was taken as the basis of the Defence of India Act and the rules made thereunder, as the Rowlatt Committee have stated in their report. I submit, my Lord, that matters stood in a very different position in 1914, and measures which were adopted in view of the situation in 1914-15 should not be re-enacted now when the war is ended and conditions are entirely different from what they were in that year. There is no justification yet shown why there should be speed secured. The Hon'ble Sir Verney Lovett drew attention to certain portions of paragraph 181 of the Rowlatt Committee Report. The Committee say there that it is of the utmost importance that punishment or acquittal should be speedy, both in order to secure the moral effect which punishment should produce, and also to prevent the prolongation of the excitement which the proceedings may set up. Now, my Lord, that does not take into account the danger of injustice which may be perpetrated upon the accused. They also go on to say: 'Furthermore, the delays involved by commitment proceedings and the double examination of witnesses increase the chance of the witnesses being intimidated, add to the hardships involved in their attendance with the consequence of making them less ready to come forward, and also afford time for them to forget the facts'. With regard to the first, my Lord, the Committee have taken an exaggerated view of the delays involved by commitment proceedings and the double examination of witnesses, and also of the increased chance of witnesses being intimidated. I submit few witnesses who come forward to speak against an accused person on oath before the Court, are likely to go back upon what they have said by reason of intimidation, because there is also the fear of the law which will inflict punishment upon them if they did. Secondly, if they are such timid people that they are so much liable to the influence of fear, we should not forget that they may also not unlikely be liable to other influences, influences of intimidation or force which might have led them to make untrue statements in the first instance. The one apprehension has to be pitted against the other. It has at any rate to be borne in mind. As to the second point that it will add to the hardships involved in their attendance, with the consequence of making them less ready to come forward, I could never imagine that such an argument would be urged on behalf of Government. If witnesses would be less ready to come forward to give evidence because of the hardships involved in their attendance, where a man is charged with a heinous offence, the law can compel their attendance. The provisions of law are strong enough and ample enough to compel their attendance. Lastly, the Committee said that delay would also afford time for them to forget the facts. On the contrary, I think that when they have once made statements on oath, that would help them to fix the facts in their memory rather than lead them to

forget them. I submit, therefore, that the reasons advanced are very meagre, and afford very slender support to the proposal to do away with commitment proceedings; and I submit that a case has not been made out for providing for a still more speedy trial of serious offences than is already provided for by the existing Act. The provision relating to the examination of the accused on oath is no doubt a new provision. I will not deal with this point further now, but will do so at a later stage. I will only submit that there is nothing to justify the enactment of a provision similar to the one that already exists in Act XIV of 1908. For these reasons I support the amendment of the Hon'ble Mr. Patel. There is only one other point which I should touch upon. In replying to the proposal of the Hon'ble Mr. Sarma to define 'revolutionary' movements, my official friends argued as if it were a sin to receive light if it did not come to them before a particular moment. I venture to differ from them. We are all human beings, including my friends on the official benches; and it will be within their experience that a certain amount of light is flashed on the question after the first discussion. I do not think they would seriously shut their eyes against any illumination, and refuse to accept the light it brings, if it should not have happened to come to them at a particular juncture. It is possible that the provisions of Act XIV of 1908 were not as fully examined as they might have been when Part I of the Bill before us was drafted. It is possible that the discussion that has now taken place has thrown some light on the points, which may well induce even the Government as at present constituted, to reconsider its position. I hope the Hon'ble the Home Member will bring a judicial mind to bear upon the situation as it stands, and that he will not be obstinate in refusing to accept this suggestion merely because it comes at a late stage."

**The Hon'ble Rao Bahadur Mr. B. N. Sarma**:—"My Lord, I did not intend to intervene in the course of the debate, but there is one point that strikes me and I should like to allude to it. There is no repeal of the Schedule. Section 42 of the Bill says 'All powers given by this Act shall be in addition to, and not in derogation of, any other powers conferred by or under any enactment'. That is to say that the Government can in any particular case choose the procedure laid down under the Act of 1908 or resort to the provisions of the new Bill. They may lay the particular case before the Magistrate and then follow the procedure under the Act of 1908, or they may proceed to the High Court under this Bill. My submission is that there must be some certainty on the subject as to the procedure that is likely to be followed in this particular class of cases. Powers should not be conferred on the executive leading to the engendering of suspicion in the minds of the people. The procedure may be A in the case of one individual and B in the case of another. Most of the offences mentioned in the Schedule of the Act of 1908 are the offences mentioned in this Schedule with the exception of 124A, 148, 153A, the sections under the Arms Act, etc., and a few others. In respect of the offences common to both there should be a repeal of those in Act XIV of 1908. The procedure should be certain so that no option may be left to the Government to choose which procedure should be followed in a particular case, or Act No. XIV should be modified and amplified in a way to suit the new condition of things. I think that Part I may be deleted or Act XIV may be usefully modified to suit the altered conditions."

**The Hon'ble Sir William Vincent**:—"My Lord, I did not intend to speak on this motion and in that respect, I am in much the same position as the Hon'ble Mr. Sarma, but it appears to me that one of the points raised in the speech of the Hon'ble Mr. Patel is such that I should take the earliest opportunity of replying to it. The gravamen of his allegation as I understand it is 'you have got this Act XIV of 1908, why therefore should you want a new Act for the trial of offences?' My Lord, the answer is very simple. The procedure under the Bill is entirely different from the procedure prescribed by the Act of 1908. There is no provision in the Act of 1908 for

a trial at or near the scene of occurrence. Again the Act of 1908 contemplated a commitment procedure which might be *ex-parte*. There was, however, a kind of commitment procedure; that is one of the defects that the Rowlatt Committee deprecated as tending to delay the course of justice. Secondly, the evidence which may be adduced in trials under this Bill is different from the evidence which may be adduced in trials under the Act . . . .

**The Hon'ble Pandit Madan Mohan Malaviya**:—"May I correct the Hon'ble Member. Section 4 of the Act says, 'The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs'. So it is open to a Magistrate to direct that the accused may be present at the inquiry."

**The Hon'ble Sir William Vincent**:—"That accentuates my point that there is a difference in the procedure under this Bill and the Act of 1908, for there is no previous magisterial inquiry necessary under the Bill. Returning to the question of evidence, the evidence which may be adduced under Part I is materially different from that which may be adduced under the Act of 1908. Hon'ble Members will observe that under Part I of the Bill provision has been made for the examination of the accused as a witness. That is a matter which was not provided for also in the Act of 1908. Finally, the offences for which persons may be tried under Part I of the Bill differ from the offences for which they were to be tried under the Act of 1908. The Act of 1908 is, however, in some respects wider. The provisions of the present Bill can be brought into operation only under specified circumstances which have been recited at considerable length to the Council already. The existence of any such special circumstances is not a condition precedent to the institution of proceedings under the Act of 1908. I have now explained what the differences in the new enactment are. We are not as ignorant as the Hon'ble Mr. Malaviya supposes of this Act of 1908, nor were the Committee; their attention must have been drawn to that Act, for they make a distinct reference to it. The fact is that it was found by experience in Bengal that the provisions of the Act of 1908 were not effective, and it is for that reason that the present procedure has been suggested. I do not intend to deal at length with the other points raised by the Hon'ble Mr. Malaviya. He says that witnesses are not likely to be intimidated, that there is nothing in the causing of inconvenience to witnesses by making them attend frequent trials, that these are not points to which this Council ought to pay any consideration, that the speedy administration of justice is also not a matter of great importance. My Lord, we know that witnesses—honest witnesses—are intimidated. We also think that it is desirable that witnesses should not be interfered with more than is necessary in assisting Government. We have not found that people in the class of life from which witnesses come are usually ready to come forward and give evidence. If the whole of their business is dislocated by constant attendance and frequent delays, then it becomes impossible to get them to give evidence in these matters.

"Finally as to expeditious trial; there was a suggestion made, I do not suppose the Hon'ble Member meant it really, but I ought to repudiate it. It was suggested that in our desire to secure a speedy trial, we were neglecting the obvious necessity for a fair, impartial and careful trial. My Lord, I submit that this Council cannot find anything in the Bill to support this argument. Who can say that a Court consisting of three High Court Judges is likely either to be incompetent to perform its duties properly or not to use its best endeavours in performing them impartially? The fact is that we have found the Act of 1908 ineffective, and for that reason we seek to supplement it by an Act prescribing a short and speedy but careful and impartial trial before the strongest court possible. There is a great point in what the Hon'ble Mr. Sarma said, and that is the existence of these two Acts side by side. Well, my Lord, if this Act had been permanent, it probably would have been desirable to repeal the

Act of 1908, and we shall even now have to consider that question further, and I am much obliged to Mr. Sarma for drawing my attention to the matter, but I must say I think that the position has been considerably altered by the fact that the present Bill will only be temporary in duration."

**The Hon'ble Mr. V. J. Patel** :—"My Lord, it has been suggested by the Hon'ble the Home Member that the provisions of Act XIV of 1908 have been found to be ineffective. I wish he had quoted instances of delays having taken place owing to the commitment proceedings provided for in the Criminal Law (Amendment) Act, 1908. This Council, before it comes to any conclusion on the desirability of passing this particular Part, must know, is entitled to know, how many cases were tried under that particular Act, and in how many of them such delays took place. Without any definite statement regarding the question before this Council, I respectfully submit the Council is not in a position to judge whether the provisions of the Act have been really found to be ineffective. On the contrary, so far as I can judge, I find that most of the cases after 1908 were, instead of being sent to a special bench, sent to the Court of Sessions and the accused had . . . . 1 P.M.

**The Hon'ble Sir William Vincent** :—"May I explain, my Lord? The reason for that is, we found the special bench ineffective, the procedure was not suitable."

**The Hon'ble Mr. V. J. Patel** :—"So the procedure under the Criminal Law (Amendment) Act, according to the statement of the Hon'ble the Home Member was found worse than the ordinary procedure in ordinary courts of law, where you have the full commitment proceedings, the Sessions Court trial with a jury and the appeal proceedings in the High Court. According to the Hon'ble the Home Member's statement, the Act worked more for the benefit of the accused than the existing provisions of the Act. I confess I cannot understand that position at all. So far as the Rowlatt Committee's Report is concerned, they have nowhere in their Report said so. Is it really a fact the procedure under that Act was found to be worse than the ordinary procedure laid down in the Criminal Procedure Code and the Evidence Act? Without any instances to show that the delays that had taken place were so great and so serious that it has been found necessary to supplement the Criminal Law (Amendment) Act by this particular Chapter, we must pause. 1 P.M.

"Then again it has been suggested that the commitment proceedings involve an amount of delay. I admit that. Such delay is, according to the Rowlatt Committee's Report due to double examination of witnesses. As I say, the Rowlatt Committee has committed some error there. There is no double examination unless the Magistrate chooses to allow the accused to be examined, as the proceedings are to be *ex-parte*. It is only a question of a day. The Magistrate examines witnesses and sends the accused directly to the High Court. There is no question of any delay. There is no question of a double examination of witnesses, there is only examination-in-chief in the committing Magistrate's court. The cross-examination takes place in the High Court, and I do not see how that would materially delay the proceedings.

"Then, again, it has been suggested that the number of scheduled offences differs from the number given in the Schedule to the proposed Bill. Well, I have carefully examined the proposed Schedule and compared it with the Schedule to the Criminal Law (Amendment) Act. What do we find? The two sections that are proposed to be added now are Sections 124A and 153A. These are the only two additional sections in the present Schedule. Well, my Lord, if the intention of Government was to bring the trials under these two sections also under the Criminal Law (Amendment) Act, the better course for them would have been to bring out openly and straightforwardly an amending Bill asking this Council to consent to the insertion of sections 124A and 153A in the Schedule to the Criminal Law (Amendment) Act. There would have been no difficulty.

"Then again another point that has been made is that the rules of evidence are different in this Bill from the rules that are laid down in the Criminal Law (Amendment) Act. I submit, my Lord, that here the Hon'ble the Home Member is wrong. In the Criminal Law (Amendment) Act also almost similar rules of evidence have been enacted. It has been provided there that the statement of a witness before a Magistrate is admissible in evidence at the trial if it is proved that the witness is dead or incapacitated on further proof that such death or incapacity has been caused in the interest of the accused. The special rules here also lay down the same thing. I invite the attention of the Council to clause 18 of this Bill which says that—

'Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where—

(*a*) the statement of any person has been recorded by any Magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the Court, but such person has not been cross-examined,

such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the Court that such death, disappearance or incapacity has been caused in the interests of the accused'.

So special rules of evidence under the Bill are similar to the rules of evidence under the Criminal Law (Amendment) Act. I, therefore, submit that unless it is proved to the satisfaction of this Council that the provisions of the Criminal Law (Amendment) Act have failed in bringing about a speedy trial in anarchical and revolutionary crimes, this Council is not justified in accepting this Part of the Bill. With these few words I hope the Council will see its way to delete this Part.

The motion was put and negatived.

[At this stage the Council adjourned for Lunch till a quarter past two.]

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 3, as amended by the Select Committee, stand part of the Bill."

2-15 P.M. **The Hon'ble Mr. G. S. Khaparde:**—"My Lord, the amendment which I wish to move to clause 3 is as follows:—that for the words 'in Council' the words 'in Legislative Council' be substituted. In other words the word 'Legislative' be introduced between the words 'in' and 'Council'. Looked at from that point of view, it is one of the shortest amendments. The reason for this is that in the affairs of men it is not enough always to be in the right. In most cases in private life one decides rightly and is quite happy about it, but in matters where others are concerned, it is not enough to be in the right, one must also appear to be in the right, and this necessity for appearing to be in the right is at the bottom of all the formalities of law and the procedure of allowing a man to have the best counsel he can get, and so on. These formalities at one time were carried much further than they are now. In the Riot Acts in England one reads that before an order to fire could be given the Magistrate had to read out the whole Act, and from that we have the phrase that, when a person becomes angry, they used to say that he read the Riot Act. That is to say there was a formality before giving the order to fire in the case of a flagrant breach of the peace. These formalities are sought now to be removed, at least in the case of particular offences dealt with by this particular Bill, but I believe that although these formalities may be curtailed or done away with, still the necessity for being in the right and appearing to be in the right remains, and for that purpose some formality, not very lengthy, not one imposing a great delay, but yet a formality, so as to assure the people that an endeavour is being made to do justice in the case and

go about it in a cautious way, is necessary. So we have got to have some formality and in order to have it I have introduced the word 'Legislative' between 'in' and 'Council.' That is to say, before the Governor General in Council proclaims a particular area and applies this Part of the Bill to it, he has got to take the Legislative Council into his confidence. It really is a matter of taking into confidence because a simple Resolution may be introduced that this Bill be applied to a particular area and that resolution will be easily passed. It may give an opportunity to the Hon'ble the Home Member to explain why Government is taking this action, and probably it may lead to a debate, but a short debate, and that will be enough to assure everybody that steps are being taken with great caution and care. This formality to me appears very necessary to inspire confidence among the people.

"There is a further reason for this and that is one which did not occur to me this morning, but was made apparent to me to-day. The Council will probably remember that an attempt was made to define the word 'revolutionary' this morning, and we saw the opposition it met with and also the support it received. When there is a word in the law which has got several meanings, and those meanings insensibly shade from one to the other, one way of confining that particular word to a particular meaning is to define it in the law itself. And as it is urged that that word will have to be used and acted upon, not by a Court, but by the Executive Government, I think we should like to define the meaning of that word. When the Court decides a matter both parties are present with their Counsel and the matter is argued out, so there is very little danger, at least the danger is very much minimised, whereas when action is taken by the Executive, when parties are not present, it is different. It may be that the reports are very good and reliable; it may be that they are exaggerated; it may be that they are wrong, and the executive officers have got to make up their minds on these reports and follow a particular line of action. So that, I think, even in the interests of the executive officers themselves, they would like to see the word carefully defined and made precise so as to be easily acted upon. I think this Council will agree that before any action is taken, it is just as well that the circumstances which have involved the exercise of these powers should be explained and understood and talked about so that the world will know what is going on, and why a particular Act has been made necessary, and why it is being put into force. Giving publicity to it at this stage appears to me very necessary, and so I say that, before proclaiming a district or area, the Governor General in Council should make up his mind and pass a Resolution in the Legislative Council and then proceed to apply it. There is a further reason still. It may be said that the Council may not be sitting at the time or it would involve delay. If the Council happens to be sitting, there would be no delay, because the matter could be introduced as an urgent matter, and your Excellency could suspend the Rules of Business and the thing could be done at once. If the Council does not happen to be sitting and the matter is really so important that exceptional measures should be taken, then the Council could be easily summoned. At any rate we could do as they do in England when Parliament is not sitting and cannot be easily summoned, then the matter is brought before Parliament, seven days I believe was the time allowed by the Act of Parliament, and the matter was placed on the table as the phrase goes. So I think that something similar might be done here. But I should like that it should be that the Governor General in Legislative Council is satisfied, not alone in the Executive Council, where beyond reports and probably some information, they have not access to the general population and any way of finding out what really is going on and knowing it first hand, as we call it in law. They may have heard about it, and yet, not having that personal knowledge of the matter, they may not feel quite certain about it. So they may share the responsibility of that action with the Council, and that is my object in putting forward this amendment.

"With these words, I submit the amendment for the acceptance of the Council."

**The Hon'ble Mr. V. J. Patel** :—"May it please your Excellency, I have got a somewhat similar amendment and I should therefore like to accord my hearty support to the amendment of my Hon'ble friend Mr. Khaparde. He has placed the case so clearly and so lucidly before the Council that it is unnecessary for me to add any new arguments. The amendment merely says well, if you are satisfied that there is a case for a Notification, satisfy us also, and then issue it. It asks for nothing more. When you want to issue a Notification, you kindly come and place all the reports that you have got before us and let us also be satisfied. We would also like to take part in it. And, after all, you don't lose much by it. You have got a majority and you will always, even if we be unwilling to consent to the issue of a Notification, be able to issue it just as you pass this Act against our wishes."

**The Hon'ble Sir William Vincent** :—"My Lord, this, and a number of later amendments to this Bill, raise questions which are to my mind of considerable constitutional importance, and if I deal with them now, I do not propose to speak on the matter at any length again.

"I regard this amendment of the Hon'ble Mr. Khaparde as a not unnatural attempt to control the executive by direct order of the Legislature. But it is nevertheless a departure from constitutional practice. Even if we take the case of the United Kingdom, Parliament does not interfere at all with details of administration, nor does it undertake the business of administration. And the reason for this is, I think, not far to seek. A deliberative body cannot really adequately deal with such matters. An assembly of the nature of this Council is really concerned with questions of policy and principle rather than with the application of the policy, and the responsibility for the application must remain with the Executive Government. The device of using the Legislature to control the application of an Act is, if I may say so, clumsy. The Members of this Council must be lacking in knowledge of the requirements as compared with the Executive Government. There are many papers which cannot be put before all members, and indeed there is much information which, I think, all the Hon'ble Members of this Council would not trouble to read. Further, the consumption of time and labour in placing these matters before Council is really disproportionate to any benefit. The responsibility for the application of these Acts must rest with the Executive Government, and no attempt of this kind on the part of the Legislature to usurp powers which do not really appertain to the Legislature could be accepted.

"Well, my Lord, if this is true of Parliament, and I believe it to be in accordance with constitutional practice, how much more so is it true of this Council, the powers of which are very strictly limited by the Statute? Section 67 of the Government of India Act, 1915, describes definitely what the powers of the Legislative Council are. 'At a meeting of the Indian Legislative Council', it says, 'no motion shall be introduced other than a motion for leave to introduce a measure for the purpose of enactment, etc., etc.' Then it goes on to say: 'Notwithstanding anything in the foregoing provisions of this section, the Governor General in Council may, with the sanction of the Secretary of State, make rules authorising at any meeting of the Indian Legislative Council the discussion of matters of general public interest, and of the Budget', and so forth. Well, the intention of the Statute and the rules framed thereunder is that this body in matters executive and administrative should only act as an advisory body to the Governor General in Executive Council, and it is for that reason that Resolutions of this Council are only recommendatory in character and not mandatory. The real controlling authority over the Government of India is Parliament and the Secretary of State, and it is to them that the Government of India are responsible for the application of the law and, generally, for all administrative acts. And I submit to the Council that it would be subversive of the whole constitutional practice if this amendment

and those other amendments which likewise give this Council a power of direct interference with the administration were passed.

"I think the Hon'ble Member referred to the Irish Act in his speech. Was that the Act that he mentioned? I am not quite sure if that is so."

**The Hon'ble Mr. G. S. Khaparde:**—"Yes."

**The Hon'ble Sir William Vincent:**—"There even there is no provision for the Lord Lieutenant of Ireland taking the previous sanction of Parliament before applying the Crimes Act. The law provides that if he applies the Act and, if the Parliament is at the time sitting, he is to lay a Proclamation before Parliament. If the Parliament is not sitting at the time, then the Proclamation has to be laid before Parliament within fourteen days of the opening of the next Session, but there is no question of the previous sanction of Parliament. So far I have dealt with what I conceive to be the constitutional objections to the procedure which the Hon'ble Member advocates.

"The practical objections are, as I think Members of this Council will admit, equally cogent: the necessity for bringing this Act into operation may be urgent and may occur, if it occurred at all, as likely as not when the Council was not sitting. The Council at present meets at long intervals, and it seems unreasonable that the Government should be deterred from bringing into operation any portion of this Act merely by reason of the fact that the Council is not sitting. Of course I may be told that the Government could on each occasion summon an emergency meeting for the purpose of considering this question but, I submit, that that would impose an unreasonable restriction on the Executive Government; it would also involve delay if on every occasion on which this Act is to be applied to the smallest area, we had to have a meeting of Council, and probably find a month later that we had to re-summon the Council, in connection with another area. I hope that Hon'ble Members will see that this is unreasonable. It is always open to them, if this Council thinks that the Act has been unreasonably applied, to bring in a Resolution in this Council, recommending the Governor General to withdraw the notification which he has issued, but I ask the Council to agree with me that both on constitutional grounds and for practical reasons the present amendment cannot be accepted."

**The Hon'ble Mr. G. S. Khaparde:**—"I agree with one part of the speech of the Hon'ble the Home Member, and it is that they do not impose in Ireland, or even in England for the matter of that, previous sanction; but they provide for the sanction being taken as early as possible. At any rate they provide an opportunity, I believe, for the matter being discussed, and they provide this opportunity by laying a Proclamation in the House of Commons and by sending it to the Clerk of the Crown. I submit that my object is the same, which is to secure a discussion of the matter. A discussion before the issue of the Proclamation is probably better than discussing it after the thing is done, because once the Government is committed to a particular line of action, it is difficult even for the Government to withdraw from that position. It is also difficult for us to bring in a Resolution, as was suggested by the Hon'ble the Home Member. It appears easy to move a Resolution, but the materials for moving that Resolution generally are not available. They are available only to Government officers or to Hon'ble Members in office; but to us they are not available. So this *post facto* remedy of moving a Resolution appears to be difficult and inadequate, and that is why I wish to provide for it in this way in this particular amendment; though in a subsequent part I try to avail myself of this remedy of asking the Executive to lay the Proclamation on the table of this Legislative Council. That was my object in moving this amendment at this stage, and that is all I have to say."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I formally move that in clause 3 after the words 'he may' the words 'with the previous approval of the Indian Legislative Council' be inserted. The matter has been sufficiently discussed, and I do not wish to take up the time of the Council. I merely formally move the amendment."

The motion was put and negatived.

2-38 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"Your Excellency, I beg to move that to clause 3 the following provisos be added:—

'Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made, an opportunity of expressing its opinion by a Resolution passed on the subject:

Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a Resolution passed by three-fifths of the members of either of the said Councils.'

"These are really two amendments which have been embodied in this amendment of mine for the sake of conciseness and brevity and inasmuch as both pertain to clause 3.

"The several objections which the Hon'ble the Home Member has suggested against the acceptance of the amendment of my friend the Hon'ble Mr. Khaparde and the amendment of my friend the Hon'ble Mr. Patel do not apply to my amendments. I shall deal with the constitutional aspect of them later. The first part of this amendment asks for the acceptance and enforcement of the principle that no man shall be judged unless he is heard. It is proposed by clause 3, and the subsequent clauses having a similar object, that the Governor General in Council should have the power to proclaim to the world that the whole of India or that the whole of a province or a part of a province is in a disturbed state, that anarchy prevails there and revolutionary movements are rife. The honour, the prestige and the good name, therefore, either of India or of a particular province or of a particular district, are vitally involved in this Proclamation. I ask that before the Governor General in Council takes such a very important step which may lead to the casting of a slur on the loyalty of a portion of His Majesty's subjects, an opportunity should be given to the representatives of the people to show that they do not deserve the condemnation which is proposed to be passed on them. Mark you, I do not ask that the recommendation of the Legislative Council should be binding upon the Executive Government at this stage. I only ask that an opportunity should be given for the people to be heard. I could not formulate any other channel than the Legislative Council for the expression of the people's opinion. I, therefore, think that on that ground this amendment can be very strongly supported unless there are practical objections or constitutional objections of so great a character that the principle can or should be sacrificed to the exigencies of the case. Now, one objection that may be taken is that it may not be possible, and that is the strongest objection possibly, and the one that has been urged by the Hon'ble the Home Member, that it may not be possible to place all the confidential papers relating to the subject before the Legislative Council, and consequently any Resolution that may be brought in may not be of that practical value as such a Resolution might otherwise be. My Lord, I would submit that the same question will have to be faced sooner or later—sooner rather than later; and that no very great object can be gained by the postponement of the discussion which will inevitably follow unless the Resolution is vetoed—no object can be gained, I say, by the postponement of the discussion of such a subject. Supposing the notification is made, at the earliest possible opportunity, the question will be brought up for discussion; such papers as could be disclosed to the Council would have to be disclosed, and the Government would have to state their case. Would it not be better that that case, so far as it can be formulated, should be placed before the Council with a caution, possibly, by the Member in charge, that there is much

more which might be said but which sound policy dictates that it be not disclosed, and therefore that the Council should not take it for granted that those are all the materials upon which the Government has acted or is going to act? I would submit that the reasons in favour of such a course are these. The section says that two things are necessary. *Firstly*, if in the whole or any part of British India anarchical or revolutionary movements are being promoted. That is one thing; and *secondly* that scheduled offences in connection with such movements are prevalent to a particular extent, that is number two. It may be first of all that the statement of fact that anarchical or revolutionary movements are being promoted may be questioned. Of course without disclosing any very great details it will be perfectly possible for the Government Member to state the reasons for the existence of the belief on the part of the Government that such movements are being promoted. Members of Council and the outside public would be in a position to know what exactly is meant by the revolutionary movements which are likely to give trouble or are giving trouble. Therefore, there can be no difficulty so far as that aspect of the question is concerned. Then it may be the fact also that scheduled offences are prevalent in that area or in the whole of India; it may be that dacoity is very greatly prevalent, that mischief is being resorted to, that murders are numerous and growing year by year in numbers; these may be facts and it would be possible for Members of the Legislative Council who are acquainted with the particular districts or of the whole of a province to come forward to show that, although it may be a fact that those offences are largely on the increase or largely prevalent, still those crimes have absolutely no connection whatsoever with any revolutionary movement or anarchical movement in that or any other part of India. I lay some stress upon this, your Excellency, because the causal connection between the two is likely to be invoked in a large measure and without a due analysis especially where the executive officer can easily explain the prevalence of a particular crime. A police officer or police superintendent may for the matter of that honestly believe that offences within a particular area which he cannot detect or which he cannot take for conviction can be explained only on the hypothesis that they are connected with the revolutionary movement. A man may be preaching politics in a particular area which may also happen to be a place where offences of a particular character were rife. Nothing would be easier than to connect the two, and it is just possible that the Government when it analyses and finds that A, B and C have preached certain doctrines in a particular area and also the coincidence of certain offences in that particular area, may legitimately agree without anything else being said to the contrary that the two are connected in the way that is suggested by their officers, for after all officers must be the judges on the spot, whereas a little discussion in the Council following a statement of fact may help to clear the situation and give materials to the Government of India and the Local Governments also to pause and see as to whether there is any real causal connection between the two, or whether the increase of crime or the non-detection of crime are due to adventitious causes.

"Coming to the constitutional aspect of the question there is nothing in this part of my amendment which conflicts whatsoever with the supremacy of the executive in matters of administration. All that I ask for is, that an opportunity which sooner or later would be taken should be given before such an announcement is made.

"Then I come to the second part of my amendment. The second part of the amendment is that after an order or notification is in force for one year, then if the Legislative Council should by a Resolution passed by a three-fifth majority recommend that that notification should be withdrawn, the Executive Government should be asked to do so. Now, there may be an apparent contradiction, the constitutional theory to which the Hon'ble Member referred in this part; but I submit that there is not. I take it that even after the reformed Councils sit the administration of the branches of law and order and justice would still be with the Executive Government as is proposed to be under the tentative

reform proposals. It is at present so. But what I say is that it is not the normal administration of justice that would be interfered with by the Legislative Council by means of a Resolution, but that we in empowering the Executive Government with extraordinary powers suited only to specific occasions depriving the people of their liberties under certain conditions, that we the Legislative Council subject those powers which are conferred upon the executive in particular ways, that is, the powers are subject to those limitations; therefore, there is no question of the Legislative Council interfering with the administration of the powers which are conferred by the Legislative Council upon the Executive. What we say is in giving the powers we subject those powers to those limitations I do not see in any way whatsoever any conflict, if the grant of these exceptional powers is within the competence of this Legislature in executive action being controlled in particular cases especially of this drastic character. I, therefore, accepting the theory of the Executive Government's powers, see nothing whatsoever in my amendment which conflicts with the enforcement of that theory in the present or the future. Then I do not say that an ordinary majority would do. I put it that an extraordinary majority of $\frac{3}{5}$ that would amount to $\frac{3}{4}$ of the non-official Members of the Council, because we take it that even if the Councils are enlarged there would be still an official element, therefore it would be $\frac{3}{4}$ of the non-official element in the Council, should agree to a particular Resolution before they recommend it for adoption or before it is binding upon the Executive Council. You may ask 'Why should not the Council ask for a repeal of the Act at the time?' I have my own grounds for not saying it. I accept it now that the Legislative Council are going to keep the Act in force for three years only. I only want the notification to be withdrawn in a particular case or particular cases under special circumstances which would be brought to prominent notice by the Legislative Council in the course of their discussions; but the Government would still have the power after withdrawing that notification to issue another notification should circumstances require it. Therefore this does not prevent the Government from giving the people an opportunity of restating their case under altered conditions; I do not mean to say under the same conditions, under altered conditions coming to the Council. I think, my Lord, there must be some reality in the exercise of the control of the Legislative Council over the powers which have been given to the Executive Government in this drastic fashion, and I think there is absolutely nothing wrong in the suggestion that I have made. It may be said that I have given an alternative power to the Imperial Legislative Council and to the Provincial Legislative Councils. My object was this: the Government of the provinces is naturally, I suppose, at present under the control of the Government of India and will, I take it, be also after this Bill is passed under the control of the Government of India. Therefore it is in conformity with the constitution of the country that the Legislative Council here should have power to interfere in a case when it thinks fit to do so; but ordinarily it would not unless the whole of India is to be included in the notification, thereby sullying the fair name of India. The whole of India is to be included in the notification and if it is only a part of the province the question would legitimately arise in the first instance in that Council. The amendment is worded elastically with the object of conforming to the traditions and constitution of the Provincial Governments and the Government of India and the Imperial Legislative Council, and at the same time to give an opportunity to Provincial Councils to express their views and opinions on matters, that particularly appertain to them. If there should be any technical difficulty in the wording that is a matter that can be set right, but it is the principle underlying that I hope will be accepted."

**The Hon'ble Sir William Vincent:**—"My Lord, I must oppose this amendment for exactly the same reasons that I gave in the previous case. The main difference in this amendment is that the Hon'ble Member proposes that the action of the Governor General in Council should be controlled by the Provincial Legislative Council as well as by the Indian Legislative Council. I do not think that this suggestion will commend itself to many Members here.

The second part of his amendment really gives mandatory effect to a Resolution of this Council which is exactly contrary to the spirit of the rules and of the Statute. I may add also that the delay in issuing the notification which the procedure described by the Hon'ble Member would entail would be a serious obstacle to public business. Finally, I should like to repeat that where responsibility is there power must be. The responsibility for maintaining law and order in this country is with the Governor General in Council and they are responsible to His Majesty's Government. If they have that responsibility, they must have the power to enforce it."

**The Hon'ble Rao Bahadur B. N. Sarma**:—"My Lord, I have nothing more to say."

The motion was put and negatived.

The motion that clause 3, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 4 stand part of the Bill."

**The Hon'ble Mr. V. J. Patel**:—I beg to move the following amendment that in clause 4 (*1*) after the words 'it may' the words 'after hearing the person concerned' be inserted. The clause will then read:—'Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may, after hearing the person concerned, order any officer of Government to prefer a written information to the Chief Justice against such person.' The Council has just disposed of two amendments seeking to provide that the notification under clause 3 should be issued with the previous approval of the Legislative Council. It has also disposed of another amendment of my Hon'ble friend Mr. Sarma that before the issue of a notification an opportunity should be given to the representatives of the people to express their views. These two amendments having been disposed of, the Local Government as the clause stands on being satisfied that the trial of any particular person should be held in accordance with the provision of this Part will have the power to order any officer of Government to prefer a written information to the Chief Justice against that person. All I ask is that, when the Local Government on information from the police or otherwise is of opinion that a trial of any person should be held under this Part, that person should be given an opportunity of stating why no information should be laid against him. An opportunity of having his say in the matter should be given to him. I trust that this proposal will not be objected to by the Hon'ble the Home Member." 3-5 P.M.

**The Hon'ble Sir William Vincent**:—"My Lord, I should have been glad if I could have accepted this amendment, but I am afraid I cannot. It was only a few minutes ago that the Hon'ble Member cited, with approval as I understood him, the Act of 1908. May I point out to him that under that Act there is no right such as is now suggested? The reasons which actuate the Government in this matter are that the trial will be held before three High Court Judges only if, in the opinion of the Government, that order is necessary in the public interest and for the preservation of law and order. It is not as if the accused was going before any incompetent tribunal or any tribunal that is not likely to do him ample justice. I have not heard any complaints against the tribunals set up under the Act of 1908, and in this case the Judges will be of the same class. Another point is that one of the objects, in fact the main object of this Part of the Bill, is to provide for an expeditious trial of persons, and such expedition is defeated by preliminary proceedings of this kind. Directly you have a preliminary hearing you have the appearance of counsel, pleaders, affidavits, etc. Further, it would be very difficult to decide what particular officer should hear on behalf of the Local

Government an application of this character. If there was any question of prejudicing the accused by an order under this Part there might be something to be said for the amendment, but actually the accused will go before a stronger tribunal than is ordinarily the case. I must, therefore, oppose the amendment."

**The Hon'ble Mr. V. J. Patel**:—"My Lord, I have only one word to say on this point. It is said that the proceedings would be lengthened because of the appearance of a pleader. As to that I would only say this that there is no provision for a pleader to appear as of right. I do not ask for such a right. The pleader would appear in cases where he is permitted to appear by the Local Government. My point is this, why are these provisions necessary? When there is ample provision why come here and ask for further legislation?"

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel**:—"My Lord, I move that in clause 4 (*2*) after the words 'any person' the words 'whose case is under inquiry before a Magistrate or ' be inserted.

The amended clause will run thus:—

'No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person whose case is under inquiry before a Magistrate or who has been committed under the Code for trial before a High Court, or a Court of Session,' etc., etc.

"What I want, your Excellency, is this, that the cases which have already been sent up by the police to a Magistrate for inquiry should not be touched by the notification. I shall give one illustration. Supposing two cases of some scheduled offences are pending before a Magistrate and simultaneous inquiry is being proceeded with in both. Suppose they are finished on one and the same day and the Magistrate writes his order of committal in one case and has not been able to finish his order of committal in the other, say the notification is issued on the next day. It means that the man against whom the order of committal is already passed will have a differential treatment under the clause as it stands. Difficulties of this kind will arise, and two persons similarly situated, will be differently treated. When the case is already before a Magistrate there is no justification why the Magistrate should be deprived of his jurisdiction and the case should be taken away from him and tried under the provisions of this Part. I, therefore, respectfully submit that cases which have already been sent to the Magistrate before the issue of a notification should not be dealt with under the provisions of this Part."

**The Hon'ble Mr. G. S. Khaparde**:—"My Lord, I have an amendment on the same point, and though it is not exactly in the same words, at any rate the object is the same. My amendment is that in clause 4 (*2*) after the words 'Court of Session' the words 'or has been placed before a Magistrate' be inserted. It comes to the same thing, though my reason is different from what my Hon'ble friend Mr. Patel has urged. My reason is that when a Court is seized of a case where a case is put before a Magistrate, it can only be removed from his cognisance by the order of a superior Court, that is to say, the High Court can transfer it, but it has got to go to a Magistrate again. The principle, of the law, as I understand it, is that once the case is before a Magistrate, another Magistrate of equal power may have to try it, generally it does not go to a Magistrate of inferior power, it can only be taken away from him by an order of the High Court. In legal language I suppose it is said that when a Court is seized of a case and when a Magistrate has taken cognisance of a case, nobody can interfere with it except a judicial authority. In this connection even if a case is before a Magistrate, this section appears to empower the Local Government to take that case away from him and make it over to the Special Tribunal. This, I think, infringes the principle of which I was speaking, namely, that once a case is before a Magistrate nobody can

interfere with it except a higher judicial authority and it goes to nobody except to judicial officers.

"Another argument in favour of the amendment is that once a matter has gone to the Courts it is not desirable to take it away and put it under executive jurisdiction. The tendency of modern legislation is not to combine the powers of the executive and the judiciary in one and the same person. And there is the inconvenience pointed out by Mr. Patel in the case of a person having two cases against him. One case has been committed, and before the other case has been committed, this order of the Local Government arrives. Then what is to be the result? They have to arrange it somehow or other. To avoid cases of this kind and difficulties which may arise in the administration of the law, I propose that once a case has been put before the Magistrate and has gone to the ordinary judiciary, it should not be brought under the provisions of this section. This is what I have to say in support of my amendment, and I speak now so that I need not make any speech later and my amendment may be put along with Mr. Patel's amendment."

**The Hon'ble Mr. C. A. Kincaid**:—"My Lord, I do not want to take up the time of the Council for more than two or three minutes, but in the course of these two or three minutes I shall try and show that there are one or two good reasons, at least what appear to me to be good reasons, for rejecting these two amendments and keeping the Bill as it stands. Now the underlying facts of this amendment are these: Under clause 4, section 1, of the Bill under certain circumstances the Local Government can lay information to the Chief Justice. By clause 5 of the Bill the Chief Justice then constitutes a bench of three High Court Judges to try the case. Section 4, clause 2, however, lays down that where a case has already been committed to a Sessions Court or to a High Court, no information shall be laid about it by the Local Government to the Chief Justice. Now the first point I will put before the Council is that there is a precedent for that. In section 2 of Act XIV of 1908 you have almost an exactly similar wording. Sessions cases committed to the High Court and the Sessions Court are referred to, but cases that come before the Magistrate are left out. When I was in Bombay many years ago attached to the Legal Remembrancer's Office it was the rule of that office that if you had a good precedent you ought to stick to it, and I think the Hon'ble Mr. Monorieff Smith will agree with me that it is a good rule. If you have a single clause or section it is always risky to add to it, as the addition may become a pitfall or a snare. The fact, therefore, that there is the precedent of Act XIV of 1908 is a very good reason for following it.

The second point is this: Under clause 8 of the Bill it is laid down that the procedure prescribed for the trial of cases by this special bench is the procedure prescribed for the trial of warrant cases by Magistrates. Now every lawyer in this Council knows that there is a good deal of difference between the procedure laid down for the trial of Sessions cases and that prescribed for the trial of warrant cases. Therefore, if you should take a Sessions case, already begun, from a Sessions Court or a High Court and give it to the special bench to try, you would not only have a change of Court but a change of procedure. That would be an anomaly and might be to the prejudice of the accused and his advisers. But where a case has come before a Magistrate and has been transferred to the special bench, the Magistrate and the special bench both being bound by the rules of procedure, namely, those prescribed for warrant cases, there would not be that anomaly.

"My third point is this: Under section 350 of the Criminal Procedure Code, where a Magistrate takes over a part-heard case (a case in which his predecessor has heard some evidence), he need not hear all the witnesses *de novo*, but can convict the accused partly upon such evidence as he himself hears and partly upon the evidence taken down by his predecessor. Now as I read this Bill in conjunction with the Criminal Procedure Code, it seems to me, of course it is a point on which there is some doubt, but it seems to me, that when a case has been transferred from a Magistrate to a special

bench, the special bench being bound by the rules of procedure prescribed for the trial of warrant cases, would be empowered to take advantage of section 350. Therefore they would be able to save all the labour and all the time involved in taking evidence twice over. There is no corresponding section where a Sessions case is transferred; therefore if a Sessions case were transferred to a special bench, it seems to me that the special bench would have to go over all the witnesses over again and that there would be a great waste of time and energy.

"I will now shortly refer to the possibility which my Hon'ble friend Mr. Patel mentioned, namely, where two cases have been tried simultaneously by a Magistrate and the order of committal has been passed in one case, but had not been passed in the other, and where in the short interval between the evening of one day and the morning of another day the Governor General in Council has introduced Part I into the district. Well, my Lord, it is not only in Sessions cases that the one is taken and the other is left, and I do not think there would be any very great harm if this somewhat improbable incident occurred. I do not very well see how the learned Magistrate could be trying two cases simultaneously, and it seems almost incredible to suppose that, in the interval between one evening and the next morning, the Governor General would satisfy himself of the existence of a revolutionary movement and the occurrence of scheduled offences requiring speedy trial. I do not think that is a case likely to arise. In any case if it did arise what would happen? Nothing very grievous; in one case the accused person would be tried in the ordinary way and in the other case by a bench of three Judges of the High Court of Bombay or Calcutta, as the case may be.

"Now my Hon'ble friend Mr. Khaparde has laid down two principles. One is that only a judicial officer should transfer. Well, as a matter of fact, the District Magistrate is in a sense a Magisterial officer, but he is also the executive head of the district and he constantly transfers cases from one sub-divisional Magistrate to another. Mr. Khaparde also laid down the principle that when a case is brought to the Judicial Department it should not go out of it. That may be a counsel of perfection. But even if it is taken from the Magistrate for a moment by the action of the Governor General in Council, it still goes back a very short time afterwards to the Judicial Department. There is no permanent transfer of a case from the Judicial Department, and therefore it seems to me that the argument of the learned gentleman is purely academic. I mentioned, my Lord, the disability which exists in the case of transferred Sessions cases and which does not exist in the case of a case transferred from a Magistrate to a bench of judges. On the other hand, there is this great advantage, that no matter how eminent and how experienced a Magistrate may be, he cannot have more authority or more competence than a bench of three High Court Judges; thus both the accused and the Crown will gain by the transfer of the case from his court under clause 4."

**The Hon'ble Mr. G. S. Khaparde**:—"If I have your Excellency's permission I should like to say one word."

**His Excellency the President**:—"We are not discussing your amendment; we are discussing Mr. Patel's."

**The Hon'ble Mr. G. S. Khaparde**:—"I only wanted to explain one point."

**His Excellency the President**:—"A personal explanation?"

**The Hon'ble Mr. G. S. Khaparde**:—"No."

3-15 P.M. **The Hon'ble Mr. V. J. Patel**:—"I am really surprised that my Hon'ble friend Mr. Kincaid should think that it would be to the advantage of the accused whose case is before a Magistrate, that his case should be transferred

to the tribunal for disposal. He forgets that if the case before the Magistrate is allowed to proceed in the ordinary way it will be committed to the Court of Sessions, where he will have the advantage of a jury. He also forgets that on conviction he will have the right of appeal, and yet he thinks that if the case is sent to the Special Tribunal from the Magistrate, it will be an advantage, as if these provisions are enacted for the advantage of the accused. My Hon'ble friend Mr. Kincaid seems to think that in a case in which the whole evidence has been recorded by the Magistrate the tribunal to whom the case is transferred will be at liberty to read the evidence already recorded and will pass final orders. Well, that is another reason why I say such cases should not be dealt with under the provisions of this Act. Suppose a case is completed in a Magistrate's court, and the notification comes into force, before the order of committal is written, all that remains for the tribunal is to pass orders on the papers recorded by the Magistrate. That is the procedure that I object to. It will do an amount of harm and prejudice to the accused person, and I respectfully submit that such a procedure should not be allowed. After the case is fully gone into by the Magistrate, if the notification is issued, what will happen? Although the police have fully investigated the case and although the Magistrate has gone through the whole case, the procedure will be that new information will have to be laid before the Chief Justice. Now, is that a procedure at all desirable in cases which have already been investigated by the police and inquired into by the Magistrate? Under these circumstances, I submit the Council will see its way to accept this small amendment."

The motion was put and negatived.

**His Excellency the President**:—"Mr. Khaparde, do you wish to move your amendment?"

**The Hon'ble Mr. G. S. Khaparde**:—"I did not intend to speak, but now I shall speak for two minutes and these two minutes I shall take to answer the two objections that were taken by my Hon'ble friend Mr. Kincaid. One is that to controvert my statement that once a case gets into the hands of the judiciary it should not pass into the hands of the executive, he said the District Magistrate often transfers cases, but the District Magistrate is a Magistrate and not an executive officer for the time being, so that objection does not hold I think.

"The other principle that I endeavoured to make out was that a case always goes through the judiciary and nobody else.

"In this case the interference as it is sought to be made would be from the Local Government or the Imperial Government, but not from the judicial authority.

"The third point which I wish to lay stress upon—and it is rather important—is in the case of part-heard cases. Magistrates can certainly dispose of the case on the evidence already recorded, but, I believe, the accused has also the right of demanding a trial *de novo* and he would not be able to claim a trial *de novo* here. These are practical difficulties which will arise and it is better to meet them beforehand. Therefore, I have submitted this proposal that when a case has been put before a Magistrate, it should not be sent to the Special Tribunal but left to be disposed of by the ordinary law of the land."

The motion was put and negatived.

**The Hon'ble Rao Bahadur B. N. Sarma**:—"My Lord, I do not propose to move my next amendment."*

* That in clause 4 (2) after the words "Court of Sessions" the following words be inserted:—
'or is undergoing a trial in respect thereof before a Magistrate.'

The amendment was by leave withdrawn.

[*Mr. V. J. Patel; Sir William Vincent; Mr. H. Moncrieff Smith; Mr. Kamini Kumar Chanda.*] [13TH MARCH, 1919.]

**The Hon'ble Mr. V. J. Patel** :—" My Lord, I beg to move ' that in clause 4 (2), for the words ' whether such offence was committed before or after ' the words ' if such offence was committed more than three months before ' be substituted. The clause will then read :—

' No order under sub-section (*1*) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court, or a Court of Session, but, save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence if such offence was not committed more than three months before the issue of the notification under section 3 '."

**The Hon'ble Sir William Vincent** :—" No, no. There is no ' not ' in the amendment."

**The Hon'ble Mr. V. J. Patel** :—" I wish I could see the original.'

**The Hon'ble Sir William Vincent** :—" I took the trouble to have it looked up."

**The Hon'ble Mr. V. J. Patel** :—" I do not know whether it exists in the original; I do not wish to press it if the word ' not ' does not exist in the original."

**The Hon'ble Mr. H. Moncrieff Smith** :— " The Hon'ble Mr. Patel's amendment has been verified ; it is as it stands in the list."

**The Hon'ble Mr. V. J. Patel** :— " Then I do not press it."

The amendment was by leave withdrawn.

3-30 P.M. **The Hon'ble Mr. Kamini Kumar Chanda** :—'My Lord, I beg to move—

" That to sub-cause (*4*) of clause 4 the following be added : —

' calling upon him to show cause within such time as may be fixed by the Chief Justice why the trial should not be held in accordance with this Part. The Chief Justice may, if he thinks proper, extend such time on the application of the accused.'

" After the Local Government or officer deputed by the Local Government has filed an application before the Chief Justice, the clause says :—

' The Chief Justice may by order require any information to be amended so as to supply further particulars of the offence charged to the accused, and shall direct a copy of the information or the amended information, as the case may be, to be served upon the accused in such manner as the Chief Justice may direct ' (and if my amendment is accepted) ' calling upon him to show cause within such time as may be fixed by the Chief Justice why the trial should not be held in accordance with this Part. The Chief Justice may, if he thinks proper, extend such time on the application of the accused.'

Well, my Lord, the principle of this matter has been disposed of so far as it related to the action of the Local Government, and it was lost. I have no reason to believe that my amendment will receive a better fate, but still I must place it on record.

" My Lord, it seems to me this is a very reasonable proposal. When you are going to take away the jurisdiction of the ordinary Court, deprive a man of the safeguards which an ordinary trial affords to him, the safeguard, for instance, of the commitment proceedings, of a jury trial, of an appeal, when you are taking away all these things from him, why not hear him before the final order is passed ? You are not bound to accept what he prays for, but I say do hear him. Strike but hear. This is the amendment I wish to place before the Council."

**The Hon'ble Sir William Vincent** :—" My Lord, I am afraid that this amendment, though possibly not so intended, would really have the effect of frustrating a great object of the Bill which is to secure an expeditious

trial. I have tried to explain repeatedly that the prisoners in this case will be put before a very strong Court, as good a tribunal as we could possibly choose, namely, three Judges of the High Court, and the reasons for which the prisoner is put before that tribunal are reasons of State and affecting the public interests. The Chief Justice cannot be in a position to know whether the requirements of the public peace or the state of the country make a speedy trial by this tribunal necessary. It is not as if the men were being put before an incompetent or other than a very impartial and strong tribunal. If I may refer again to this Act of 1908 of which we are said to be so ignorant, may I say that there is no provision there at all similar to the proposed amendment, and I have never heard of any injustice occurring by reason of the omission of it."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"Just one word, my Lord, with reference to the objection that has been raised by the Hon'ble the Home Member that the Chief Justice may not know the grounds which render a speedy trial necessary. I would ask what is there to prevent these facts being placed before the Chief Justice by the Local Government? We do not ask for an *ex parte* order. Let all the facts be placed before the Chief Justice. Then, no doubt, it will be a great luxury which the accused will have of being tried by three High Court Judges, but will he be able to pay for the luxury which a trial before these three High Court Judges will entail? I do not think the objections urged by the Hon'ble the Home Member are very convincing."

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I beg to move—that the following sub-clause be added to clause 4:—

'(5) The Chief Justice may direct that the accused, if in custody or under arrest, be produced before him and when he is produced before him, or without directing that he be produced, order that he be admitted to bail.'

"My Lord, there is nothing in this Bill to show where the accused will be or in what condition when the application will be made before the Chief Justice. I presume he will be in the custody of the Government securely lodged in the lock-up. But it is not enough to know where he will be or what his condition will be. My submission is that before he is called upon to stand his trial the question of his admission to bail should be decided. It may be that the offence with which he is charged is bailable because you will find a long list of offences given in the Schedule, many of which are bailable, and although it may not be bailable, still the circumstances may be such as not only to justify a man's admission to bail, but to make it eminently desirable that he should be on bail. Therefore, my Lord, I think that this is a matter that ought to be made clear, and my submission is that the Chief Justice ought to have full power to deal with this matter and ought to be empowered to pass orders for bail."

**The Hon'ble Sir William Vincent**:—"As I have told the Hon'ble Member before this meeting, if he will withdraw this particular amendment, I am quite prepared to insert—if he will move an amendment or even if the Council will allow me to move an amendment—an amendment in clause 19 (2) which will meet the contingency to which he adverts, and will enable the Chief Justice to allow bail in these cases. As a matter of fact, this goes a little further than the Act of 1908, but it seems to me to be a very fair provision. I believe I am right in saying that the Hon'ble Member is prepared to accept it."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, so far as that is concerned, I am perfectly willing to accept the Hon'ble the

Home Member's suggestion We must be thankful for small mercies. I understood from the Hon'ble the Home Member that the Government are prepared to accept the principle. I therefore beg to withdraw my amendment; but in doing so I cannot resist the temptation of relating a small story here."

**His Excellency the President**:—"Perhaps the Hon'ble Member will refrain this afternoon."

The amendent was, by leave, withdrawn.

The motion that clause 4 of the Bill, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 5 of the Bill, as amended by the Select Committee, stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I have this amendment to clause 5:—

'That in clause 5 after the words 'to him' the following words be inserted:—

'and after considering any cause shown by the accused and further inquiry, if any, which he considers necessary.'

"This is merely a consequential amendment, my Lord. As my amendment* has been rejected, it is not necessary for me to move it. I therefore beg leave to withdraw this amendment."

The amendment was, by leave, withdrawn.

**The Hon'ble Mr. V. J. Patel**:—"My Lord, I beg to move:—

'That in clause 5, for the words 'the Chief Justice shall' the words 'the Chief Justice may after hearing the accused' be substituted.'

The Council will see that I do not desire that the Chief Justice should be empowered to make any inquiry whatsoever. All I want is that if on the face of the information laid before the Chief Justice, there is no case to go to the special tribunal, the accused should be allowed an opportunity to have his say in the matter and the Chief Justice to be empowered to throw out the information. I submit the Council ought to allow an opportunity to the accused person to show that on the face of the information there is no case against him. With these few words I move this amendment."

**The Hon'ble Sir William Vincent**:—"My Lord, I have nothing to add to the argument that I used in respect of a previous amendment of exactly the same character. The Chief Justice is not, and cannot be, in a position to know whether the requirements of the country necessitate a trial under this Part or not. I must therefore oppose the amendment."

The motion was put and negatived.

**The Hon'ble Rao Bahadur B. N. Sarma**:—"My Lord, I beg to move that in clause 5 after the words 'three of the' the word 'permanent' be inserted. In substance it would be that the Chief Justice should appoint three permanent Judges of the High Court. It is a matter of some importance and a matter not free from difficulty. I ask that the Chief Justice should select three permanent High Court Judges in pursuance of the principle enunciated by the Rowlatt Committee in paragraph 182 of their Report, with a view to inspire confidence in the public, and in order that the administration of justice may not be exposed to the criticism that officiating judges appointed for

* See page 976, *supra*.

the purpose should have control in such matters. It has been suggested in the report that Judges of the High Court should be asked to try the cases. What they say is this:—

'It seems to us inadvisable that these tribunals should to any extent be composed of persons not already members of the judiciary but selected by the executive for the purpose of the specific case. Nothing that we have seen suggests that the special tribunals hitherto appointed have been unfair towards the accused, but we think the objections in principle cannot be overlooked.'

"Now in giving effect to that recommendation there are considerable difficulties to be faced. The High Court may at any time consist of permanent Judges, of acting Judges and of temporary Judges. The temporary Judges may have been appointed or may be appointed to dispose of arrears of work generally, or may be appointed in view of special exigencies arising, such as the trial of cases of this description. Now these officiating Judges may be appointed by the Government for a particular case, or they may be appointed generally for the purpose of these cases. But the trouble is, once they are appointed officiating Judges of the High Court, should a number of cases arise after the trial of the particular case is over, there would be nothing to prevent cases under this Act that might come up thereafter in the High Court from being referred to the temporary judge? I think that in principle there ought to be no distinction made between one Judge of the High Court and another Judge of the High Court. I am strongly against the enforcement of any principle which would vitiate the sound maxim of the perfect equality of the Judges. But once you appoint officiating Judges to clear off arrears, the criticism that these Judges are appointed by the Government with reference to their particular tendencies would still remain, and they would be exposed to the charge that being only acting Judges or officiating Judges they may unconsciously be biassed by the hope of being made permanent or influenced by the fear of incurring the displeasure of Government. I am not stating that any Hon'ble Judges of the High Court would be actuated in practice by such considerations. I am not suggesting that for a moment. But the members of the Rowlatt Committee as well as the public, I think, are perfectly justified in asking that the administration of justice should be above suspicion. Therefore our object must be to prevent officiating Judges from trying these specific cases. Well, then, if we are to prevent these Judges from trying such cases, what is to be done? There seems to be only one way and that is to rely upon another principle, namely, that is in providing for special tribunals for a specific purpose we contemplate the trial only by permanent Judges of the High Court. That is the only way to escape from that dilemma of not drawing a distinction between one Judge of the High Court and another. We contemplate only permanent Judges of the High Court because they are always there. We constitute them as special tribunals, having regard to the particular exigencies of this piece of legislation. We are not thereby infringing the generally accepted maxim that no distinction should be drawn between one Judge and another. I hope therefore that in asking for the constitution of a bench of three permanent Judges of the High Court, we are not deviating from that maxim, while at the same time we are safeguarding ourselves against the just suspicion, or at any rate, against the suspicion of the public that officiating Judges may have too much to do in the trial of cases of this description. I submit, My Lord, as I have said, the point is not free from difficulties; but I think in the interests of the administration of justice and on this specific ground that we are constituting new tribunals for a particular purpose, there would be nothing wrong in providing for the appointment of three permanent Judges of the High Court to try cases under this Act."

**The Hon'ble Dr. Tej Bahadur Sapru**:—"My Lord, I desire 3-45 P.M. to support this amendment of my Hon'ble friend, Mr. Sarma. I think that it is not fair to the accused, not fair to the officiating Judges of the High Court and not fair to the Government, that a trial like this should take place

before Judges who have yet to be confirmed. Now what is the charm about a permanent Judge of the High Court? The charm is not that he is necessarily abler than another Judge, but that he is thoroughly independent; he has got no favours to expect and no frowns to fear from any one. If you really want to inspire confidence in trials like these by Judges of the High Court, it is only fair that you should give us, if I may use the expression, *pucca* Judges of the High Court, not men who have still got to be confirmed, a trial by whom will not inspire, to my mind, the same degree of confidence as a trial by Judges who have already been confirmed."

**The Hon'ble Mr. Surendra Nath Banerjea**:—"My Lord, I desire to support this amendment. I need not recapitulate the reasons which have been urged. I remember that this point was mentioned in the Select Committee, I think, by my Hon'ble friend, Pundit Madan Mohan Malaviya, and if my memory serves me right, the Hon'ble the Home Member was inclined to favour the proposal. . . . .

**The Hon'ble Sir William Vincent**:—"May I rise to a point of order, my Lord. I have always understood that proceedings in Select Committee are confidential save in so far as they are disclosed in the Report; in any case my memory does not coincide with that of the Hon'ble Member."

**The Hon'ble Mr. Surendra Nath Banerjea**:—"I will withdraw that reference to the Select Committee. I draw from my own resources, and I will say that so far as my impressions go without reference to the proceedings of the Select Committee, I was under the belief that the Hon'ble the Home Member was inclined to accept. . . . .

**The Hon'ble Sir William Vincent**:—"May I rise again to a point of order and ask on what occasion I made the statement to the Hon'ble Member?"

**The Hon'ble Mr. Surendra Nath Banerjea**:—"In that case I should be disclosing a proceeding which you do not want me to disclose. But I stand upon absolutely unassailable ground in expressing the impression that I have formed. I do think apart from what passed in Select Committee which may be confidential, the reasons in favour of the amendment seem to be absolutely unassailable, and it strikes me that in a matter of this kind my Hon'ble friend and the Government may see their way to accede to the proposal which has been put forward. It would inspire confidence and, I think, it is the right thing to do, and therefore I appeal with some little confidence to the Hon'ble Member, apart from the proceedings of the Select Committee, to accede to the amendment."

**The Hon'ble Sir Verney Lovett**:—"My Lord, it is necessary that I should say a few words just to explain what the Rowlatt Committee really meant. Their meaning was somewhat misrepresented, no doubt unintentionally, by my friend, Mr. Sarma, when he spoke on the 7th of February. He said: 'There can be no doubt that the Rowlatt Committee meant that acting Judges should not be appointed to these tribunals. That is not what the Rowlatt Committee meant. . . . .

**The Hon'ble Rao Bahadur B. N. Sarma**:—"May I just say, my Lord, one word of explanation. I did not say acting judges; I meant Judges appointed *ad hoc*."

**The Hon'ble Sir Verney Lovett**:—"I will quote exactly what the Hon'ble Member said directly. What the Rowlatt Committee wrote was this. At the end of their paragraph 182 they say: 'Substitutes can be

appointed for the judges called away, and if there is no power it can be obtained. Substitutes, however, ought not to try these cases.' What they meant was that substitutes appointed *ad hoc* should not be appointed to try these cases. They did not mean that judges who were already acting on High Courts should not be appointed to try these cases. They did not intend to interfere with the discretion of the Chief Justice in such matters. My Hon'ble friend, Mr. Sarma, said the following on the 7th of February. He was referring to a member of our Committee. 'I have the highest respect for my distinguished friend, a Judge from Madras, and I say from my knowledge of him that he could not have allowed any corrupt or personal motives to creep into his decision. But still the Rowlatt Committee has said that the future is to be safeguarded by permanent judges of the High Court being placed on these tribunals, thereby showing distinctly their opinion that Government were not altogether happy in choosing an acting man'. Well, my Lord, the Rowlatt Committee did not say this or did not mean what the Hon'ble gentleman thinks they meant. They certainly never dreamt of showing distinctly an opinion which they never for one single moment entertained."

**The Hon'ble Mr. C. A. Kincaid**:—"I wanted to say just one word, my Lord. Since the Simla Session of this Council last year, I have been a member of a High Court which contains four judges, of which not one single member is permanent. In these circumstances Mr. Sarma's proposal for three permanent judges is absolutely impossible."

**The Hon'ble Sir William Vincent**:—"My Lord, there is in the report of this Committee, as far as I understand it, no suggestion that permanent judges only should be appointed on these tribunals. Further, I would point out that we have not provided in the Bill that the Executive Government should choose the judges for this duty. The judges will be chosen by the Chief Justice himself. We have followed exactly in this, I believe I am correct in making this statement, if not, the Hon'ble Member will correct me, the precedent of the Act of 1908. There is no distinction as far as I know in the powers of an officiating temporary or permanent judge. They have exactly the same authority in the matter of hearing appeals in matters of life and death, and they can inflict any sentence that is authorised by the law. I do not think that it can be said with any justice that an officiating judge of a High Court is open to any suspicion of dishonesty or liable to attack or that he is not as competent as anyone else; and I suggest that if we accepted a modification of this kind we should really be accepting an amendment which constitutes almost a reflection on officiating judges, a reflection to which I should be very sorry to be a party. I repeat again that the Government will not choose the members of this tribunal. A further practical difficulty has already been alluded to by Mr. Kincaid, namely, that when many officers are on leave it might be extremely difficult, if not impossible, to secure the required number of permanent judges. For these reasons I must oppose this amendment."

**The Hon'ble Mr. Srinivasa Sastri**:—"Your Excellency, as a layman not connected with any of these high offices and having no expectations in those quarters, I am in some difficulty as to how to give my vote. Time was when we used to think that persons occupying such exalted positions were above all temptation and that their character and independence were beyond question. But nowadays we have found permanent judges of the High Courts looking forward to other preferments. The Hon'ble Dr. Sapru said that a man who had risen to a permanent judgeship had afterwards nothing to look to, neither fears nor favours.

"We have seen that High Court Judges have been made members of the Executive Council, and members of the Executive Council have subsequently become High Court Judges. There is at least one gentleman hovering about between these offices and not yet settled down. I think we shall give the benefit of the presumption to everybody, permanent or officiating, and say that they are all above suspicion."

**The Hon'ble Rao Bahadur B. N. Sarma**:—"My Lord, I pointed out the difficulty and I thought I had suggested a way out of it. What happens? There are a large number of temporary judges and if the permanent strength is exhausted having regard to these exceptional trials, three or four temporary judges are appointed to work off the arrears that have accumulated. The objections which the Rowlatt Committee had was to temporary judges appointed *ad hoc* trying these offences, and they suggested that substitutes should be found to do the work which might fall into arrears. Officiating judges may be appointed when once a trial is on, but the moment that trial is over they cannot be said to have been appointed for the purpose of these trials and would not come within the rule. Therefore the difficulty remains that the Chief Justice would not in practice be able to provide against these substitutes really sitting on the Bench, and in any event we shall be throwing on the Chief Justice an invidious duty by compelling him to draw a distinction between judges and judges unless you provide by Statute that he should appoint only from among permanent judges. When a judge is appointed to clear off arrears he cannot be said to be a judge appointed *ad hoc* for a particular trial; he would be sitting to try offenders under these Acts. Therefore the objections which the Rowlatt Committee anticipated would in practice remain whatever may be the desire of the Chief Justice or of the Governor General in Council. Therefore if on the special tribunals you provide that only permanent judges of the High Court should sit, there would be no slur on any particular person. This is a specific Act providing for a particular occasion, and consequently in drawing upon your staff of officers who are always on the permanent lists, there is no harm. It is possible to defend this statutory limitation on more than one ground, and that is the reason why I have suggested the amendment to prevent the Chief Justice from falling into obvious difficulties, and in order that the administration of justice may not be exposed to the criticisms to which it is sure to be exposed especially when seditious trials are held. The only way out of the difficulty is to enact this statutory limitation. Power should be taken, as I have suggested, by the Government to transfer cases to a High Court where there are more permanent judges than five who can dispose of this work."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel**:—"My amendment* is similar to the one just disposed of and I beg leave to withdraw it."

The amendment was by leave withdrawn.

**The Hon'ble Rao Bahadur B. N. Sarma**:—"I beg to withdraw my amendment that in the proviso to clause 5 after the words 'two such' and after the words 'who are' the word 'permanent' be inserted."

The amendment was by leave withdrawn.

4 P. M. **The Hon'ble Mr. G. S. Khaparde**:—"My Lord, my amendment runs as follows:—

'That after clause 5 the following clause be inserted:—

'5-A. (1) The Court of criminal appeal under this Act shall consist of the Judges of the High Court within the jurisdiction of which the Special Tribunal held its sittings and not less than five of any of those Judges may sit and exercise the powers of the Court:

"Provided that when the number of the Judges of the High Court does not exceed four, the Chief Justice may nominate not more than one Judge and shall complete the Court by the nomination of the rest from either of the following classes:—

(*a*) Persons who have served as permanent Judges of the High Court, or

(*b*) With the consent of the Chief Justice of another High Court, persons who are Judges of that High Court:

* That in clause 5 before the words 'High Court Judges' the word 'permanent' be inserted; and that in clause (*b*) of the proviso to clause 5, before the words 'Judges of that High Court' the word 'permanent' be inserted.

Provided further that a Judge who sat in the Special Tribunal shall not sit in the Court of criminal appeal on any appeal against a conviction by that special tribunal to which he was a party.

'(2) The determination of any appeal shall be according to the determination of a majority of the Judges who heard the appeal.'

"I have taken the wording of this amendment partly from 45 and 46 Victoria, Chapter XXV, and partly from clause 5. It is usually said that, where there is a Court of three High Court Judges you don't want an appeal. In Ireland they have a Court which is similar to ours, but notwithstanding that they have provided for appeal there and there is no reason shown why there is no appeal allowed here. I believe there is an argument that when three Judges have decided a case a further appeal is unnecessary, but this is allowed in the case of the corresponding Irish Act, and it seems to me that where a case of life and death has to be decided this is throwing too much responsibility on the Court to decide the matter finally.

"In England, a Judge tries the case with the assistance of a Jury of 13, in this country we have only 9, and then the Judge summarises the case and judgment is pronounced. Under the Law the majority of the Jurors are able to decide by their verdict, and there are other safeguards. The three Judges may be very highly qualified, but still I believe it is anomalous to make that question final. As regards Ireland I think its state was worse than that of India, and I hope India will never reach the state of Ireland in this respect. As I said I have taken this from 45 and 46 Victoria. Section 3 of that Act runs: 'the Court of Criminal appeal under this Act shall consist of Judges of the Supreme Court of Judicature in Ireland with the exception of the Lord Chancellor and any of these Judges, no less than three may sit to exercise the powers of the Court.' The first part will be found in the transcript of this in which it is said that with the exception of the Lord Chancellor any of the other Judges shall preside over the Supreme Court of Judicature in Ireland, and I do not know why they excepted the Lord Chancellor presiding in these courts, and I have not discovered the reason. I have omitted that also. I suppose the Chief Justice in India would be about the same as Lord Chancellor in Ireland.

"Then the proviso to this section I have taken from clause 5 which we have already passed which speaks of the total number of Judges. I am aware that there are some High Courts in India which have got only four Judges and not more, and in their case if three Judges are nominated, there would be left only one Judge or the Chief Justice, so in constituting the Appellate Court he will nominate one Judge. The Judge nominated will be himself and he will complete the court by nominating persons mentioned in sub-clause (*a*) or (*b*) in the preceding section. If necessary I suppose he will apply to the neighbouring High Courts to complete the Court and in that way the appeal will be heard. I have also provided, my Lord,—and that amendment will come later on—I have also provided for the right of appeal. Now suppose in this particular instance in appeal the majority of the Judges are to decide the case. Three Judges hold one way and they acquit the man and two other Judges convict him, the man will be acquitted, and if the three Judges convict him, and he is acquitted by the other two, then he is convicted. There is an amendment about this which will come later on which is also in accordance with the provisions of the Crimes Act, namely, that the Judges should be unanimous, anyhow I shall not bring that matter into this subject. There are two points which the Council will have to vote upon, first whether an appeal should be permitted, and if the appeal is permitted, whether it should be in this form. The reason why there should be an appeal I have indicated already because the whole work of 13 jurors in England is done by 9 jurors in India, and three gentlemen, however estimable and good they may be, cannot be expected to come to a right decision.

"The second reason is that human life and human liberty are so sacred that we should safeguard them as much as possible. Thirdly, there will be no

delay in this matter. Fourthly, that involves no inconvenience to the Government in any way. Government get their object of speedy trial; if the man deserves to be punished he will be punished soon, and there is nothing lost in giving him a chance of defending himself or taking the chance of being acquitted by a higher court. We know that in Ireland a man committed a grievous offence, I think he was Sir Casement or somebody which led to very serious things. But with all that he was given the chance of an appeal before the Lord Chancellor of England, where of course it was rejected, but that is another matter, but he had a chance. So by the method you propose you take away the chances of appeal or the man being saved by a higher court. That, I think, is one of the matters to which I referred yesterday as being a matter of fundamental rights. Under the law he must have a chance of appeal. To take away the chances of a person of saving himself by appeal is not right, and that was what I was trying to make out yesterday as against the fundamental laws of the realm, and it is a fundamental law that should obtain in India. Yesterday I remember the eminent Jurist the Hon'ble Sir George Lowndes mentioned to us the Regulation passed in 1818 which can take away the liberty of a person, and asked us why we should complain about it now. Well, I had not the opportunity of replying to it, but to-day I think I can mention, that Regulation was passed in 1818, but then India was not administered by the Crown, it was administered by the John Company, and we came under the Crown in the year 1858, and therefore the law constituting this Council says that all laws passed after the year 1858 shall be binding. I particularly mentioned it yesterday. Before that or some time about that the Crown assumed the government of India and since then the great Queen's Proclamation which we always cite as the Magna Charta of our liberties . . . .

**The Hon'ble Sir William Vincent**:—"May I rise to a point of order? May I inquire what this has got to do with the right of appeal?"

**The Hon'ble Mr G. S. Khaparde**:—"I beg to submit that to take away the right of appeal is tantamount to taking away the right of liberty which was conferred upon us by Her Majesty in Her Gracious Proclamation."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi**:—"May I point out that according to the scheme of the Bill section 5 refers to the constitution of the court, section 6 to place of sitting, then come certain intervening sections which refer to the trial, then comes section 15 which refers to conviction for offences referred to in the Schedule, and clause 16 refers to sentence. Then comes section 17 which says that 'the judgment of the Court shall be final,' so that the question is not pertinent under that section, section 5 merely deals with the constitution of the court. As I myself have an amendment to section 17 which relates to the question of the right of appeal, it seems to me necessary to point out here that the question of the right of appeal is irrelevant unless it is incidental to the constitution of the Court."

**The Hon'ble Mr. G. S. Khaparde**:—"In regard to what has fallen from the Hon'ble Mr. Shafi, I wish to point out that we must know what constitutes the court of appeal, and when this court of appeal is accepted, then it is time to think of the appeal. When there is no appeal court at all . . . .

**His Excellency the President**:—"You had better first establish your case for right of appeal, and then if you can get the Council to accept that, I think there will be no doubt about establishing a court of appeal."

**The Hon'ble Mr. G. S. Khaparde**:—"I submit my amendment may be taken at the end of clause 17."

**His Excellency the President**:—"All right, we will leave it there."

**The Hon'ble Mr. G. S. Khaparde**:—"Thank you, your Excellency."

The motion that clause 5, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 6, as amended by the Select Committee, do form part of the Bill."

**The Hon'ble Mr. V. J. Patel**:—"My Lord, I beg to move that in the proviso to clause 6, for the words 'the Court shall' the words 'the Court may' be substituted and the words 'for reasons to be recorded in writing' be deleted. So that the proviso will then read as follows:— 4-13 P.M.

'Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court the Court may, after hearing the accused, make an order to that effect unless, it thinks fit to make any other order.'

"The point raised by this amendment, my Lord, is that the Court should have full discretion to determine the place of its sitting. Because the Advocate-General certifies to the Court that in his opinion it is necessary that the whole or any part of a trial shall be held at some place other than the usual place, the Court should not be bound as it were to accept that opinion and pass the order accordingly. In substituting the word 'may' for the word 'shall' I leave this discretion to the Court. Secondly, in asking this Council to delete the words 'for reasons to be recorded in writing', I want that the Court should not be under any obligation to record in writing any reasons for making any order as regards the place of its sitting. You will find from the next clause, it will not be necessary for the certificate of the Advocate-General to be supported by any affidavit, nor shall he be required to state the grounds upon which such certificate was given. I respectfully submit it is unfair that the law should ask the High Court to state its ground for refusing the application of the Advocate-General and at the same time for the Legislature to say that the Advocate-General shall not be bound to state the grounds on which he bases his application. I submit that if you leave the Advocate-General free to give his certificate without stating any grounds, you should also leave the Court to dispose of the application of the Advocate-General without stating any reasons. With these few words I move the amendment."

**The Hon'ble Sir George Lowndes**:—"My Lord, there does not seem to be very much point in this amendment. My Hon'ble friend Mr. Patel does not want the Court to be obliged to state reasons, and he bases that on the fact that the Advocate-General is not to be obliged to state the grounds of his application. But the two things are not on a par at all. The Advocate-General's statement is based on confidential information, while the order of the Court is necessarily based on a judicial finding, and therefore there is no reason why the Court should not state the reasons for its judgment. In 99 cases out of a hundred it would do so. I am quite content to leave it to the Court to record its reasons or not as it pleases, if the Hon'ble Mr. Patel thinks there is anything in it; but I am not prepared to accept the other part of his amendment because it is not only bad English but bad sense. You can hardly say the Court 'may' do so and so 'unless' it does something else. The two proper alternatives are *shall* do one thing *unless* it has to do something else. If my Hon'ble friend is prepared to accept this suggestion, I am ready to meet him to that extent; otherwise I must ask the Council to reject the amendment."

[*Mr. V. J. Patel; The President; Sir George Lowndes; Pandit Madan Mohan Malaviya; Dr. Tej Bahadur Sapru.*] [13TH MARCH, 1919.]

**The Hon'ble Mr. V. J. Patel**:—"I am perfectly willing if the Council accepts it. I am in the hands of the Council; I have no objection to the proposed change."

**His Excellency the President**:—"It is left to you."

**The Hon'ble Mr. V. J. Patel**:—"It is for the Council to decide and I am one of the Council, and so far as I am concerned, I have already said I have no objection."

**The Hon'ble Sir George Lowndes**:—"If that is so I am quite willing to move an amendment to the amendment—that the words 'for reasons to be recorded in writing' shall be deleted."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"If you will allow me to suggest an amendment to the amendment which the Hon'ble Law Member has suggested, it would probably put the matter in a clearer position than that in which it stands at present. My friend objected to the words 'the Court may' being substituted for the words 'the Court shall,' and now he deletes the words 'for reasons to be recorded in writing'."

**The Hon'ble Sir George Lowndes**:—"I have only suggested the deletion of these words if it satisfies Mr. Patel and he said it does."

**The Hon'ble Mr. V. J. Patel**:—"I have not said it satisfies me; I merely said I had no objection if the Council accepted it."

**The Hon'ble Sir George Lowndes**:—"Do I understand that Mr. Patel desires to press his amendment? If so, I leave it to the Council. If Mr. Patel is not prepared to withdraw his amendment and accept mine then I move no amendment."

**The Hon'ble Mr. V. J. Patel**:—"I say I have not the slightest objection to my friend's amendment if the Council does not object to it."

**The Hon'ble Sir George Lowndes**:—"Does the Hon'ble Member withdraw his amendment?"

**The Honble Mr. V. J. Patel**:—"I am perfectly willing to withdraw my amendment."

**The Hon'ble Dr. Tej Bahadur Sapru**:—"I hope your Lordship will allow me to say something before Mr. Patel withdraws his amendment. He may be very much satisfied in accepting the change in his amendment, but I have the very greatest objection to it. I think the court must be required to state its reasons, to be recorded in writing. I certainly think that Mr. Patel is not strengthening the position of the accused; he is weakening it."

**The Hon'ble Mr. V. J. Patel**:—"I am very sorry my friend Dr. Sapru finds fault with me; I have already stated that if the Council is of that opinion I have not the slightest objection."

**His Excellency the President**:—I think it will be most convenient if we deal with Mr Patel's amendment as not withdrawn."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"There are two parts to Mr. Patel's amendment; one is the substitution of the word 'may' for 'shall' and the other is the deletion of the words 'for reasons

to be recorded in writing.' I want to know, my Lord, whether either of these is withdrawn."

**His Excellency the President**:—No, they are both before the Council."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"With reference to the proposal that the word 'may' should be substituted for the word 'shall', I would ask your Lordship's permission to suggest not only that the word 'may' be substituted for the word 'shall', but also that the words which come subsequently to 'after hearing the accused, make an order to that effect,' should be entirely omitted. If it commends itself to your Excellency, I should like to make that amendment because that would meet the objection of the Hon'ble the Law Member. It should be left entirely to the discretion of the Court. The proposal relates to the Court which will consist of three High Court Judges, and I think it is not very complimentary to such a Court to say in a Statute that the Court shall order that a trial shall be held at some time and place other than the usual place of sitting of the High Court at the request of the Advocate-General. I think it should simply be left to the Court, after hearing the accused, to decide whether it would or would not pass such an order. My whole objection to the wording of the proviso as it stands is that it is not complimentary to the Court to say that the Court shall, at the request of the Advocate-General, pass a certain order. It would be more in keeping with the dignity of the Court to say that the Court may pass such an order."

**The Hon'ble Sir George Lowndes**:—"My Lord, it is really very difficult to know where we are with Hon'ble Members in this Council. We are usually told that the model we should follow is the Irish Crimes Act. The Hon'ble Pandit now tells us that it is derogatory to the High Court to allow the Advocate-General to make application upon these terms. But if I may read to the Council what the provision in the Irish Crimes Act is, on this point he will see that we have in this case followed it. Section 6(1) of that Act says:—

'The Attorney General on making an application to the High Court of Justice or a judge thereof, and certifying that in his opinion it is expedient in the interests of justice that a person awaiting his trial for an indictable offence should be tried in some county named in the certificate other than the county in which he would otherwise be tried, shall be entitled as of right to an order directing such person to be tried in the county named in the certificate.'

Therefore, under the Irish Act, it is a case of the Attorney General making an application and being entitled as of right to have a change of venue."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"May I say one word. If my Hon'ble friend is willing to accept the other provisions of the Irish Act which support the amendments here, I will accept his proposition."

**The Hon'ble Sir George Lowndes**:—"I am not prepared to accept the Hon'ble Pandit's amendment."

**The Hon'ble Rao Bahadur B. N. Sarma**:—"I would only point out that, as the wording of the proviso stands, we would be led into very great difficulties if not into ridiculous positions. The Advocate-General is shown certain confidential papers by the Government which, naturally, he would not be able to disclose to the High Court. He need not support his statement by any affidavit; he is not also asked to state any reasons on which the certificate is given. So the Advocate-General informs the High Court 'I would like that this trial should take place in such and such a place.' Then the accused is asked to be heard. The accused does not know the grounds

upon which the Government, *i.e.*, the Advocate-General, wants a trial to take place in any particular place. He has to draw upon his imagination. He has therefore to anticipate the grounds upon which it is possible that the Government has asked that a trial should take place in a certain locality and then to meet those arguments, which perhaps have or have not been in the contemplation of the Government and ask the High Court not to accept the recommendations of the Advocate-General. Well, that is the position of the accused. What is the position of the High Court? The High Court is really reduced to this position that it is merely the amanuensis or the clerk of the Advocate-General. It has to say 'The Advocate-General says so, we accept it because the accused is not in a position to meet that case,' or it has to say 'We reject this application because we do not know the grounds upon which the learned Advocate-General certifies that this trial should take place in a particular locality. Therefore we are not able to say that the accused in opposing it is wrong, so that, inasmuch as no grounds have been placed before us, we reject this application.' I think there should be a stereotyped order in the High Court, namely, 'the High Court rejects this application inasmuch as it does not know the grounds on which this application is based'. I submit that greater confidence should be reposed in the discretion of the High Court, and the word 'shall' ought to be replaced by 'may'. If it is not to be, then I think, later on, the Government should undertake to express the reasons in asking that their request through the Advocate-General should be taken into consideration. I hope that the whole proviso will be taken into consideration together and not piecemeal, and that the word 'shall' would be replaced by 'may' giving the High Court an opportunity of doing what it likes and of compelling the Advocate-General or the Government to state its reasons."

**The Hon'ble Mr. V. J. Patel**:—"So far as I am concerned, I would rather like to accept the amendment of my Hon'ble friend the Panditji and withdraw mine, so that one amendment, *i.e.*, Panditji's amendment, may be put to the vote."

**The Hon'ble Dr. Tej Bahadur Sapru**:—"I do certainly object to these words 'unless for reasons to be recorded in writing' being deleted. I attach great weight to them, and I think it will lead to a great deal of satisfaction on the part of the accused if he knows what are the reasons for the Court taking any particular action. My Lord, there is no question of dignity involved. My learned friend the Hon'ble Pandit Malaviya thinks that it is not consistent with the dignity of the High Court that the Advocate-General should give a certificate like that. As a matter of fact we know that the Advocate-General does give certificates in regard to certain matters. I would much rather have reasons, good, bad, or indifferent, than go without any reasons."

**The Hon'ble Mr. M. A. Jinnah**:—"I see there is some misapprehension in the mind of the Hon'ble Dr. Sapru. If he reads this clause carefully he will see that the High Court is required to give its reasons, provided it makes an order against the certificate of the Advocate-General, not otherwise. That is the point, and, therefore, it seems to me that if this clause stands as it is, the Advocate-General will not be bound to give any reasons for a certificate. He will present his certificate and ask the High Court that the trial should take place in a particular place. The High Court shall make an order to that effect unless, for reasons to be stated by the High Court, it chooses to make any other order, namely, any other order against the certificate of the Advocate-General. Therefore, the High Court is called upon to give its reasons only in case it does not comply with the certificate. It means this that when the High Court will be called upon to say 'I do not accept the certificate,' the High Court is obliged to give the reasons in writing. Well, I can quite understand the point of the Hon'ble the Law Member why the

Advocate-General presents his certificate without giving his reasons or his grounds, namely, that he may not be able to disclose certain matters which are confidential matters. But surely if you give the accused an opportunity of being heard on this point, namely, whether a trial is to take place in a particular place or not, then it follows that you must give full discretion to the High Court to decide either in favour of the certificate of the Advocate-General or in favour of the accused, and that you should not compel the High Court to give reasons only in case it decides against the Advocate-General. Of course, if you like to follow the Irish Act you can follow it; you can follow anything you like. But you have not followed the Irish Act, you have gone beyond it, and if you are going to give an accused person an opportunity of being heard, then surely it is not consistent with the dignity of the High Court to call upon it to give reasons only if it decides in favour of the accused."

**The Hon'ble Dr. Tej Bahadur Sapru:**—"I should like to understand whether the Hon'ble Mr. Jinnah meant by the word 'shall' that it is imperative upon the Court to pass an order in favour of the certificate granted by the Advocate-General. I do not think it is imperative so long as the words 'unless for reasons to be recorded in writing' are there. Therefore, it seems to me that the Court is not bound to grant an order in favour of the Advocate-General. I am quite clear about it; there is no confusion in my mind. It seems to me that my learned friend seems to attach too much importance to the word 'may'. There is no charm about the word 'may'."

**The Hon'ble Mr. M. A. Jinnah:**—"My point is a simple one. I think I have made myself clear. What I say is this, that the Court shall make an order to that effect, namely, an order to the effect that the Advocate-General wants unless—perhaps the Hon'ble Member (Dr. Sapru) will allow me to finish—unless the High Court is prepared to state its reasons in writing: in that case, it can make an order to the contrary."

**His Excellency the President:**—"Do you wish to speak agai ?"

**The Hon'ble Pandit Madan Mohan Malaviya:**—"Just a few words, my Lord. My Hon'ble friend Mr. Jinnah has made the first part of this amendment quite clear. As regards the second part. The words in the proviso 'The Court shall make an order to that effect' are followed by the clause 'unless for reasons to be recorded in writing it thinks fit to make any other order'. Now, as it has been pointed out the Court will not be given the reasons upon which the Advocate-General would want the transfer of a case, and yet the Court will be required to pass an order as demanded by the Advocate-General unless it gives reasons why it should pass a different order. Are you placing the Court in a fair position? You say that it must pass an order as demanded by the Advocate-General, and that if it chooses to pass a different order, it must give reasons in writing for doing so, but you at the same time provide that the Advocate-General shall not be required to state the reasons upon which his application shall be based. That will not be fair to the Court."

**His Excellency the President:**—"Do I understand that the Council are willing that the Hon'ble Mr. Patel's amendment shall be put to it as amended by the Hon'ble Pandit Madan Mohan Malaviya, because if so, I will put the amendment in that form. The amendment will then run as follows:—

'That in the proviso to clause 6, for the words 'the Court shall' the words 'the Court may' be substituted and the words 'unless for reasons to be recorded in writing it thinks fit to make any other order' be deleted'.

The motion was put and the Council divided as follows:—

| *Ayes—10.* | *Noes—34.* |
|---|---|
| The Hon'ble Sir Gangadhar Chitnavis. | The Hon'ble Sir Claude Hill. |
| „ Pandit M. M. Malaviya. | „ Sir George Lowndes. |
| „ Mr. R. Ayyangar. | „ Sir Thomas Holland. |
| „ Mr. B. N. Sarma. | „ Sir Sankaran Nair. |
| „ Mr. V. J. Patel. | „ Sir William Vincent. |
| „ Mr. M. A. Jinnah. | „ Sir James Meston. |
| „ Maharaja Sir M. C. Nandi. | „ Sir Arthur Anderson. |
| „ Mr. G. S. Khaparde. | „ Mr. W. A. Ironside. |
| „ Rai B. D. Shukul Bahadur | „ Babu S. N. Banerjea. |
| „ Mr. K. K. Chanda. | „ Dr. T. B. Sapru. |
| | „ Sir Verney Lovett. |
| | „ Mr. H. F. Howard. |
| | „ Sir James DuBoulay. |
| | „ Mr. A. H. Ley. |
| | „ Mr. H. Sharp. |
| | „ Mr. R. A. Mant. |
| | „ Sir Godfrey Fell. |
| | „ Mr. F. C. Rose. |
| | „ Mr. C. H. Kesteven. |
| | „ Mr. D. de S. Bray. |
| | „ Lt.-Col. R. E. Holland. |
| | „ Surg.-Genl. W. R. Edwards. |
| | „ Mr. G. R. Clarke. |
| | „ Mr. H. Moncrieff Smith. |
| | „ Mr. C. A. Parron. |
| | „ Mr. P. L. Moore. |
| | „ Mr. T. Emerson. |
| | „ Mr. E. H. C. Walsh. |
| | „ Mr. C. A. Kincaid. |
| | „ Sir John Donald. |
| | „ Mr. P. J. Fagan. |
| | „ Mr. J. T. Marten. |
| | „ Mr. W. J. Reid. |
| | „ Mr. W. F. Rice. |

The amendment was therefore negatived.

4 44 P.M. **The Hon'ble Mr. G. S. Khaparde:**—"My Lord, I had better read out the amendment first: It is that in the proviso to clause 6 for the words from the word 'make' to the words 'any other order' the following words be substituted:—

'Make such order as it deems fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government'.

"The amended proviso would run as follows:—

'Provided that if the Advocate-General certifies to the Court that it is, in his opinion, necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make such order as it deems fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government . . . .'

The gist of my amendment is that if this application is made by the Advocate-General to the High Court and if the High Court accepts the recommendations of the Advocate-General and orders the case to be tried elsewhere, then the expenses that will accrue to the accused for going there and getting all his witnesses there and getting his lawyers there and all those things, those should be borne by the Government. The Court in making that order may also make a similar order. The authority for this is, as correctly guessed, the Irish Prevention of Crimes Act of 1882. I think I had better read the other portion of the section; the first part was read out to the Council by the Hon'ble Sir George Lowndes showing what the law in Ireland was. If

the Court complies with the request of the Advocate-General then clause (2) of that section which reads as follows should apply :—

'The Lord Lieutenant shall from time to time provide for the payment, if an order is made under this section respecting the trial of any person, of the reasonable expenses of such person coming to the place at which, in pursuance of such order, he is to be tried in any case where he was admitted to bail and also of the witnesses required for the defence of such person, and certified by the Court before whom he is tried to be so required'.

It means that if the Advocate-General's application succeeds and the venue is transferred, then the expenses which necessarily will have to be incurred by the accused, if he is free in going there (if he is not free the Government takes him free of charge), the expense of his witnesses and his lawyers will have to be provided for. I think, one reason for this provision is that this application may not be lightly made. Supposing a person was being tried in Bombay; he might have friends there; he will be able to arrange easily for his defence and his witnesses may be living there. If they take the trial in the Punjab and say 'The offence might have been committed in Bombay, but it is better to try him in the Punjab', then in that case if the Court agrees to it, the Court should also say to the Government 'You pay the expenses which are incidental to this transfer.' The accused's lawyer has to go to the Punjab, his witnesses and so on. I think this is intended both for the protection of the person charged and also for the protection of the Government itself so that an application will not be made lightly, more especially since no reasons are to be assigned. It is to be merely a certificate, and in giving that certificate he need not give his reasons. I propose that the Court may make such order as it thinks fit and provide that if the case is transferred that provision should be made for the payment of his witnesses and pleaders and so on. This is in accordance with clause (2) of section 6 of 45 and 46 Vict., c. 25, and to me appears to be designed for the protection both of the Crown as well as of the accused, and I trust that this Council will accept this proposal as it is very good indeed, more especially since it came to be very nearly accepted in one part, but unfortunately it missed the mark; let me see if this will succeed now."

**The Hon'ble Sir James DuBoulay**:—"My Lord, I am afraid that Government must oppose this amendment. It is divided into three parts, namely, the question of first the person charged, secondly, his witnesses and thirdly, his counsel. Mr. Khaparde has quoted the Prevention of Crimes Act. It has been referred to frequently to-day; and Mr. Khaparde referred to it in justification of his proposal for the payment of expenses. I do not think he will find anything in the Crimes Act about counsel or about witnesses. It is limited so far as I can see to 'the expenses of such person coming to the place at which in pursuance of such order he is to be tried, in any case where he was admitted to bail'. It refers only to his personal expenses. No; I see there is also provision for the payment of the expenses of witnesses. But may I point out that under clause 7 of the Bill the Criminal Procedure Code applies to proceedings under this Part; and under the provisions of the Code the expenses of witnesses are paid; so that in the matter of witnesses there is no necessity to make any special provisions. So far as the payment of counsel goes, I think I am right in saying that, when a man is tried for his life, in every province of India arrangements are made by order of the High Court—and we had considerable correspondence in the Home Department on this subject with Local Governments—arrangements are made that if a man is too poor to provide his own counsel, the Court should arrange for somebody to defend him. There is nowhere any suggestion in the Code that special provision for the accused's expenses should be made, and Government do not think that in this respect a man charged with revolutionary crime is entitled to be treated with any greater tenderness than in the case of ordinary offences."

**The Hon'ble Mr. Srinivasa Sastri**:—"There is some difficulty, my Lord, as I think in understanding the meaning of the amendment. This is how it is. The Court shall after hearing the accused make such order as it deems

fit and shall order the expenses of the person charged, his witnesses and counsel to be paid by Government. Is this expenditure to be incurred by Government in the case of any order favourable or otherwise, even when actually refusing transfer of the venue of the Court? That is the meaning of the Hon'ble Mr. Khaparde's amendment. I think it is in excess of his own intention as expressed in his speech."

**The Hon'ble Sir George Lowndes**:—"That is, I take it, the meaning of the clause as amended by Mr. Khaparde."

**The Hon'ble Mr. G. S. Khaparde**:—"I am very glad to hear that under the Criminal Procedure Code these expenses of the witness will be ordinarily paid and if the man is poor and unable to defend himself then Government will engage a pleader for him. I only wanted to make it clear so that it might come in here and not get ignored, this being a special enactment. I know that there is a section that the Criminal Procedure Code may apply in all cases in which it is not inconsistent with this This payment is not part of the procedure; it is part of the grace or general consideration that is shown to a man because the law always presumes a man to be innocent until he is proved guilty. So if I am assured that that will apply here, I am content."

**The Hon'ble Sir James DuBoulay**:—"I am not sure whether the Hon'ble Member understood what I said, it was that the rules of the High Courts make provision that where a man is tried for his life the Court shall provide him with a lawyer if he is too poor to afford one. That is the rule of the High Courts now. In this particular case the Chief Justice has power to make rules; he will no doubt make exactly the same rules in these as in other cases. I do not think that anything more than that is necessary."

**The Hon'ble Mr. G. S. Khaparde**:—"Then, if a man is to be transported for ten years the poor man will get nothing at all?"

**The Hon'ble Sir James DuBoulay**:—"Exactly as at present."

**The Hon'ble Mr. G. S. Khaparde**:—"Well, I humbly submit that, considering that this is a special enactment and a special procedure, this concession may be given, and if I am assured that the Chief Justice will deal with this part of the case also and prescribe some scale on which payment will be made to enable the poor man to defend himself, then I shall be content. Otherwise, of course, I will take the general chance. That is what I have to submit."

The motion was put and negatived.

4-54 P.M. **The Hon'ble Rai Bahadur B. D. Shukul**:—"My Lord, I beg to move my amendment which runs as follows:—

'That in the proviso to clause 6 the words from 'nor shall' to the end of the proviso be deleted'.

"The clause will then run as follows:—

'The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable:

'Provided that if the Advocate-General certifies to the Court that it is in his opinion necessary in the interests of justice that the whole or any part of a trial shall be held at some place other than the usual place of sitting of the High Court, the Court shall, after hearing the accused, make an order to that effect, unless for reasons to be recorded in writing it thinks fit to make any other order. It shall not be necessary for the certificate of the Advocate-General to be supported by any affidavit.'

"My Lord, this clause has already been discussed so I do not intend to detain the Council very long. I do not approach the question from the lawyer's point of view, I look at it from a commonsense point of view; to me this proposal seems to be quite anomalous. I think it is not fair to the

judges that the Advocate General should not state the reasons for having given the certificate. It is equally unfair to the accused that he should not know the reason why there should be a change of venue. I, therefore, think that the Advocate General should give his grounds so that the High Court may be in a position to form an independent opinion as to where the case should be finally tried and why. With these words I beg to move this amendment."

**The Hon'ble Sir George Lowndes** :—" As there are some more amendments on this same subject it might save time if the movers spoke to them now."

**His Excellency the President** :—" Yes, because if the amendment is lost, I should have to rule them out of order."

**The Hon'ble Mr. G. S. Khaparde** :—" I have a similar amendment which runs as follows :—

'That in the proviso to clause 6 the words from 'nor' to the end of the proviso be deleted'.

" My reason for proposing this is that I think it is a little hard that the Advocate-General should not state his reasons for not granting a certificate. The accused will not know why the change is made."

**The Hon'ble Rao Bahadur B. N. Sarma** :— " My Lord, I beg to move my amendment which runs as follows :—

'That in the proviso to clause 6 the words 'nor shall' to the end of the proviso be deleted'.

I have already said what I have to say on the point."

**The Hon'ble Sir George Lowndes** :—" My Lord, I regret I cannot accept the amendment moved by my Hon'ble friend Mr. Shukul. The clause in the Bill as drafted only says that the Advocate-General cannot be compelled to state the grounds of his application. There is no doubt that in ordinary cases he will be able to state them and indeed he will be most anxious to do so. There is very good reason why he should want to do so in order to convince the Court. In every case where he can he will do so. But there may be cases in which it will be impossible for the Advocate-General to state the grounds. Such a case is conceivable. Suppose at the place where the trial is to be held the accused are actually preparing to murder a witness. In such a case it is not very desirable to disclose his knowledge of the conspiracy, and in that case he will merely grant the certificate. In the section of the Irish Act on which this is modelled the certificate of the Attorney-General is conclusive. He has merely to state that in his opinion it is desirable that the place of trial should be changed, and it is changed because of that certificate. We have adopted the provisions of the English Act, but have made it more favourable to the accused and have given the Court discretion to make any order it thinks fit, but we are not going to compel the Advocate-General, who corresponds to the Attorney-General in Ireland, to state the grounds on which he gives his certificate."

**The Hon'ble Rai Bahadur B. D. Shukul** :—" If the High Court is not in complete possession of the grounds on which the certificate has been given, how is it possible for the Court to form an independent opinion as to where the place of trial should be and inasmuch as the accused does not know the reasons why the usual place of trial as was specifically recommended has been altered he is precluded from challenging the propriety of their certificate strongly. Further, it may not be convenient for him to secure witnesses for his defence at the altered place, and he will, therefore, be put to grave inconvenience if the place is changed to the one recommended by the Advocate-General, a fact which would be worth considering."

The motions were put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I put my amendment which runs as follows:—

"That the following be added to the proviso to clause 6:—

'Where there is no Advocate-General the Court may of its own motion or on being moved by either party and after hearing the accused when it acts of its own motion or on the application of the prosecution direct that the whole or any part of the trial shall be held at any place other than the usual place of sitting of the High Court'.

"My Lord, I put this amendment because there is an Advocate-General only in Presidency Towns. The clause as drafted refers to the certificate of the Advocate-General; so that it presumes there is an Advocate-General. This clause, as it stands, is no doubt drafted on the clause in the Irish Crimes Act, but in Ireland there is one Attorney-General. In any case I don't see how provinces like the Central Provinces or the Punjab, for instance, are to be dealt with, and that is why I have provided in my amendment that the Court shall act on its own motion or on motion by either party. This completes the process that is indicated in the clause, and I trust the amendment will commend itself to the Hon'ble the Law Member."

**The Hon'ble Mr. V. J. Patel:**—"Your Excellency, I regret I cannot see my way to support the Hon'ble Mr. Chanda. I think ample provision exists. The first part is wide enough. If he will look at it, he will see it says:

'The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable'.

"This makes it clear that there is no difficulty about the matter, and I hope therefore he will withdraw his amendment."

**The Hon'ble Sir William Vincent:**—"May I explain in the first place there is, as far as I know, no such officer as an Advocate-General in Ireland, so it is unlikely we got the expression from the Irish Act. There is, however, an Attorney-General and a Solicitor-General. The Hon'ble Mr. Patel is quite right in his statement about this amendment and further, if the Hon'ble Mover will refer to section 4 (*l*) of the Criminal Procedure Code he will see that in provinces in which there are no Advocates-General, the term includes Government Advocate and persons appointed to carry out the duties of an Advocate-General. The definitions in the Code apply to the Bill.

"I hope, therefore, that the Hon'ble Member will see that there is nothing in his amendment and that he will withdraw it. As a matter of fact there is in every province either an Advocate-General or a Government Advocate. I assure the Hon'ble Member that there is nothing in his amendment."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, there is, no doubt, some officer performing the functions of the Advocate-General, and in some provinces, but as we shall see later, the Advocate-General has certain functions to perform and which only exclusively belong to him."

The motion was put and negatived.

5 P.M. **The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move the following further proviso to clause 6:—

'Provided further that—

(*a*) if the trial or any part of it be transferred by the Court as aforesaid on the application of the prosecution or on a certificate by the Advocate-General, or on its own motion, the accused, if on bail, shall be entitled to his reasonable travelling or other expenses necessitated by such transfer. The Court shall have power in all cases to impose such terms as to cost and other matters as appears proper to the Court, when ordering such transfer; and

(*b*) the accused shall have the right of moving the Court to direct that the trial or any part of it be transferred in the same manner and the Court, after hearing the prosecution, may then pass such order as appears proper to it'.

"As regards the first part, I submit that if the case is transferred by the Court on the certificate of the Advocate-General and if the accused is on bail, all his reasonable travelling and other expenses should be paid. There was on this point another amendment by my Hon'ble friend Mr. Khaparde, but it was more ambitious as he wanted the expenses of the counsel also to be paid. I submit I restrict my suggestion to a small matter. My amendment is in accordance both with precedent and justice. If the case is transferred at the request of the prosecution, there is no reason why the accused should not be compensated and paid the expenses if he is on bail, and I say that the inherent power which the Courts possess of passing any orders regarding terms as to costs and other matters should not be fettered. Finally, I say that though the accused would have the right of asking that the trial of any part of the case should be held in some other place, I do not see why you should try to curtail the inherent power of the Court which it has of dealing with such applications."

**The Hon'ble Sir James DuBoulay**:—"My Lord, both these amendments have already been negatived in substance. In regard to the first of them the Hon'ble Mr. Khaparde suggested in moving a previous amendment that the Court should order the expenses of the person charged, his witnesses and counsel to be paid by Government, and the Hon'ble Mr. Chanda in the present amendment has suggested a provision that the accused if on bail should be entitled to his travelling expenses if the trial be transferred. In this matter of expenses, Mr. Chanda says that he now restricts his suggestion to a small matter; Government opposed the larger proposal and will now restrict its opposition to the smaller suggestion, but must still oppose. I don't think there is any reason for following the Irish Bill in this particular matter.

"As regards the question of the Court being moved by the accused, it has not been argued at any great length, but it does seem to me that the reasons for moving for these transfers are the general interests of justice. You will find that the explanation is given by the Rowlatt Committee, where they point out that witnesses brought to Calcutta or other great cities are exposed to great inconvenience and difficulties and labour under a sense of alarm and confusion in entirely novel surroundings. It is really from that point of view, the prevention of witnesses from being terrorised and in the interests of the administration of justice that this provision has been made: it is not in the interests of the accused persons but in the interest of justice. There is, therefore, no reason for permitting the accused to have the right of moving the Court in such matters and Government cannot accept the amendment."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I do not think I have anything more to add. I only want that the power of the Court should not be interfered with."

The motion was put and negatived.

The motion that clause 6, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 7 stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 8 as amended by the Select Committee stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I beg to move the following proviso to clause 8:—

'Provided that the accused shall have the right of cross-examining any prosecution witnesses if he so wishes before the framing of any charge without prejudice to his right of cross-examination after the framing of the charge.'

"I think, my Lord, this provision ought to be inserted. It is exactly in accordance with precedent, as both in trials of warrant cases and in commitment proceedings this power exists. But in practice it is very rarely resorted to by the accused But it some sometimes happens that questions put to a witness directly after his examination-in-chief may help the Court to find that there is really no reason to proceed further in the matter, and it results in the saving of time and public money. It also saves the accused from harassment and expenses.

"With regard to the remarks made by the Hon'ble the Home Member, I may inform the Council that I have known cases where a Magistrate refused to allow this right of cross-examining a witness at this stage, and the High Court strongly commented upon it. So when there is room for doubt, I think the point should be made clear, so I am strongly of the opinion that this provision should be inserted."

**The Hon'ble Sir William Vincent:**—"My Lord, the Hon'ble Member wishes to insert this amendment to the clause, although he thinks that the right which it provides will never be exercised . . . .

**The Hon'ble Mr. Kamini Kumar Chanda:**—"Very rarely."

**The Hon'ble Sir William Vincent:**—"That the right will be exercised very rarely. Well, if that be so it does not seem worth while at all to insert the provision. As a matter of fact I take a rather different view. I believe that in all these cases the right of cross-examining witnesses before a charge is framed is always admitted when it is desired by the pleader for the defence, and this is certainly so in the provinces of Bengal and Bihar and Orissa with which I am familiar. The practice has always been so and it has been very definitely laid down by the Calcutta High Court. I will just quote one ruling here:

'Opportunity to cross-examine a witness for the prosecution should be given to the accused if they so desire even though the charge may not be framed'.

"There are other rulings exactly to the same effect, so that really the accused is given an ample opportunity of such cross-examination under the Criminal Procedure Code which applies to trials under the Bill.

"There is no necessity to make the change which the Hon'ble Member seeks to adopt."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I am not quite sure that what the Hon'ble the Home Member says will be followed. You find cases reported in Calcutta in which the Magistrate refused to give the accused this right in this matter, and as we cannot be sure that it always will be done, I think it should be stated clearly. You are making a special procedure and I see no harm in making this point clear."

The motion was put and negatived.

The motion that clause 8 of the Bill, as amended by the Select Committee, stand part of the Bill, was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 9, as amended by the Select Committee, stand as part of the Bill."

**The Hon'ble Mr. G. S. Khaparde:**—"This is a small amendment, not so much to add to the law as to make it clear. It is that in clause 9, after the word 'necessary' the words 'for the attendance of defence witnesses or' be inserted before the words 'in the interests of justice'. It was pointed out to me that the words 'in the interests of justice' include the necessity for the attendance of witnesses, but sometimes I have seen that these

witnesses are not allowed either because it would cause delay or for some other reason. So I submit that it should be stated clearly in the section that at least one or two opportunities will be given to the accused to secure the attendance of witnesses. If he cannot secure the attendance of his witnesses by two adjournments the Court may proceed, and that is all that is intended by my amendment."

**The Hon'ble Sir William Vincent**:—"My Lord, the Hon'ble Mr. Patel has also, I think, an amendment on the same clause. It might save time if he will speak to it."

**The Hon'ble Mr. V. J. Patel**:—"I rise to support the amendment of my Hon'ble friend Mr. Khaparde. I have given notice of a somewhat similar amendment. It was no doubt pointed out to us in the Select Committee that the words 'in the interests of justice' would meet our objection. We however feel some doubt about it, and after all it is better to make clear by specified words that, if the Court is of opinion that postponement is necessary to enable the accused to produce his witnesses, it should postpone the case. The words are 'The Court shall not be bound to adjourn any trial'. What we want is that the Court should be bound to adjourn if it is necessary to enable the accused to get his witnesses produced. I therefore support the amendment moved by my friend Mr. Khaparde."

**The Hon'ble Sir William Vincent**:—"My Lord, in the first place I wish to repeat in regard to this amendment that I think Members of this Council sometimes forget that trials under this Part will be before three High Court Judges. When the last amendment was discussed, we were told, 'Oh! cases have been known in which the cross-examination of witnesses has not been allowed before charge.'

"My Lord, these cases will not be tried before a Subordinate Magistrate, and I do not think that the Hon'ble Member could name any case or suggest any case in which a Judge of a High Court had refused a reasonable opportunity for adjournment for the purpose of calling defence witnesses. The fullest discretion is left to the Court in the clause as it stands; the Bill merely says that the Court shall not be bound to adjourn save in the interests of justice or as provided in the preceding clause. Where a person deliberately, to defeat the ends of justice, either keeps his witnesses out of the way or puts in an enormously long list of witnesses, not *bonâ fide* with the intention of examining them, but merely to delay proceedings, in such cases it is right that the Court should not be bound to adjourn. I think that a Court of three High Court Judges would always adjourn if it was thought that there was any possibility of injustice to the accused."

**The Hon'ble Mr. V. J. Patel**:—"Why then is this clause necessary?"

**The Hon'ble Sir William Vincent**:—"I ask the Council to believe that three High Court Judges will behave in a reasonable manner and give an adjournment when it is required. The Hon'ble Member has asked me why this clause is necessary. It is necessary in view of the procedure prescribed by section 257 of the Criminal Procedure Code. It may be said that it is possibly unsafe to vest a similar discretion in the hands of subordinate courts, but it can be safely left in the hands of three High Court Judges."

**His Excellency the President**:—"Mr. Khaparde, do you wish to reply."

**The Hon'ble Mr. G. S. Khaparde**:—"No reply."

The motion was put and negatived.

5-26 P.M. **The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, the amendment I beg to move is:—

"That to clause 9 the following be added:—

'The accused shall be entitled to get copies of the depositions and exhibits free of cost to prepare his line of defence'.

"This is a very small matter to the State, but it is of very great importance to the poor man who is on his trial. He will only have 14 days' time to get copies and prepare for his defence, and it may be that he may not be able to pay for the cost of these things in time, and this means extra cost. I submit that it will be a bare act of justice to let him have these copies free of cost."

**The Hon'ble Sir William Vincent**:—"My Lord, I confess I can see no reason why an accused person who is being tried before this tribunal of three High Court Judges should be more favoured in the way of obtaining copies free of cost than any ordinary prisoner. My sympathies do not run so much with these men. They are in the same position as any ordinary accused persons and, if, I may say so, I know of no precedent for the amendment of the Hon'ble Member either in the Act of 1908 or anywhere else. Where accused persons—and the provisions of the Code are not illiberal in that respect—do get copies free of cost, the same facilities will be provided to persons accused under Part I, but I confess I can see no reason for showing them any special indulgence."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"I think there is a provision in the Code under which accused persons are sometimes allowed copies free.

"In regard to the first objection of the Hon'ble the Home Member that there is no special reason why these men should get copies free, I submit that there is a special reason. You are taking away from them rights which other persons possess, namely, the right of commitment, the right of trial by jury and the right of appeal, and I think it is only bare justice that they should get something for this."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel**:—"My amendment was not proposed."

"That to clause 9, the following words be added:—

'or to enable the accused to secure the attendance of his witnesses'."

**His Excellency the President**:—"But it is exactly the same amendment as Mr. Khaparde's. I would ask the Hon'ble Member to compare the two. I must rule that they are both the same and that the one has been disposed of by the other."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, I beg to move—

"That after clause 9 the following clause be inserted:—

'9A. If there is any record of any previous statement or evidence or of substance thereof, of any prosecution witness made to any authority including the police, the accused shall be entitled to have copies of such evidence, statement or substance on applying for the same.'

"I must make a special appeal to the Hon'ble the Law Member to have sympathy with me in this matter, my Lord. Here you find that the man will have nothing to go upon in his trial. Of course, so far as the prosecution is concerned, before they call a witness, they must have got some information as

to what he is going to say ; they must have some statement from him recorded either by a Magistrate or a police or some other officer. Is it not essential in the interests of justice that this fact should be known by the accused ? In an ordinary Sessions trial he has the statement of the man in the commitment proceedings, and if the man makes another statement he can compare the two and see if the man is telling the same story or a new one. But there is no chance now of his knowing anything at all. Is it, or is it not, necessary, in the interests of justice, that these facts should be known to the accused ? Therefore, my appeal to the Hon'ble the Law Member is that he should view this amendment sympathetically and allow the accused copies of statements in the possession of the Crown. Of course, if a statement is made before a Magistrate, the accused has a right absolutely to have it and he is entitled under sections 145 and 157 of the Evidence Act to cross-examine a witness on that statement. If the statement was to a police officer, the matter is slightly different. Before the present Code of Criminal Procedure was enacted in 1898, it was always allowed that statements recorded by the police should be given to accused persons. Then, my Lord, it came out that an Inspector-General of Police in Bengal, in order to evade this, issued a circular to the police to the effect that, when making investigations, they were not to record the statements of witnesses in the diary under section 161, but to incorporate them in the diary under section 172. The diary under section 172 being a privileged document, the accused person had no right to call for it or to inspect it, but it was ruled under the old Act that he had a right to get any statement to the police which had been recorded in the diary under section 161. It was tried to evade that by this circular to which I have referred and this coming to the notice of the High Court in a well known case, Mr. Justice Trevelyan ruled that if information given by any witness is incorporated by the police in the diary under section 172, the accused was entitled to that even then and he strongly censured the conduct of the police. He says : ' I can hardly believe that any responsible officer of Government would issue a circular like this to evade the rules of this Code'. (This is a case reported, I believe, in 20 Calcutta.)

"After that the Code was amended and the law was amended on this point. The present law (section 162) is that if a man is called as a witness and if, as a matter of fact, he was examined by the police, then the accused person shall be entitled to ask the Court to send for that document and, after inspecting it, if the Court thinks fit in the interests of justice that a copy should be given to the accused, a copy was to be given. This is the present law, and, my Lord, when this law was enacted, there was considerable discussion in this Council about this point, and, with the leave of the Council, I should like to place this matter before it. This is what the Hon'ble the Law Member at that time, Sir Mackenzie Chalmers, said :—

'It is a question of discovery. When a witness is called, you are always entitled to impeach the credit of that witness by showing that on a previous occasion the witness made a statement inconsistent with what he is now saying in the witness-box. That is English law, and I believe it to be Indian law also. There is no question about that, but the point is this. In order to show that the witness on a previous occasion made a statement which was inconsistent with what he is saying now you must have some material to go upon, and there has been on the construction of the old section a conflict between the decisions of the Courts '.

"Then, later, he says :—

'We have only provided that in certain cases, and subject to the discretion of the Court, copies may be given of the supposed statements of a witness where the witness is himself called. It is clear that, when a witness is called, his name, identity and the substance of his information is to be given to the Court, and therefore there is no objection to any previous statement made by that witness being accessible to the accused . . . . Very often in this country, and by no means rarely at Home, witnesses do make inconsistent statements at different times. They may make them from folly ; they may make them from bad motives ; but it is most important to the accused when he is being pressed by the evidence of a witness to be able to show that the story told by the witness in the box is not the story told by the witness when first he was asked about the affair when his memory was fresh and the facts were fresh in his recollection, and when he had no time to think out the consistent story which he afterwards tells. I can recollect several cases at Home in which I have been concerned where the inconsistent statements made by witnesses were most material evidence in favour of

the accused. I remember one case where a woman was undoubtedly robbed and maltreated; there was no doubt of the fact. She first accused one man, and then she accused another, and I am by no means sure that either of the two persons she accused was the real person who assaulted her.'

"Then, my Lord, in reference to one remark of the Law Member, the then Lieutenant-Governor, Sir John Woodburn, put this question:—

'The Hon'ble Mr. Chalmers used the expression that he hoped that the discretion would be freely used by the Magistrates. I do not know exactly what he meant by that: whether he meant that they should not give copies of the papers or that they should freely do so'.

"Mr. Chalmers replied 'I meant that they should freely do so'. In a considerable portion of Bengal and the whole of Assam such statements are always given in Sessions trials, and whether the statements are recorded in full or the substance only is recorded, the Sessions Court always allows copies to be given to the accused. It is a matter of justice that this should be done. Under these circumstances, my Lord, I submit and I earnestly pray that the Hon'ble the Home Member will be pleased to accept this amendment."

**The Hon'ble Sir William Vincent:**—"My Lord, where there are records of any previous statements or of evidence given against the prisoner by any prosecution witness, copies will be available to persons accused under this Part just as much as they are to any ordinary accused, and there is no reason for making any change. As to police papers, the position under the ordinary law is that where a witness is called for the prosecution and his statement has been taken down by the police, the court may, if it thinks expedient, give a copy of it to the accused when the statement may be used to impeach the credit of the witness. I submit that this is all that is required in the present case. The Hon'ble Member has told us that Judges always give these copies. Why should we suppose that three High Court Judges will not do so, unless it is in the public interest to refuse them? But in the case of these political conspiracies particularly, there are instances in which statements made to police officers cannot in the public interest or with due regard to the protection of the lives of those who make them be given; and it is in those cases only, I imagine, that copies of the statements of such witnesses will not be furnished to the accused. I cannot see why any difference should be made in the matter of furnishing copies of these statements made to the police between these young revolutionaries and any person accused before the ordinary courts."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I do not ask for any differentiation. What I say is that in the case of these revolutionaries the present law should be followed. If there is any matter that ought not to be furnished to the accused on political grounds, by all means keep that back; but I say so far as it implicates the accused, why should not the accused know what the previous statement of a witness against him was? In the Court the witness may make a totally different statement, and, I submit, my Lord, that in a case like this it is very necessary that the accused should be given a copy of the previous statement."

The motion was put and negatived.

The motion that clause 9 of the Bill as amended by the Select Committee stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 10, as amended by the Select Committee, do stand as part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 11 do stand part of the Bill."

[13TH MARCH, 1919.] [*Mr. Kamini Kumar Chanda; Sir William Vincent; Pandit Madan Mohan Malaviya; Sir George Lowndes.*]

**The Hon'ble Mr. Kamini Kumar Chanda** :—"My Lord, I beg to move the following amendment :— 6-45 P.M.

'That in clause 11 the words 'its proceedings or' be omitted ; and the following proviso be added to the same clause :—

'Provided that the Court is unanimous on the point '.

"The clause would then run thus :—

'The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of any part of its proceedings, provided that the Court is unanimous on the point'.

"I do not propose to make a speech on this amendment. All that I ask is that, if it is thought necessary to keep any portion of the proceedings from the public, the opinion of the Court on this point should be unanimous."

**The Hon'ble Sir William Vincent** :—"My Lord, I submit that if the Court considers that the whole of the proceedings should be held *in camera* in the public interest or for the protection of any of the witnesses, they should have that power. It is very doubtful—I cannot put it higher—whether every Court has not got that power at present. Many here will remember that the question was discussed at great length recently in the superior English courts. Nor is there any reason why in a matter of this kind, where the public interest or the safety of a witness are concerned, the opinion of the majority should not prevail, or why if one Judge thinks differently from two others, his opinion should have greater weight. I must certainly oppose this amendment."

**The Hon'ble Pandit Madan Mohan Malaviya** :—"My Lord, the reason why the opinion of one Judge should prevail if he is of opinion that the proceedings should not be *in camera* is that the Legislature and law courts have long recognised the advantages of a trial which is open to the public, where all that the Court is doing can be watched by the public. If one of the Judges constituting a bench is not satisfied that there is any reason for shutting out the public from watching the proceedings, I submit that that is sufficient justification for requiring that the proceedings shall be public. My Lord, I fear that the Hon'ble the Home Member does not recognise the value of the safeguard of a public trial in the case of India and Indians to the same extent that he would do perhaps in the case of other countries. But the circumstances here are peculiar, and the remarks to which he referred—the remarks, I suppose, in the House of Lords, made on this subject—would apply with greater force to the circumstances obtaining in India. In this legislation before us you are adopting a very special procedure which considerably curtails the safeguards for liberty which the subjects of His Majesty at present enjoy. If you must do so—we urge that you should provide a safeguard against the exercise of the power except under circumstances where there shall be a guarantee at least to the mind of the person accused—that the matter has been properly considered by all the three Judges, and that they are unanimously of opinion that there is reason for the proceedings being *in camera*. Where one of the Judges is doubtful, I submit the matter stands on an entirely different basis, and the Council will be wise in requiring that where such is the case, the proceedings should not be conducted *in camera* and that the trial should be in open court . . . .

**The Hon'ble Sir George Lowndes** :—"I should like to point out that this clause of the Bill is not dealing with the question of trials *in camera*. The Hon'ble Pandit's remarks therefore are, I submit, beside the point."

**The Hon'ble Pandit Madan Mohan Malaviya** :—"I should like, my Lord . . . .

[*Sir George Lowndes; Pandit Madan Mohan Malaviya; The President; Mr. Kamini Kumar Chanda; Sir William Vincent; Mr. Surendra Nath Banerjea; Mr. V. J. Patel.*] [13TH MARCH, 1919.]

**The Hon'ble Sir George Lowndes**:—"My Lord, I object to my Hon'ble friend replying; he has already spoken."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"I only want an explanation, my Lord. I want an explanation of the section, if I may. I want to know whether my friend is right in what he has said. I want to draw the attention of Council . . . .

**His Excellency the President**:—"No, no. The Hon'ble Member has already spoken once; he can make any personal explanation but nothing more than that."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"May I make my meaning clear? The language of this section is 'the Court may in certain circumstances prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.' I should like the Hon'ble the Law Member to tell us whether that will not enable the Court to shut out people and members of the public from entering the hall or the room where the Court may be holding its trial."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"My Lord, the last portion of the clause will include such a case. I think it can be construed as meaning that persons shall not be present at the time the trial is going on; otherwise it would be disclosing the proceedings. By using such words as 'disclosure of its proceedings' we clearly take away the right of the public being in Court when the Court may say that the trial shall be held *in camera*. I think it is a very dangerous power to give. It ought to be made clearer; I mean the last portion of the clause should be amended so as to make the sense clear; otherwise it will be construed that a trial may be held *in camera*."

The motion was put and negatived.

The motion that clause 11 stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 12 as amended by the Select Committee do stand as part of the Bill."

**The Hon'ble Mr. Surendra Nath Banerjea**:—"My motion is that 'clause 12' be deleted. My Lord, this clause introduces an innovation in the existing Criminal Procedure Code so far as this particular Bill is concerned. It provides for the examination of the accused as a witness. Under the existing law the Court may ask the accused such questions as the Court may think fit and the accused is at liberty to answer them or not as he pleases. But under this section the Court will explain to the accused that he is entitled to be examined as a witness, and if he agrees he will be examined as a witness, which means that he will be put on his oath, that he will be cross-examined and a minor point, he will take his place in the witness-box. My Lord, this I understand, is the law of England, and it is the law of the civilised world; but we must bear in mind that the conditions in India and the conditions in England are very different; furthermore when we have a perfect system of criminal procedure as you have in England there will be time enough to have an innovation of this kind engrafted on our criminal system. Apart from these general considerations it seems to me there are certain directly relevant facts which make it highly undesirable that this clause should have a place in the Bill. Unless at least one important provision is changed the accused will not be permitted to have the benefit, the assistance, of a pleader. Therefore the accused will be standing alone in the dock, the Court will put him questions and he will be left to his own unaided judgment."

**The Hon'ble Mr. V. J. Patel**:—"The pleader is there, see Part I of the Bill."

**The Hon'ble Mr. Surendra Nath Banerjea**:—"Well be it so. I withdraw that part of the statement. It does not make any difference so far as my contention is concerned. Then he is placed in an unenviable position, he will be subjected to cross-examination and altogether the conditions are such as in the case of an ordinary person will make this position exceedingly unfavourable. It seems to me, my Lord, that this is a somewhat dangerous innovation. As regards this particular clause of the Bill the High Courts have not been consulted, no competent legal opinion has been obtained. I think before you introduce an innovation of this kind competent legal opinion ought to be consulted. Undoubtedly there were three High Court Judges on the Rowlatt Commission, but not High Court Judges from Calcutta, authorities likely to be more conversant with actual conditions existing. It seems to me further that before you introduce a clause of this kind in this emergent measure it is important that local opinion should be obtained and the High Court consulted. Moreover there is another general observation I do desire to make in this connection, and it is this. This may be good law or bad law, I know nothing about it. If it is good law it should be introduced, but the fact that it has found a place in such a highly unpopular measure as this will handicap it later on in its introduction into the substantive law of the land. I understand there is a proposal to introduce this into our Code of Criminal Procedure. If you do so I feel confident that will be creating prejudice against that particular section so far as it forms part of the substantive law of the land. Having regard to the fact that it is an innovation, and that it is not supported by competent legal opinion I think it is most undesirable to introduce the section. The Bill is unpopular, this section will make it more unpopular. I do not think in the interests of justice it is necessary. Therefore I beg that this section be deleted."

**The Hon'ble Mr. V. J. Patel**:—"My Lord, I will only add a few words to the arguments of my Hon'ble friend, Mr. Banerjea. I understand that in the Act for the prevention of crimes in Ireland there is no such provision, I think I am right. If you are going to follow the procedure laid down there, there is no reason why this provision should be inserted in this particular instance. The question was thoroughly discussed in Select Committee, and if I remember it aright, most of the non-official members were against the change proposed to be introduced. I hope the Council will see its way to support this amendment."

**The Hon'ble Mr. G. S. Khaparde**:—"I have an amendment which by a strange coincidence is in almost the same words, namely, 'That clause 12 be deleted'. I find that this provision of the law has come out of 61 and 62 Vict. c. 26. It was introduced into England and now it has come into our system. When this Act was introduced into England the law did not apply to Ireland. If it was good law, why should it not apply to Ireland? I tried to look up Hansard's Debates on this point but got mixed up. I believe that the Irish members protested in a body. The Irish people are excitable and it requires a very strong-willed man to stand cross-examination, more especially when that cross-examination is conducted in the presence of three High Court Judges. Government is able to engage the ablest persons at the Bar. It has been found that many innocent persons spoil their own case; they tell the truth but they tell it in such a way as to prejudice the case against them. Then again it has to be remembered that education has not advanced in this country as far as it has in Ireland. Another thing is that the people are excitable, so that they may commit some act. In a book which I saw the other day on examination of the questions of identification a crime was committed and a witness was called; one witness said 'this man was not there' so the accused instead of staying quiet said 'Oh! thank God, there is one man that does not recognise me'. As Counsel explained this man was thanking God that there was one honest person who said that he was not there. A similar thing has happened in my own practice. The people with whom we have to

deal are ignorant. Cross-examination is a very useful instrument, but it has to be in skilled hands, it is an instrument which is liable to be dangerous in wrong hands and to injure the person concerned. On the one hand the Government will have the ablest advocate at the Bar, whereas the man may not have any, unless he is treated as a pauper and the High Court thinks it necessary to provide him with one. I have come to the conclusion that this is a dangerous provision especially in a measure of this kind in which everything is being to a certain extent hurried. The charge against a man may, in these circumstances, be aggravated and he may commit some act or say something which he really never contemplated doing, and which may accordingly inculpate him. Therefore I say this provision should not find a place in this measure.

"So under these circumstances, I also move the same amendment that this provision should not find a place in an Emergency Act at any rate. These are the reasons why I put forward this amendment."

6 P.M. **The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, the provisions of clause 12 of the Bill are to my mind of such far-reaching consequence that they require to be very carefully considered by the Council. My Lord, on the one hand, it is perfectly true that the accused is not compelled by clause 12 to offer to go into the witness-box. To use the words of this clause 'the Court shall inform the accused that he is entitled, if he so desires, to give evidence on oath on his own behalf and shall at the same time inform him, if he does so, that he will be liable to cross-examination'. On the other hand, you have the important fact to bear in mind that if in the exercise of his option he refused to offer himself into the witness-box according to one part of the section, although it will not be open to the prosecution to make his abstention from the witness-box a subject of any comment, yet taking the clause as it stands there is nothing to prevent the Court from coming to any conclusion that it likes having regard to the fact that he has abstained from going into the witness-box. My Lord, it is perfectly true that during recent years, it is perfectly true that some 20 or 23 years ago the English law on the subject was changed; but let us not forget that it was changed after centuries during which it was recognised as a fundamental principle of English jurisprudence that the accused cannot be shown into the witness box, that it is for the prosecution to make out its case against the accused. Now, my Lord, I do not think it would be right or fair to hold that the conditions in regard to this matter in this country are exactly parallel to those that obtained in England, say some 20 years ago or that obtain at the present moment. My Lord, my impression is that an attempt was made when the Irish Coercion Bill was introduced in Parliament to get a similar provision incorporated into that law and I speak from recollection, subject to correction by any member of the Council, that at that time the strongest possible objection was taken to provisions of this character in that Bill. It was probably, as my Hon'ble friend, Pandit Malaviya corrects me, and I think it really was in the year 1888. However, whether it was at that time or at any subsequent time, I am speaking only from memory, the fact remains that at that time the strongest possible opposition was shown by the lawyer members and not only by the lawyer members, but also by other members in Parliament to provisions of this character. Now, my Lord, it is perfectly true that in some cases the only evidence that the accused can give in his own defence is his own evidence, and it may be that the whole case of the prosecution may fall to the ground if the accused goes into the witness-box. The explanation that he may give in support of his own defence may be so convincing that the Court may be justified in discarding all the evidence of the prosecution. I am perfectly aware of that and I realise that it may have been in many cases that the accused may be let off solely upon his own evidence, but at the same time the risk is enormous; but surely it cannot be contended that there is not an equally great amount of risk of even a perfectly innocent accused spoiling his case and strengthening the case for the prosecution by going into the witness-box and submitting himself to such a cross-examination at the hands of a clever cross-examiner.

"My Lord, speaking as a lawyer, I must say that I have no strong prejudices one way or the other, but to be absolutely frank, I should not like an experiment of this character to be tried in a measure like this in the absence of important opinion which we should collect before we undertake to introduce a provision of this character in our law. My Lord, in the course of my speech yesterday, I said that the Bill should have been referred to the High Courts and to other Judges who have got to administer justice from day to day. My Lord, when it is borne in mind that an important provision like this is sought to be introduced in a measure of this character, I submit in all humility the force of my remarks yesterday becomes quite apparent. We are entitled to know what is exactly the view which Judges of the High Courts in various parts of the country, which Sessions Judges, District Magistrates and other Magistrates and lawyers having considerable practice on the criminal side of the courts hold, what opinion these gentlemen hold in regard to a matter like this. We have got absolutely no evidence of that character. It may be that if you consult the High Court Judges and Sessions Judges and criminal lawyers, you may find your position infinitely stronger than it is now, but in the absence of any evidence to that effect, I certainly think that you are taking an extraordinary risk in trying an experiment of this sort. This question can be raised fairly and clearly when the revision of the Criminal Procedure Code comes to be considered; it will be time enough then for us to consider the bearing of the English law upon Indian conditions. But at the present moment when you are introducing a special measure like this, I do not think that it is right that you should introduce a provision of such a far-reaching character. Therefore, my Lord, without, as a lawyer condemning it on legal principles or without as a lawyer supporting it on legal principles, I say the experiment is one which requires to be tried very carefully, and certainly, this is not the time when you can try an experiment of this character."

**Th Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I strongly support the amendment which has been moved by my Hon'ble friends Messrs. Banerjea, Patel and Khaparde. My Lord, I think it will be unwise, inexpedient and dangerous to introduce section 12. In the minute of dissent which I submitted to the Select Committee, I made my position with regard to this section so clear that I cannot do better than draw attention to what I said there. The first attempt that I know was made before the laws were reformed in England, and there used to be a provision that an accused person should not only have the option, but that he should be compelled, on penalty of physical suffering, to undergo cross-examination. That was regarded as a barbarous provision and was set aside, and for a long time, for some centuries as the Hon'ble Dr. Sapru has said, the law would not allow an accused person to be subjected to cross-examination or give him even the option of being examined on oath. In 1888, a Bill was introduced in Parliament which sought to introduce this change, namely, that an accused person may be examined on oath on his own application or at his own wish. There was opposition to the proposal, public opinion was strongly divided, and the Bill did not pass into law. The next attempt was made in 1898, and it was only then that the law was changed. Since that time an accused person in England is entitled to be examined on oath on his own application, and if he so offers to be examined on oath, then he is liable to be subjected to cross-examination. Now, my Lord, that is how the matter stands so far as England is concerned. Opinion was divided as to the utility and wisdom of this measure even in England; but the experience of the last twenty years seems to have satisfied English Judges and lawyers that this was a wise provision to adopt, so far as accused persons in England were concerned.

"But, my Lord, for the purposes of the present discussion we have to remember that we here unfortunately are not yet in the position of England. We have to remember with regret that the system of the administration of justice which obtains in India is not yet what it should

be. For thirty-five years and more educated Indians have urged one simple reform in the administration of justice, namely, the separation of the judicial and executive functions, and we have not been able to persuade the Government of India to carry out that very simple elementary reform. We have also not been able to persuade the Government of India to introduce a system of trial by jury all over the country and to let the opinions of the fellowmen of the accused have their due weight in influencing the decisions of Judges, in deciding questions affecting their lives and liberties. In other respects, too, the administration of justice in India does not stand on the same footingas it does in England. I think of all the institutions that Englishmen have reason to be proud, and they have got many such, the administration of justice among them is one of which they may well be very, very proud. We wish that we had the same system of justice introduced in India. When it has had its work for some time I do not think there will be a voice raised against a proposal to incorporate into our Criminal Procedure Code the provision of the law by which accused persons are now offered the opportunity of being examined on oath. But in order to consider this we should look at this question at this stage, and I would invite the attention of this Council to what was said on the subject in England in 1888 and even in 1898. I will first take the later period. In the discussions that took place in the House of Commons in April 1898, on the Bill to which my Hon'ble friend has referred, and which became 61 and 62 Viet. c. 36. Speaking on the Bill, Mr. Lyttleton, M. P., said :—

'The very moment a man begins to cross-examine another an atmosphere of heart is generated. How many men can engage in an ordinary argument on an important subject without showing warmth? I think there are rather few in number. But what is cross-examination? It is argument conducted by men in public, with all the excitement that publicity can give. It is done by a man who is exhibiting his powers before others who may afterwards employ him; and is it not too sanguine to expect that such a man would conduct a cross-examination of a prisoner with that calmness and moderation with which English prosecutions are now conducted? May I give one quotation from the opinion of Lord Justice Collins, who has allowed me to use his name in this matter? My Hon'ble and learned friend has said that he did not believe that Judges would be carried away by the duties imposed on them by this Bill. Allow me to read the testimony of one of the Judges on this point, which I am sure will have great weight. There is no Judge on the bench more respected, esteemed and admired than Justice Collins. He says :—

'My chief objection to the proposed change is that I feel certain, it will greatly alter the present relations between the Judge and the prisoner. It seems to me inevitable that, if it should become the practice for the prisoner to give evidence in every case, the judge will in most cases have to put questions in the nature of cross-examination himself. He has to do so now very frequently in cases under the Criminal Law Amendment Act. Counsel who conduct ordinary cases are frequently inexperienced, and a crucial question often has to be put by the Judge . . . .'

'If this becomes the ordinary practice, as I think it must, if the proposed change be made, it must shake the prisoner's confidence in the absolute impartiality of the Judge, which is so valuable a feature in our present system. It cannot but tend to alter the attitude of the Judge himself actually and apparently; and I should regard this as a great public mischief, and deprecate any change which might make it possible, unless I feel sure that the certain benefits would more than compensate.'

"Mr. Lyttleton went on to say :—

'This is the opinion of a Judge who has tried these cases himself, and who has no prejudice one way or the other. He has had great experience of both systems. Is it not a deplorable thing for the Government of this country that the Ministry should seek to alter one of the most impressive functions of Government which now exhibits the Judge and the prosecuting counsel—at any rate the Judge—not as the enemy, but as the friend of the poor and miserable? Would it not be a deplorable thing that a system so generous and humane should be so changed to one in which it would be the business and the duty of the Judge to put questions such as Lord Justice Collins suggests, and as the result of which he would not appear to the poor and miserable in a Criminal Court as a friend, as he is now generally regarded, but as an embittered enemy?'

"That was the view taken by sober, sensible men who spoke against the Bill. But the majority were for it and the change was introduced. Now,

as I have said, experience has shown that in England the provision has worked well. But the circumstances of England and India are different. In order to judge of the suitability of the proposed law to India, I would rather invite comparison—I regret to do so, both for the sake of Ireland and India—with Ireland and draw attention to the opinions of the Irish Members.

"The controversy raged over the desirability or otherwise of the change for fifteen years before this provision found a place in the Statutes of England. The Irish Members as a body fought for fifteen years against the introduction of this provision in Ireland, and, my Lord, they eventually succeeded. It was because the discussions in the session of 1888 had shown that they were unanimously opposed to the introduction of this provision in Ireland, in the Bill which was introduced in 1898, and which became law, there was a distinct clause which stated that the Act should not extend to Ireland. The reasons which led Irish Members to oppose the extension of the change to Ireland were stated by Mr. Morley in the debate which took place in 1888. He said:— . . . .

**The Hon'ble Sir George Lowndes:**—"May I ask where the Hon'ble Pandit is quoting from?"

**Pandit Madan Mohan Malaviya:**—"Hansard, Vol. CXXIV, pages 95, 96. Mr. Morley said:—

'There was no difference of opinion as to the utility of the measure. They were all agreed that to allow prisoners to become witnesses when they wished to do so would be a humane and beneficent change. But he could not agree that all the reasons which existed for the application of the Bill to England must necessarily exist in the case of Ireland also. The Hon'ble and learned Solicitor General said that there was no distinction between the cases'.

"Mr. Morley inquired if that was so why the Hon'ble gentleman was not prepared to extend the same laws to Ireland which were in existence in England; why he was not prepared, for instance, to extend self-government to Ireland, and he went on to say;—

'The Hon'ble and learned gentleman had not dealt effectively with the argument of the Hon'ble and learned Member for North Longford (Mr. T. M. Healy) that the atmosphere of an Irish Court was not supposed by the people of Ireland to be favourable to the prisoner'.

"Unfortunately, my Lord, the same remark applies to the atmosphere of many a court in India. Mr. Morley went on:—

'The argument of the Hon'ble and learned Member for North Longford proved that there was all the difference in the world between the operation of a measure in Courts like the English Courts and its operation in Courts such as the Hon'ble and learned Member and his friends believed theirs to be. This was a Bill in favour of the prisoner; but the Government were going to apply it in a country, where it would inevitably be regarded—whether rightly or wrongly—as being hostile to the prisoner. The effect of the measure upon Irish opinion would be the very opposite of that which was justly claimed for it in England. The Hon'ble and learned Member for Inverness (Mr. Finlay) had argued with great plausibility that the supposition that there was animus in the mind of a Judge against a prisoner was all the more convincing reason why they should give the prisoner the chance of exculpating himself by giving evidence. But it must not be forgotten that if the contention of the Hon'ble and learned Member for North Longford were correct, and if there was animus in the mind of an Irish Judge and a strong animus in the prosecuting counsel, the prisoner under this Bill would be exposed to the risk of a bitterly hostile cross-examination, and it will enforce on him a very serious disadvantage. It appeared to him (Mr. John Morley) the sheerest pedantry to insist that because this was a wise and desirable change in itself and in this country, they were, therefore, bound to force it upon Ireland against the wishes of her Representatives, and against the opinion of so staunch a partizan of the Government on the Opposition side as the Right Hon'ble and learned Member for Bury. The Right Hon'ble and learned Member for Bury was free from the suspicion of motive which attached to the Irish Members below the gangway and he had shown that he was strongly opposed to the change itself; and on both these grounds his opinion was entitled to the greatest weight. Would the Government insist upon extending the legislation to Ireland against the wish of all the popular Representatives of that country, and against the opinion of a partizan of their own who was most competent to give an opinion upon that subject? He wished to underline the

argument of the Hon'ble and learned Member for the City of Durham (Mr. Milvain), which he was surprised the Government did not see the force of. They considered they were engaged on the difficult task of restoring law and order in Ireland. They said they had now got a state of opinion in Ireland much more favourable than it had long been to the maintenance of law and order and respect for the administration of the law. They must admit, therefore, that it was most undesirable politically to arouse fresh jealousy by introducing a single element of suspicion or irritation into the administration of the Criminal Law in Ireland at a moment like this; and yet they must equally admit that this would be the effect of the provision which, with deplorable tenacity, the Government insisted upon extending to Ireland'.

That was said, my Lord, in 1888; substitute India for Ireland in the passage, and see how well it applies to the case we are considering . . . .

**The Hon'ble Sir George Lowndes** :—"May I ask once again that the Hon'ble Pandit will give me the reference; volume 124 is in 1885?"

**The Hon'ble Pandit Madan Mohan Malaviya** :—"1888, I gave the year."

**The Hon'ble Sir George Lowndes** :—"I understood the Hon'ble Member to say volume 124."

**The Hon'ble Pandit Madan Mohan Malaviya** :—"Volume 324, pages 95 and 96.

"My Lord, other members expressed the same view that this legislation should not be forced upon Ireland, and the result was that the Bill fell through then, but when the Government introduced the Bill which became law in 1898, the Government themselves dropped the idea of extending its provisions to Ireland. This is our position. I submit that the proposal to introduce an important change like the one in question in this exceptional and drastic legislation is all the more unwise. If the change is a good one, you should wait and see that our courts are improved and that the administration of justice stands on a footing anything like what it stands in England. Let there be a greater feeling of confidence that the prisoner has all the constitutional safeguards of life and liberty provided secure to him and do not introduce such a change in a measure which is on the face of it admittedly, professedly going to curtail the constitutional rights and safeguards of life and liberty.

"My Lord, the basis for this legislation is to be found in the same Rowlatt Committee's Report to which we are indebted for the other important provisions of the proposed Bill. Let us see what the Rowlatt Committee have said on this point. They recognised that the introduction of this provision was an important departure; they also recognised that it was a departure which should not be introduced into the ordinary courts, and that it should not be introduced unless safeguards were provided against its abuse. This is what they said :—

'No doubt only an experienced court should try cases under these conditions in order to make sure that an ignorant prisoner does not misunderstand his position and is not unfairly dealt with. This safeguard is ensured when the cases come before three Judges of the highest rank, and, upon the whole, we think the provision should be introduced. If it were a question of its general application we should, having regard to the above-mentioned considerations, be against it'.

"Now, my Lord, the Rowlatt Committee clearly stated that in their opinion this was not a provision to be introduced in ordinary circumstances. They would only agree to its introduction, as they say, when there would be all the safeguards provided against an ignorant prisoner misunderstanding his position and being unfairly dealt with. They thought that the provision of a Special Tribunal, consisting of three High Court Judges, supplied these safeguards. With due deference to the members of the Committee, I beg to differ from them.

"The remarks to which I have drawn attention, the opposition which the Irish members waged for fifteen years against the introduction of a similar provision into Ireland, and their success in resisting its introduction into that country have a lesson for us. And in view of the existing state of things in this country, and of the fact that this is a very special and a very repressive piece of legislation in which it is sought to incorporate the provision in question, I beg your Excellency's Government to reconsider the situation and to decide to drop it My Lord, I have acknowleged that the change has been beneficial in England. Yet let us not be in a hurry to introduce the most up-to-date improvements of only some departments of national existence in England, unless and until we introduce corresponding improvements in other departments of national existence and administration. Many such improvements are yet to come in particular in the administration of justice. Therefore until they come, until a feeling of greater confidence in that administration is developed and spread far and wide in the country, I hope the Government will see the unwisdom of enacting a provision like the one which is incorporated in section 12."

**The Hon'ble Mr. C. A. Kincaid**:—"My Lord, I do not wish to waste the time of the Council unnecessarily, but this is a question on which I feel very deeply, and I also venture to hope that this Council will attach some little weight to the experience of one, who has been for 23 years a judge. Lovers of the 'Pickwick Papers'—and I hope that this includes the majority of this Council—will remember the trial of the suit which was brought against Mr. Pickwick for breach of promise. Now the first thing that strikes a lawyer about that case is that neither the plaintiff nor the defendant went into the witness-box. The next thing that strikes a lawyer is that had Mr. Pickwick gone into the witness-box and told the Court exactly what had happened, it is perfectly certain the jury would have believed him, and that he would have won his case. But he did not go into the witness-box and so he lost his case, and, as far as I remember, there was a verdict against him for £700. 6-27 P.M.

"There was an ancient and deep-rooted objection in the Laws of England to parties in civil and criminal cases going into the witness-box. It was thought that perjury would result from this, and that there would be so much perjury that it would become a national calamity. The first breach that was made in this position was, I think, in 1838 when a law was introduced by which parties in a civil case could give evidence. However, it was still held that in criminal matters it would be very much better for an accused not to go into the witness-box It would be impossible for him not to perjure himself. The next breach in this position was when the Criminal Law Amendment Act was introduced. This dealt with complaints made by women against men for sexual offences and it came to be generally understood that such offences were never likely to be committed in anybody else's presence, and that therefore it was necessary that an accused person should go into the witness-box in order to prove his innocence. This change proved a success and, finally, the whole position was carried by the Criminal Evidence Act of 1898, and now it is the law of England that if an accused person wants to do so he can give his view of the case to the jury.

"Well, my Lord, a good many quotations have been made from the debates on that Act by the Hon'ble Mr. Malaviya. I have had the advantage of reading those debates, an advantage which, I regret, the Hon'ble Mr. Malaviya has not enjoyed; and I think it is impossible for any one who reads those debates not to see that the weight of argument of those who supported the Bill was far-superior to the weight of argument on the side of those who objected to it. The only person who really spoke with any force against it was Mr. Lyttleton from whose remarks the Hon'ble Member has read some quotations . . . . .

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My friend is not quite right. I have read several of the volumes and I have got some of them with me,"

**The Hon'ble Mr. C. A. Kincaid**:—"If I do the Hon'ble Mr. Malaviya an injustice I apologise. At any rate, as far as I read the reports of the debate, it seemed to me that Mr. Lyttleton's speech against the Bill was the only one of any importance. On the other side, there was the great authority of Sir Edward Clarke and he quoted the opinions of Lord Halsbury, Lord Russell, Sir Henry Poland, Sir George Lewis, the greatest criminal experts of the time, and they all agreed that innocence was the one sure shield—that if a man was innocent and told the truth in the witness-box, he could baffle the most skilled cross-examiner. And Sir Edward Clarke ended that speech by saying: 'Why should you deny to an accused person on a capital charge the privilege of explaining exactly what happened, a privilege you accord to the merest scullery maid before dismissing her'.

"The Hon'ble Mr. Malaviya has, my Lord, said that that law has proved a success in England. I may mention that when I was appointed by the India Office some years ago to instruct the Solicitor General, Sir Rufus Isaacs, for the extradition of one Savarkar, to be tried in connection with the murder of Mr. Jackson, the argument made by Savarkar's counsel that told most with the Court of Criminal Appeal was that if Savarkar was tried in India he would not be allowed to go into the witness-box and tell the Judges his own version of the case on oath.

"My Lord, I will give another personal experience, if I may, to this Council. Some months later, I was going through a course of legal study and I went to one of the minor courts of London, and I remember quite well—indeed I shall never forget it all my life—the case of a boy there who was charged with having committed some theft. Witness after witness came up and swore that they had seen the boy there. He had no witnesses, but his Counsel put him into the witness-box, and I can assure this Council that, when he had left the witness-box, there was not one person present in Court who was not convinced of his innocence. He was not an educated man; he was simply an ignorant boy from the street; but, as Sir Edward Clarke said in the debate, his innocence proved a sure shield against the most skilful cross-examination.

"There is one great authority I will quote in this connection and that is the authority of Mr. Justice Hawkins. Mr. Justice Hawkins, in his 'Recollections' says:—

'At the time of these debates, I felt great misgivings as to the passing of this Act, but I should like to put it on record that I have never yet seen a case, where an innocent person went into the witness-box and gave evidence in his own behalf that it did not do his case the greatest possible good'.

"My Lord, I have mentioned the case where I myself went into a small London Court and saw an accused person go into the witness-box and be acquitted. I was so struck by that case that directly I was appointed Judicial Secretary on my return to India and from that time onwards I did all I could to urge the Bombay Government to alter the general Statute law; and I am glad to say the other day when the Government of India consulted the Bombay Government about alterations in the Criminal Procedure Code, the Government of Bombay on my advice and on the advice of some other senior judicial officers asked the Government of India to bring in a provision into the Criminal Procedure Code similar to that which has been embodied in this Bill. My Lord, only one question now remains, and that is the question of Ireland. The Hon'ble Mr. Malaviya asked why this provision could not be introduced in Ireland. Well, my Lord, I have read the debates of the Irish Members with the greatest possible attention, and I think the objection of the Irish Members was not to the principle involved. It was quite a different one. They urged before the House of Commons that they could not trust the administration of justice in Ireland. The one person whom they objected to was Mr. Peter O'Brien. He was either Counsel for the Treasury or Attorney-General for Ireland, I forget which; but when I was in Ireland as a boy there was not a man, woman or child that did not call that man 'Peter the Packer.' I do not know whether it was justified, but whenever an Irish Catholic went into the dock, Mr. Peter O'Brien managed to get a jury of twelve good men

and true who were all Protestants and mostly from the North-West of Ireland. With this man's extraordinary success in getting together juries to his liking, an Irish Catholic was not likely to have a fair trial if he went into the dock. And that was the reason why the Irish Members objected to the introduction of this provision. It had nothing to do with the principle of the thing. It was due to the peculiar political atmosphere of Ireland. But no such prejudice exists in regard to the Judicial Department in India, especially the Judges of the High Court, who will constitute these special tribunals. The Hon'ble Dr. Sapru has spoken in the most flattering terms of the High Courts of India, and I think I may say that their impartiality and fairness are universally recognised."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi**:—"My Lord, in order to enable some of us to express a definite opinion, I should like to know what exactly is the position of Government with regard to the amendment which four or five of us have proposed to the clause as amended by Select Committee, *i.e.*, whether they are prepared to accept the amendment that the Court shall not draw an inference adverse to the accused by reason of his failure to give evidence on oath. It seems to me that that is a matter which is weighing on the minds of a large number of non-official Members. If we were in a position to know the definite position of Government in this matter, and whether they are going to accept the amendment that it shall not be open to the Court also to draw an inference adverse to the accused by reason of his omission to go into the witness-box, then possibly the position of affairs may be different. With your Excellency's permission I should like to ask the Hon'ble the Home Member to enlighten us with reference to this."

**The Hon'ble Sir William Vincent**:—"I am quite prepared to make a statement on this point. The Government of India propose to follow the English law absolutely."

**The Hon'ble Mr. Surendra Nath Banerjea**:—"My Lord, may I suggest adjournment of the debate now, having regard to the fact that it is a most important matter and will need prolonged discussion."

**His Excellency the President**:—"Well, Mr. Banerjea, I was going to inform the Council that I propose to sit until we finish with amendment No. 77. We are now at amendment No. 48, and for the convenience of Council I propose to adjourn at a quarter to eight and resume again at nine."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi**:—"My Lord, in view of the answer which has been given by the Hon'ble the Home Member to my question, I am compelled to say that with all my predilection in favour of the retention of this clause, that answer compels me to support the motion placed before the Council by the Hon'ble Mr. Banerjea. I do not think I need add to what has been said by other Hon'ble Members. The apprehension in the minds of most Hon'ble Members who are opposed to the retention of this clause is that although the clause provides that the counsel for the prosecution shall not comment on the conduct of the accused in not going into the witness-box there will be an unconscious bias in the mind of the Judge which may influence him against the accused by reason of the accused's conduct, and I submit that unless and until the safeguard that five of us have suggested, that such an inference shall not be open to the court to draw, we are not prepared to accept the retention of the clause."

**The Hon'ble Sir George Lowndes**:—"My Lord, the reliance 6-40 P.M. that has been placed by some Hon'ble Members on the reference to the opposition of Ireland would make it possible to deal with this motion very lightly,

though I am far from desiring to do so. The Hon'ble Pandit referred to the diffidence felt by Irish Members on the subject. Another Hon'ble Member—I think it was Mr. Patel or Mr. Khaparde—asked 'If it is a good law for England, why is it not a good law for Ireland?' I wish either of those Hon'ble Members could put that question to an Irish audience. I wish that the Hon'ble Pandit could do so, and he would see what reply he would get: I could almost laugh when I think what an Irish audience was in the years to which the Hon'ble Pandit refers, the years between 1882 and 1898,—believe me, I know much more what it was like than the Hon'ble Pandit can know. Those were the years when Ireland would accept nothing from the Government. Those were the years when the Irish Party looked at the hand that gave and not at the thing that was given. Any one who uses that as a serious argument against applying this provision to India, that the Nationalist Party would not have it for Ireland, shows a complete ignorance of Irish politics. The Council have heard my Hon'ble friend Mr. Kincaid, who is an Irishman. I am not an Irishman by birth, but I have some knowledge of what politics in Ireland were in those years, and I entirely endorse all that he said. The refusal of Ireland to accept it was for very definite political reasons and due to the opposition of the Irish Nationalist Party, who would accept nothing from the Government. But let us get away from the Irish argument and let us treat this thing not lightly but seriously. Now, what is the object of every rule of evidence? Is it not to get at truth? Not to get at the truth only when it is favourable to an accused person—not certainly to get at the truth only when it is favourable to the prosecution; but the object of every rule of evidence is to get at truth. Well that is what I want in supporting this clause. When I was addressing this Council on the introduction of the Bill, I said that legislation of this sort was a thing very distasteful to me, though in this particular instance I was satisfied with its necessity. That may incidentally be an answer to certain remarks that fell from my friend the Hon'ble Mr. Jinnah yesterday. But when I said that legislation of this sort was distasteful to me, I was making no reference whatever to clause 12 of this Bill, which has had my most earnest and sympathetic support throughout. I regret greatly to see India lagging behind the rest of the civilised world in this matter. I am not talking about Ireland, or about England only. Is it known to this Council that every self-governing Dominion—and remember it is the replica of a self-governing Dominion that Hon'ble Members are always asking to become—that every self-governing Dominion has this provision; that it is the law of most of the Crown Colonies, and the law of nearly every State of America? I need not refer to the French law. It is perfectly well known to all of us. The Hon'ble Mr. Khaparde suggested that the reason why it did not apply to Ireland was because the Irish are very excitable. Well, that applies at least equally to the French, and yet the system of examination of an accused person in France is far more drastic than it has ever been in England or in any part of our Colonies. Therefore what we are pressing on Members of this Council—I hope pressing on their reason—is the adoption of something which is practically the law of all the rest of the Empire, and with regard to which India alone is lagging behind. The proposal rests on this basis. It is no good for the Hon'ble Pandit to get up here and read extracts from Mr. Lyttleton's speech in 1898. That was 20 years ago.

"He read, naturally enough, only from a speech of the opposition; he did not make any reference to the number of great speakers who spoke on the other side . . . .

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I rise to a point of order, my Lord. The extracts I read from Mr. Morley's speech distinctly stated that he recognised the utility of the measure and I repeatedly said more than once that English lawyers dealing with the measures had said that it worked well. My Hon'ble friend need not be angry because I quote from authorities who are opposed to his views."

**The Hon'ble Sir George Lowndes**:—"My Lord, I am not angry; I may have spoken with some warmth; but all my life I have tried to put forward the two sides of a question fairly."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"So have I."

**The Hon'ble Sir George Lowndes**:—"I say again the Hon'ble Pandit quoted from one important speech which was made on one side; he has not quoted from any single one on the other; and I tell him that there are volumes upon volumes of them so that he would have had plenty to choose from. I say it is not the very least good coming and reading to this Council extracts from an opinion which was given in 1898, not mentioning the opinions which were given on the other side when it is admitted by every lawyer in England now that this has proved to be a most salutary reform in the law of evidence . . . .

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My Lord, I must rise to a point of order. I leave it to your Lordship whether I have not made it clear in my speech that English lawyers had expressed opinions against the Bill, but that in the last 20 years their experience was that they were satisfied that the Bill had worked well. If I have, I would ask my Hon'ble friend to withdraw the remarks that he has made."

**The Hon'ble Sir George Lowndes**:—"I did hear the Hon'ble Pandit make the remark, to which he has referred, but I have not suggested he did not make it. What I have said is that in view of the fact that 20 years' experience of the new law has shown that it works very well in England, we should adopt it here, and that is why I say the opinions which were recorded in favour of it then should also have been quoted to Council. Well it is admitted by the Hon'ble Pandit and by everybody, I believe, that the 1898 Bill which has become the law of England has been a very great addition to the jurisprudence of the country. What I was trying to do in support of my argument was to establish that proposition. I started by saying that the object of a law of evidence is to try and get at truth. As I pointed out nearly every other part of the Empire except India has got this law, and it is now fully recognised, I am glad to say even by the Hon'ble Pandit, that it is a good law, that is to say, that it is a law which does help to get to the truth; and this, as I say again, is the one object of a law of evidence. It has been said that we have taken no—I forget what the exact words were—no competent legal advice, I think it was the Hon'ble Mr. Banerjea who said this. Is that quite true? We have got at all events so far as the general proposition goes some most competent legal opinions. We have the long debates in Parliament in 1898 when eminent lawyers declared that the measure would be a very valuable one; we have got the fact that it has been adopted in almost every other part of the British Empire. We have got the advice of this very strong committee who have recommended it, a committee containing not only an English Judge but an Indian Chief Justice and an Indian Puisne Judge, and I believe a very eminent member of the Bengal bar. They have recommended it not hastily or unthinkingly but after careful consideration and weighing the merits and demerits of the case. They have said that if it were a case of applying this rule to all the subordinate courts in India they would be against the proposal; but they say that having regard to the character of the tribunal before whom these trials will be held they have, as I read it, no hesitation in making this recommendation. Then it is suggested that it is a great pity to try the experiment only in such a tribunal as this. It is said that we should wait till we get it in as an ordinary amendment of the Criminal Procedure Code. Surely the argument, if I may say so, is all the other way. Here is an opportunity of trying the provision, of which Hon'ble Members seem so doubtful, with an extraordinarily strong tribunal. Surely that is the way you would try it first; you minimise the risks. If the proposal were to apply it to the whole of India or make it a general law of evidence throughout India, having regard to the very different status of many local tribunals that have to

deal with such questions, I quite agree that there would be a risk; but here we have a unique opportunity of at all events trying the effect of a rule which the experience of 20 years in England has shown to be peculiarly good, before a tribunal of the highest possible position and character. There will be no tribunal equal to it in India. We have never before had an original tribunal of three high court judges dealing with questions of this sort. Therefore, I suggest to the Council that so far from it being wrong in principle to try the experiment here, it is the best possible opportunity of doing so, if it is an experiment, if it is still in the experimental stage at all, and surely twenty years' experience in England takes it out of the experimental stage or at all events that is what I suggest to the Council. I believe it is known to some Hon'ble Members that proposals have been circulated with regard to an amendment of this nature in the Criminal Procedure Code Amendment Bill, and Local Governments and High Courts have had this matter under consideration. The Rowlatt Report too, as Hon'ble Members know, has been before the public, and been, if I may say so, very much in the public eye and the public mind. I think Mr. Banerjea told us yesterday, for eighteen months. I think that was a little bit of an exaggeration; it was published a year ago or something like that. Therefore it has been before the public with its recommendations for nearly a year . . . .

**The Hon'ble Mr. Surendra Nath Banerjea**:—"May I rise to correct the statement which has just been made by my Hon'ble friend? I said 18 months, but since the facts were pointed out to me I withdrew that statement, and I said that whether 18 months or 12 months did not in the slightest degree affect the argument which I had put forward, namely, that the circumstances had changed since the publication of the Rowlatt Report and therefore there was no justification for following entirely the recommendations of that report. The law must be suited to the circumstances. I think that represents it?"

**The Hon'ble Sir George Lowndes**:—"Exactly. I was only referring good humouredly to what my Hon'ble friend had said. The Report has been before the public for about a year, and it has been very much discussed in the public and I have not the very least doubt that eminent legal gentlemen, high court judges and practitioners, have been considering this clause very carefully. Then again, when it is said that no competent legal advice has been obtained, I look around this Council. Is there no competent legal opinion in this Council? I can count a dozen lawyers here at all events. Then there is really very little more to say about it. The truth of the whole matter is that Hon'ble Members mistrust the proposal because it comes in this Rowlatt Bill. It is a case of '*Timeo Danaos et dona ferentes.*' It is not that my Hon'ble friends really have any real doubts of the value of this thing as a test of evidence; they are content to refuse it because it comes in the Rowlatt Bill . . . .

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My friend is misrepresenting us here when he says we have no honest doubts about it. He is misrepresenting us."

**The Hon'ble Sir George Lowndes**:—"I have no doubt I am misrepresenting the Hon'ble Pandit; I do not pretend to read his mind. I say it is purely a case of fearing the hand of the giver. You fear a gift that comes from the Government; you fear it most because of its connection with the Rowlatt Bill. That is the real ground for it. Some at all events, I believe, in this Council are very recent converts to this distrust.

"I think I might have counted, if it had not come into the Rowlatt Committee's Report, on the support of a good many Hon'ble Members in this Council. Certainly, before the proposal was introduced into the Criminal Law Amendment Bill, several Hon'ble Members who are lawyers pressed it upon me very strongly and told me that it was absurd that India should lag behind in this respect. It would be a great advantage if we could look at this provision from the point of view of commonsense and reason. A man is

charged with an offence, everybody can go into the witness-box and swear away his life, his honour and everything else. He is the one man whose mouth is shut, the one man who cannot give evidence. Are there not many cases where the only man can tell the court what really happened, is the man who is in the dock? Is it fair that you should deny him an opportunity of going into the witness-box and of telling you what happened? Yet this is what you are going to do in this Council . . . .

**The Hon'ble Pandit Madan Mohan Malaviya:**—"You refused to allow him . . . .

**His Excellency the President:**—"The Hon'ble Member has spoken and must not interrupt."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I rise to a point of order. I want my Hon'ble friend to say whether he accepts . . .

**The Hon'ble Sir George Lowndes:**—"I object to the Hon'ble Member interrupting me. He has only a right to do so to make a personal explanation."

**His Excellency the President:**—"The Hon'ble Member is entirely out of order in his remarks, and I must ask him not to make any more interruptions."

**The Hon'ble Sir George Lowndes:**—"I was trying to say that it seems a little hard that all of you sitting round this Council, Indians and lawyers, should be deliberately denying to the man who is accused of an offence the right to go into the witness-box and declare his innocence. I am not compelling him to do so. I merely want to give him the right to give evidence. If this is to be rejected let it not be rejected by his own countrymen. But I wish that before it is too late Hon'ble Members will pause before they formally oppose this clause. Will you make it necessary for us by an official majority to carry this clause, will you deny every Indian if he is charged before a tribunal of this experience the right to go into the witness-box and give his own story of what happened? All I can say is, and I do so with all the earnestness at my command, that I hope Hon'ble Members will pause before they deliberately refuse this act of justice to an accused man. I have practised for many years in India, Hon'ble Members will concede that; I may have seldom prosecuted, but I have spent a considerable portion of my career in criminal sessions defending men of this country, and I believe that this is a provision of the law which we ought to have; that it is a provision which will enable truth to be attained and that where an innocent man is charged as he is charged in some cases, it will enable him to clear his character. Have my Hon'ble friends never heard the Latin *Magna est veritas et praevelebit.* If a man is innocent and goes into the box, I fully agree with Mr. Kincaid that truth will prevail. But you are denying him, you are refusing him the right to tell his Judges what really happened."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"May I make a statement?"

**The Hon'ble Sir George Lowndes:**—"I think this is the sixth time the Hon'ble Member has attempted to speak. Our one object is to get the truth, and I think that all in this Council will believe that this is the only object that I have in view. I doubt if any one believes that my object in pressing this is to get an innocent man convicted. I do not believe at all events that there is any one in this Council who thinks so. If there is, let him get up and say it. To give an innocent man this opportunity will be an enormous advantage to him and one to which, I believe, every lawyer in this Council will concede his right. I have no hesitation in affirming my conviction that this provision will be a great improvement in the law so far as it will help us to get at the truth in criminal cases."

7 P.M. **The Hon'ble Mr. Srinivasa Sastri:**—"We have heard a most interesting and lively discussion and may I add that it has been to me of the utmost profit and instruction. I wrote a dissenting minute in which I opposed clause 12. I have heard sufficient now which makes me think that perhaps I had better have supported clause 12. It is not usual for speeches to make converts in Council; we come here with our minds more or less made up, but having come into this Council with intent to do the accused in these cases all the justice possible, it occurs to me that the rule need not be followed in this instance I am prepared, your Excellency, to change my mind. I do so with conviction and I will vote in favour of the retention of clause 12. I may say this that I have travelled in this matter in a direction contrary to that in which my Hon'ble friend and colleague Mr. Shafi has travelled. Mr. Shafi and I wrote dissenting minutes. Mr. Shafi would have clause 12, but after listening to the speech which we have just heard I go to the other side . . . .

**The Hon'ble Khan Bahadur Mian Muhammed Shafi:**—"My Lord, may I say that my learned friend is not entitled to make any such assumption. So far as clause 12 is concerned my position is the same as in Select Committee. By reason of the answer given by the Hon'ble the Home Member I said I could no longer support it."

**The Hon'ble Mr. Srinivasa Sastri:**—"My Lord, I am very glad to find myself in the excellent and encouraging company of the Hon'ble Mr. Shafi in this matter. It is a pity that the Hon'ble the Home Member has been unable to accede to our request in respect of the other change we propose. However I have heard sufficient, as I said, to make me a convert to the theory that perhaps when a man is really innocent he had best be allowed to go into the witness-box in his own behalf."

**The Hon'ble Mr. Surendra Nath Banerjea:**—"My Lord, I am sorry I am not able to follow my Hon'ble friend Mr. Sastri. I fear I am too old to be converted to new ways after having formed my conclusions upon the information placed at my disposal. I still think that the provision is a dangerous innovation, at any rate, it is a provision which has to be carefully thought out, in regard to which we ought to have more information than is at our disposal. My Lord, at the present moment I had in mind a name that I am not permitted to disclose. I had an opportunity of discussing this matter with him. He is a distinguished lawyer, I need not say more because I cannot disclose his personality, and as the result of that discussion, we both came to the conclusion that in the present circumstances of the country such a law would not be instrumental in eliciting the truth. I am entirely at one with the Hon'ble the Law Member that we ought to get at the truth, but our apprehension is that having regard to the class of prisoners in such cases the section would not help the elucidation of the truth. They would break down under the stress of cross-examination. They would not be able to tell the truth, in some cases they may but in most cases my fear is that they would not stand the stress of examination, and you may receive impressions which would be the reverse of it. It is this apprehension which fills the mind of our friends over here, and I venture to think that the general sense of the educated community would be one of suspicion and mistrust. My Hon'ble friend has referred to the attitude of suspicion and mistrust with which we approach the Rowlatt Committee's Report. This is absolutely true. We do approach that Report in an attitude of suspicion. That colours our views with regard to it. Can you seriously say that it should not be so having regard to the character of the recommendations, the drastic recommendations, the curtailment of personal rights which the Report recommends? Thus there is that attitude of suspicion and distrust, and, my Lord, it is because of this fact that I ventured yesterday to ask, to beg, to entreat your Lordship's Government to postpone the consideration of this Bill for a few months so that the public mind might be reduced to a more rational frame and we might be in a position to consider the whole case in an atmosphere free from prejudice which would

be a waning prejudice as time went on. We do not think that the examination of the accused would be instrumental in eliciting the truth. And, my Lord, if that is the public sense, and if that feeling is repeated in the newspapers, in the great organs of public opinion, if that is voiced in this Council, I put it to your Excellency to say whether we ought not to respect that feeling. Here you are introducing an innovation, I will say with the best of motives, I do not for one moment question the intentions of the framers of that section. You have done it with the best of motives, but you are generous enough, I do hope and trust, to allow others to think differently from you, and permit honest differences of opinion between yourselves and those who may be your critics. We are afraid of the innovation, we think it is dangerous. We are of opinion that it would not elicit the truth. I will not refer to the Irish controversy, but that is the sentiment, the deliberate sentiment, of my educated countrymen, and with the exception of Mr. Sastri, no one here has given expression to any view other than that which I have put forward. Lawyers like Dr. Sapru have expressed their apprehensions; another lawyer like my Hon'ble friend Mr. Shafi is of the same opinion, and if Mr. Jinnah would speak, I do not know what he would have to say, and I take his silence as evidence that I have rightly interpreted his views. However it may be, here we have got lawyers in this Council Chamber, other men who are not lawyers, they are all Indians, of the same mind, of the same view, that this is a dangerous provision, and therefore we are right in pressing upon your Excellency's Government, despite my friend's conversion, to drop this provision of the Bill. The Bill is already unpopular. Do not make it more so by having a provision of this kind against practically the unanimous sentiment of our educated countrymen."

The motion was put and the Council divided as follows :—

*Ayes—14.*

The Hon'ble Mr. S. N. Banerjea.
" Dr. T. B. Sapru.
" Pandit Madan Mohan Malaviya.
" Mr. R. Ayyangar.
" Mr B. N. Sarma.
" Mir Asad Ali, Khan Bahadur.
" Sir Dinshaw Wacha.
" Mr. V. J. Patel.
" Mr. M. A. Jinnah.
" Maharaja Sir M. C. Nandi.
" Khan Bahadur Mian Muhammad Shafi.
" Mr. G. S. Khaparde.
" Rai B. D. Shukul Bahadur.
" Mr. K. K. Chanda.

*Noes—37.*

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
" Sir Sankaran Nair.
" Sir George Lowndes.
" Sir Thomas Holland.
" Sir William Vincent.
" Sir James Meston.
" Sir Arthur Anderson.
" Mr. W. A. Ironside.
" Sir Verney Lovett.
" Mr. H. F. Howard.
" Sir James DuBoulay.
" Mr. A. H. Ley.
" Mr. W. M. Hailey.
" Mr. H. Sharp.
" Mr. R. A. Mant.
" Major-General Sir Alfred Bingley.
" Sir Godfrey Fell.
" Mr. F. C. Rose.
" Mr. C. H. Kesteven.
" Mr. D. de S. Bray.
" Lieutenant-Colonel R. E. Holland.
" Surg.-General W. R. Edwards.
" Mr. G. R. Clarke.
" Mr. H. Monerieff Smith.
" Mr. C. A. Barron.
" Mr. S. Sastri.
" Mr. P. L. Moore.
" Mr. T. Emerson.
" Mr. E. H. C. Walsh.
" Mr. C. A. Kincaid.
" Sir John Donald.
" Sardar Sundar Singh.
" Mr. P. J. Fagan.
" Mr. J. T. Marten.
" Mr. W. J. Reid.
" Mr. W. F. Rice."

The amendment was, therefore, negatived.

7-14 P.M. **The Hon'ble Mr. Kamini Kumar Chanda** :—"I beg to move that for sub-clause (3) of clause 12 the following sub-clause be substituted :—

'(3) No inference adverse to the accused shall be drawn from his failure to give evidence on oath.'

"My Lord, I am aware that the clause as drafted is from the English Statute, but nevertheless I would respectfully urge that it should be amended on the lines I have suggested. The Hon'ble the Home Member has declared in emphatic terms . . . .

**The Hon'ble Sir William Vincent** :—"May I explain that that was my personal view, and that I may have to defer my personal opinion to the views of others."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :—"My Lord, that is most unfair to me; I was prepared to support the clause but for the reply to my question given by the Hon'ble Member and now he goes back on that."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I am thankful for the ray of hope that is given by the Hon'ble the Home Member's words. I do hope that the Government will be pleased to reconsider the matter and accept this very small amendment. If in the Hon'ble Home Member's personal view he forms this judgment, I need not detain the Council at this late hour with any more words, and I move this amendment."

**The Hon'ble Sir William Vincent** :—"My Lord, as I said just now, I am afraid in an unwitting moment I expressed my own opinion on this matter, perhaps too readily, but it is obviously one's duty in these matters to defer sometimes to the opinions of others, and, in these circumstances, it is my duty to accept this amendment."

**His Excellency the President** :—"There are four or five amendments here in different words but implying more or less the same thing. I think it may be convenient if we were to leave this particular amendment over until we meet again at 9 o'clock, by which time the Hon'ble Member in charge of the Bill will have made up his mind as to the form he would prefer."

**The Hon'ble Sir William Vincent** :—"My Lord, it is scarcely for the Member in charge to make up his mind as to the form of words at a moment's notice."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I thank the Hon'ble Member for this kind concession for which I am most grateful, small as it is."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :—"My Lord, I desire to offer my sincere congratulations to your Excellency's Government on the compromise which has been arrived at, a compromise satisfactory, I think . . . .

**His Excellency the President** :—"Is that a personal explanation ?"

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :—"No, but perhaps your Excellency will allow me to say something about this amendment as a very similar amendment stands in my name, and I wanted to say a few words in support of it. Is it your Excellency's pleasure that that should be taken later on ?"

[13TH MARCH, 1919.] [*The President; Sir George Lowndes; Mr. M. A. Jinnah; Rao Bahadur B. N. Sarma.*]

**His Excellency the President** :—"I think it would be more convenient if numbers 51, 52, 53 and 54 were to stand over until we resume at 9 o'clock and if that form of words could be settled."

**The Hon'ble Sir George Lowndes** :—"I suggest that it is not necessary to accept a form of words. Hon'ble Members always wish that amendments should be put into shape by us, and therefore if we accept the spirit of the amendment, my Department will put it into shape before the Bill comes up again."

**His Excellency the President** :—"That is the usual practice; perhaps that would meet the Hon'ble Member."

**The Hon'ble Mr. M. A. Jinnah** :—"May I know what the Hon'ble Member means by 'before the Bill comes up again'?"

**The Hon'ble Sir George Lowndes** :—"What ordinarily happens is that we have an adjournment in a long Bill after the Select Committee's Report has been considered, and then it comes up to be passed when the amendments have been put into shape. That is the usual practice, but I have no doubt we can deal with this particular one at 9 o'clock if Mr. Shafi wishes it."

The motion that the principle of the amendment be accepted was put and agreed to.

**His Excellency the President** :—"Mr. Patel's* amendment and Mr. Shafi's† and Mr. Shukul's‡ too, are covered by Mr. Chanda's."

**The Hon'ble Rao Bahadur B. N. Sarma** :—"My Lord, I beg to move that in sub-clause (*b*) (*ii*) of clause 12 (*4*) the words from 'or the nature or the conduct of' to the words 'the prosecution or' be deleted. The words are 'or the nature or the conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution. Omitting them clause (*b*) would enact that an accused person, when he is in the witness-box, shall not be asked several questions, including whether he has a bad character, unless:—

'(*i*) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or

(*ii*) witnesses for the prosecution have been cross-examined with a view to establish his own good character, or he has given evidence of his good character.'

"Your Excellency, ordinarily an accused person can adduce evidence of good character; then if he does adduce evidence of good character, of course evidence to the contrary may be adduced. All this is provided for in clauses (*i*) and (*ii*). What I am asking the Council to delete is the restrictive words qualifying the exemption provided for in clause (*b*) against the cross-examination of the accused about his bad character. That exemption should not be dependent upon a determination of the nature or the conduct of the defence. It would lead to very elaborate discussion as to whether the conduct of the defence is correct or incorrect, and whether the nature of the defence is such as justly to provoke this reprisal. Possibly the judge would be called upon at an early stage to state whether imputations are cast

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* That to sub-clause (*3*) of clause 12, the words 'or of any inference by the Court' be added'.

† That to sub-clause (*3*) of clause 12, the following be added:—

'nor shall the Court draw any inference adverse to the accused from such failure.'

‡ That to clause 12 (*3*) the following be added:—

'nor shall the Court draw any inference adverse to the person charged from such failure'.

upon the character of the prosecution witnesses by reason of the nature of the defence. It would be undesirable that the Court should, before the conclusion of the trial, be asked to express an opinion as to whether the conduct of the defence is such as to expose the accused to this penalty of being cross-examined about character.

"I submit nothing would be lost if these words be omitted. Of course in the ordinary course of the trial the accused would put questions to the prosecution witnesses to shake their credit by affecting their character. That is a privilege which the Evidence Act provides for now, and every accused person must try to show that the prosecution witnesses are unworthy of credit. I think, my Lord, we need not go so far as to bring in this question of the nature of the conduct of the defence as determining the exemption or non-exemption of the accused from certain privileges. I hope that the last words may be deleted and that the trial should proceed in the manner provided for elsewhere, especially having regard to the fact that we are introducing a new section."

**The Hon'ble Sir George Lowndes** :—"My Lord, there seems no object in this amendment. We have followed the English Act throughout, except where we have been heavily pressed this evening to make a concession which has recently been made by my Hon'ble friend of the Home Department. Otherwise we have followed the English Act all through, except that we have left out the words 'so as to involve imputations on the character of the prosecutor or the witnesses for the prosecution.' We have left out the words 'imputations on the character of the prosecutor,' because, of course, in all these cases before the Special Tribunal the prosecutor will be Government, whereas the English Act applies also to private prosecutions. We have followed the English Act and there seems no reason for going back on it. They have had 20 years' experience of this new addition and have found that it is a desirable one. Once we begin to tinker with it, even with the wisdom of the Hon'ble Mr. Sarma to help us, we do not know where we are and we lose all the benefits of the English precedent.

"Then, as to the merits generally, it is perfectly obvious that if the defence makes aspersions on the witnesses for the prosecution, it is only fair that some retort should be made to them. If I may use a homily illustration, which, no doubt, will appeal to my Hon'ble friend Mr. Sarma in view of a recent discussion, what is 'sauce for the goose is sauce for the gander'."

The motion was put and negatived.

The motion that clause 12 of the Bill, as amended by the Select Committee and as further amended stand part of the Bill, was put and agreed to.

7-2 P.M. **The Hon'ble Sir William Vincent** :—"My Lord, I move that clause 13 stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent** :—"My Lord, I move that clause 14 stand part of the Bill."

**The Hon'ble Rai Bahadur B. D. Shukul** :—"My Lord, I beg to move the following amendment:—

'That for clause 14 the following clause be substituted:—

'14. The accused shall be acquitted unless all the Judges constituting the Court concur in convicting him'.

"My Lord, the amendment which I beg to move is not based on merely sentimental grounds. It is based upon the fundamental principle of British justice, a principle which has a long and sacred tradition behind it and which we all respect and value so highly. That principle, my Lord, is that the benefit

of doubt shall be given to the accused. It is an established principle of the criminal jurisprudence that 99 guilty persons shall be let off but that not one innocent man shall be punished. Such is the great and sacred regard which the British Legislature has always attached to the freedom of the lives and liberties of the people. The Indian Legislature has also acted upon the same principle in the matter of the administration of the criminal law in this country, and this is the first time in the history of criminal legislation in India, except measures designed to meet the exigencies of war times, that a departure is sought to be made.

"My Lord, while moving various amendments to the Bill, and while speaking on the principle of the Bill, when it was introduced, we have endeavoured to make it quite clear how under the provisions of this Bill even an innocent man is likely to be hauled up. The administration of the Defence of India Act in the past has confirmed this view. The case of the Sindhubalas in Bengal and similar flagrant instances show the way in which laws of repressive nature are apt to be abused, and there can hardly be any guarantee to the effect that such abuse will not be repeated in future. As a concrete instance of this, with your Excellency's permission, I beg to quote the case of King-Emperor *versus* Narain Rao Vaidya tried and decided lately in the Central Provinces . . .

**His Excellency the President:**—"Will the Hon'ble Member indicate to me how what he is saying comes under the amendment which he is moving."

**The Hon'ble Rai Bahadur B. D. Shukul:**—"I am just trying to point out that the benefit of doubt should be given to an accused, and a difference of opinion amongst Judges indicates doubt. That is what I am driving at, and I am going to give an illustration of the fact how this law is apt to be abused at times and innocent men hauled up and why an adequate safeguard is necessary."

**His Excellency the President:**—"Proceed."

**The Hon'ble Rai Bahadur B. D. Shukul:**—"Narain Rao Vaidya was charged with an offence punishable under rule 23 read with rule 29 of the Defence of India Act Consolidation Rules, 1915. The case was instituted and tried in the Court of the District Magistrate, Criminal Case No. 14 of 1918, and resulted in conviction. As a result of the same Mr. Vaidya had to undergo imprisonment and rot in jail for very nearly three months, and he was only released when the case went up to the Judicial Commissioner's Court and justice was at last done and he was released by Sir Henry Drake-Brockman, the Judicial Commissioner. The charge was to this effect:—

> 'I, Syed Zahir Ali, District Magistrate, hereby charge you Narain Kashinath Vaidya, as follows:—First—that you on or about the 8th day of June, 1918, at Damoh in the course of a speech delivered by you made a statement to the following effect:—
>
> > '(1) Does anybody consult you when settlement is being done as to how you maintain yourself, and your circumstances, and how much you spend and how many dependents you have, and what rent ought to be assessed? Without any inquiry rent is assessed according to their sweet will, and the Tahsildar is deputed to make realisations. What is being done? The stream of money flows to England. War Loan is being demanded. There is no money. So where is it to come from? India is something like a sugarcane tree. The juice is extracted but the roots should be left alone. If the root is also gone then how can we enjoy the cane? If the root is eaten up then you are also gone and we are also gone.'

"This was the first item of the charge . . . .

**The Hon'ble Sir William Vincent:**—"May I rise to a point of order in this matter? As I understand from the Hon'ble Member, and my recollection corroborates his statement, this was not a trial under the Defence

of India Rules at all, that is, before any court constituted under those Rules, but a trial before the District Magistrate under the Criminal Procedure Code. There was an appeal and the man was acquitted. It really seems to me to have no relevance to the point which is now under consideration."

**His Excellency the President**:—"I should like the Hon'ble Member to point out how all this is relevant to the amendment he is moving. I thought he was going to build up his argument on it, but I see now he is going off on another tack."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"I wanted simply to point out that at times innocent men make innocent speeches—of course they may be severe and harsh speeches—and yet a charge is framed against them stating that that is an attempt to overthrow the British Government; and that is what had actually happened in the case I am quoting . .

**His Excellency the President**:—"That has nothing to do with the amendment you are moving."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"Very well, my Lord, I shall proceed without it."

**His Excellency the President**:—"Give us another illustration."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"My Lord, last year when my friend the Hon'ble Mr. Banerjea moved a Resolution on the Indian Defence Act, the Hon'ble the Home Member was pleased to admit that mistakes had been committed in the past and widespread alarm . . . .

**The Hon'ble Sir William Vincent**:—"I again rise to a point of order. That was in connection with advisory committees for internees and had nothing whatever to do with the question of trial at the King's pleasure."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"But what I beg to point out is that these laws are liable at times to be abused, and this is a fact which, I submit, cannot be denied. There have already been numerous complaints in the past that the emergency powers given by the Act upon which this Bill is based were being used with uncompromising rigour and often with little discrimination, and the Bill has naturally given rise to a general feeling in the country that the attitude of Government . . . .

**His Excellency the President**:—"If you were discussing the principle of the Bill you would be quite *ad rem* in referring to these matters, but you are now speaking to the amendment you have put before Council, and really I must draw your attention again to the fact and ask you to confine yourself to the amendment you are moving."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"Well, my Lord, as I just now indicated, whenever there is a difference of opinion among the Judges, the established principle of the British law and justice is that the benefit of the doubt must be given to the accused. I submit, my Lord, that this principle should be adopted in this case as well, and as a proof of this and as an authority for this, I beg to point out that in the Prevention of Crimes Act, Ireland, 1882, 45 and 46 Victoria, Chapter 25, there is a provision to this effect:—

'A person tried by a Special Commission court shall be acquitted unless the whole court concur in his conviction, and the judges of the said court shall in all cases of conviction give in open court the reasons for such conviction.'

"Now that is the provision there and I beg to submit that a provision similar to that may be embodied in the Bill in substitution of the one that exists in the Bill."

**The Hon'ble Mr. Surendra Nath Banerjea** :—"My Lord, I have got a similar amendment * to move."

**His Excellency the President** :—"I don't wish to force you to speak."

**The Hon'ble Mr. Surendra Nath Banerjea** :—"I have just half a dozen words to say, my Lord, in this matter. When there is a difference of opinion between Judges trying an accused person, the fact indicates that there is at least some element of doubt. Two judges are on one side, the third on the other side. The very fact shows that, with regard to the guilt of the accused, there is some doubt; and if there is such a doubt, the accused surely should get the benefit of that, and that is the principle upon which my amendment is based. Let me call your Lordship's attention to one particular case which occurs to my mind in Bengal. It was under the Defence of India Act and therefore relevant to the particular matter which we are discussing. There were three judges and a young man was tried, I think, Krishnagar or Khustia was the place of trial, which is a sub-division of Krishnagar. Now there was a difference of opinion among the Judges. The plea that was set up was a plea of *alibi*. The young man came from a highly respectable family. Respectable witnesses deposed to the fact of the *alibi*. The non-official Judge accepted the plea. The official Judges did not, and there was a difference of opinion. Great excitement prevailed, articles in newspapers and so on. The matter went up before the Government of Bengal, and the Government in its executive capacity was called upon to determine whether this unfortunate young man had been rightly convicted or not. The Government upheld the verdict of the majority.

"Well, my Lord, cases of that kind ought to be avoided, and it does seem to me that it is a right principle and is attended in its practical application with no inconvenience that no man shall be convicted except on the unanimous verdict of all the Judges. And, my Lord, I understand that is also the Irish law. That is a provision of the Irish Criminal law, and I do hope that my Hon'ble friend the Home Member will see his way to accept this amendment. It is a reasonable amendment; but I do not find that he accepts everything that is reasonable."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"My Lord, I have a similar amendment † and I support it."

**The Hon'ble Mr. V. J. Patel** :—"My Lord, I have a similar amendment‡ on the agenda, and I support it. The amendment is all the more necessary in view of the fact that there is no right of appeal to the man and the trial is not by jury. In the Irish Act referred to by my Hon'ble friend the Mover of this amendment, you have at any rate the right of appeal, and yet it has been further provided that the verdict must be unanimous for conviction. Here there is no right of appeal. I therefore think that, unless the Judges are unanimous, the benefit of the doubt, as my Hon'ble friend Mr. Banerjea put it, must be given to the accused."

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* 'That for clause 14 the following clause be substituted :—
'14. The accused shall not be convicted except on the unanimous opinion of the Judges constituting the Court'.

† 'That for clause 14 the following be substituted :—
'14. The accused shall be acquitted if the Court is not unanimous in finding him guilty'.

‡ 'That in clause 14 for the words 'the opinion of the majority shall prevail' the words 'the accused shall be acquitted' be substituted.'

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I strongly support this amendment. Reference has been made several times to the Irish Act, and, I think, rightly. I beg to point out that under the Irish Act also the special court was to consist of three High Court Judges, and yet there was also an appeal provided. I would draw attention to a portion of the speech of Sir William Harcourt, who introduced the Bill, in order to show how strongly anxious they in England were to see that injustice should not be done."

**His Excellency the President:**—"Will it be long, because I propose to adjourn at a quarter to eight?"

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I will finish, my Lord, before that."

**His Excellency the President:**—"Of course I am willing to let the Hon'ble Pandit continue his speech later, if he likes."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"Thank you, my Lord. But I will finish shortly. Sir William Harcourt said:—

'The court will sit without a jury. They will decide the questions both of law and of fact, and their judgment shall be unanimous. Well, then, in order to give every security and confidence to this tribunal, we give in all these cases an appeal to the Court of Criminal Cases Reserved. I believe that is what it is called in Ireland. At all events, it is a body consisting of the residue of the Judges of the Supreme Court. I believe that the ordinary quorum of that Court is five Judges, and upon the appeal the judgment will be by a majority of the Court, so that you will see that no man' and it is this to which I beg to invite your Excellency's attention and the attention of the whole Council 'so that you will see that no man can be convicted, under these circumstances, without the assent of six Judges—three in the court below and three in the court above.'

"I submit, my Lord, that this lends strong support to the proposal that where there is no unanimity of opinion among the three Judges of the Court, the accused should have the benefit of the doubt, and I hope the Government will see their way to accept the amendment."

**The Hon'ble Sir William Vincent:**—"My Lord, I am sorry to be accused of being unreasonable by my friend, Mr. Banerjea. I thought we had met him throughout in a spirit of sweet reason during the course of this debate. There is another thing that I am sorry for and that is that in an unlucky moment in the course of the debate I mentioned the Irish Coercion Act, as I believe that by doing so I laid the foundation of a great deal of trouble. I think many Hon'ble Members would not have brought the Act up at all if I had not in a moment of weakness mentioned it. . . . .

**The Hon'ble Mr. V. J. Patel:**—"I rise to a point of order. It is a quarter to eight, your Excellency."

7-45 P.M. **His Excellency the President:**—"I think if we can get rid of Sir William Vincent it would be better."

**The Hon'ble Sir William Vincent:**—"I put it to the Council that though in the Irish Coercion Act they do have a unanimous verdict of the judges, there this verdict is in substitution of a unanimous verdict of the jury, whereas in many parts of this country these offences are not triable by jury at all, and even where they are triable by jury we do not require in any case a unanimous verdict. I think the Hon'ble Mr. Khaparde said, quite correctly, just now that in the High Courts a verdict of 6 out of 9 is accepted and in other courts where jury trials obtain, the verdict of the majority is accepted; and generally speaking we do not follow the system of always requiring a unanimous verdict. We accept a majority verdict or decision. This was the case not only under the Defence of India Act, but also under the Act of 1908,

and I cannot remember any case of injustice under that Act. I myself do not see why the opinion of one judge possibly on a point of law should prevail over two judges, or why a person who is accused of a revolutionary crime and is put before three judges, the very best tribunal we can give him, why he should be better off than an ordinary criminal. In the case of a difference of opinion between judges in the case of an ordinary criminal the opinion of the majority prevails even if it is a death sentence. At the same time I am quite sure that Members of this Council will admit that where any one Member of a tribunal under this Act was in favour of acquitting a person, his opinion would necessarily—any judicial officer who has ever done judicial work will bear me out—carry the greatest weight with the other two judges who are sitting with him. Whenever there is any question of this kind, the tendency of the court is always to go with the judge in favour of the acquittal, and it is only in the very strongest cases that a contrary view is taken. My Lord, the two cases by the Hon'ble Mr. Shukul really have no kind of connection with the amendment under consideration. I hope that Hon'ble Members will not allow their minds to be prejudiced by them; one was the case of Sindhubala. I think Hon'ble Members of this Council are well aware . . .

**His Excellency the President**:—"I think I checked the Hon'ble Member when referring to these cases."

**The Hon'ble Sir William Vincent**:—"Well, then, my Lord, I will not refer to them and will content myself with saying that for the reasons already given, namely, that the procedure under the Bill is in consonance with the practice in India and with the previous law on the subject, I regret I am entirely unable to accept this amendment."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"My Lord, I shall say only a few words . . . .

**The Hon'ble Pandit Madan Mohan Malaviya**:—"I shortened my speech, my Lord, on the understanding that we would adjourn at this time. I hope I shall have an opportunity again."

**The Hon'ble Mr. V. J. Patel**:—"It will take some time, anyhow I am going to ask for a division."

**His Excellency the President**:—"Not if Mr. Shukul will finish his reply soon."

**The Hon'ble Mr. V. J. Patel**:—"Because the division will have to be taken."

**His Excellency the President**:—"I do not want to steal a march on any Member if he thinks it preferable to adjourn till 9 o'clock."

**The Hon'ble Mr. Surendra Nath Banerjea**:—"I am not coming here after 9 and therefore my vote will be lost; I want to record my vote."

**His Excellency the President**:—"It will be more convenient for Mr. Shukul to reply now."

**The Hon'ble Rai Bahadur B. D. Shukul**:—"I shall say only a few words. It has been pointed out that the practice in India has all along been to have a majority verdict; but we must remember that it is not an ordinary procedure that we are discussing and providing for here, and that this is a

measure of a drastic character; and so I hope the Government will accept the suggestion in this case. That is all I have to say for the present."

The motion was put and the Council divided as follows :—

| *Ayes—15.* | *Noes—35.* |
|---|---|
| The Hon'ble Mr. S. N. Banerjea. | His Excellency the Commander-in-Chief. |
| „ Dr. T. B. Sapru. | The Hon'ble Sir Claude Hill. |
| „ Pandit M. M. Malaviya. | „ Sir Sankaran Nair. |
| „ Mr. S. Sastri. | „ Sir George Lowndes. |
| „ Mr. R. Ayyangar. | „ Sir Thomas Holland. |
| „ Mr. B. N. Sarma. | „ Sir William Vincent. |
| „ Mr. Asad Ali, Khan Bahadur. | „ Sir James Meston. |
| „ Mr. V. J. Patel. | „ Sir Arthur Anderson. |
| „ Sir Fazulbhoy Currimbhoy. | „ Mr. W. A. Ironside. |
| „ Maharaja Sir M. C. Nandi. | „ Sir Verney Lovett. |
| „ Khan Bahadur Mian Muhd. Shafi. | „ Mr. H. F. Howard. |
| „ Sardar Sundar Singh. | „ Sir James DuBoulay. |
| „ Mr. G. S. Khaparde. | „ Mr. A. H. Ley. |
| „ Rai B. D. Shukul Bahadur. | „ Mr. W. M. Hailey. |
| „ Mr. K. K. Chanda. | „ Mr. H. Sharp. |
| | „ Mr. R. A. Mant. |
| | „ Major-General Sir Alfred Bingley. |
| | „ Sir Godfrey Fell. |
| | „ Mr. F. C. Rose. |
| | „ C. H. Kesteven. |
| | „ Mr. D. de S. Bray. |
| | „ Lieutenant-Colonel R. E. Holland. |
| | „ Surgeon-General W. R. Edwards. |
| | „ Mr. G. R. Clarke. |
| | „ Mr. H. Moncrieff Smith. |
| | „ Mr. C. A. Barron. |
| | „ Mr. P. L. Moore. |
| | „ T. Emerson. |
| | „ Mr. E. H. C. Walsh. |
| | „ Mr. C. A. Kincaid. |
| | „ Sir John Donald. |
| | „ Mr. P. J. Fagan. |
| | „ Mr. J. T. Marten. |
| | „ Mr. W. J. Reid. |
| | „ Mr. W. F. Rice. |

The amendment was therefore negatived.

[At this stage the Council adjourned for Dinner.]

The Council re-assembled at 9-15 P.M.

9-15 P.M. **The Hon'ble Mr. V. J. Patel:**—"My Lord, the amendment that I have the honour to place for the consideration of this Council reads thus:—

'That to clause 14 the following words be added:—

'but in no case of difference of opinion shall a sentence of death be passed.'

The clause as amended will read thus:—

'In the event of any difference of opinion between the members of the court, the opinion of the majority shall prevail, but in no case of difference of opinion shall a sentence of death be passed.'

"My Lord, coming events cast their shadows before. We are shortly going to have a first, rather a substantial instalment, we hope, of self-government, and it is in the fitness of things that we should copy some of the methods of debates in the House of Commons, at any rate in having night sittings. We are on our trial, and, I hope, we shall stand the trial all right and we shall have complete self-government in the near future.

"My Lord, coming to the amendment itself, the Council knows that we are taking away the right of trial by jury, we are taking away the right of trial by ordinary courts of law, we are doing away with commitment proceedings and we are creating special rules of evidence. We have just rejected an amendment to the effect that in case Judges are not unanimous the accused should be acquitted.

"Now I come to a more moderate amendment which I place for the consideration of this Council. The point, my Lord, is that if three Judges who sit in the special tribunal are not unanimous as regards the guilt of the accused, the accused should not be sentenced to death, and I appeal to your Excellency, and to the official members and also to the non-official members of this Council to consider this amendment favourably in the name of humanity, and I trust the amendment will be received in the spirit in which I have moved it."

**The Hon'ble Sir William Vincent:**—"My Lord, I remember that when the Defence of India Act was before the Council, a very similar amendment to this was pressed, and I think that many members of this Council who were present then and are here to-day may remember it. I remember also that, although the amendment was not accepted by Government, there was a very strong feeling among the non-official members on the point, and I am prepared to accept the present amendment in substance. I do not think that it will come in properly into section 14. I have consulted with the Legislative Department which is responsible for the drafting of these measures, and I propose either to accept an amendment if the Hon'ble Member will move it, or to move an amendment myself if the Council will permit me to do so, to the following effect, by a proviso to section 16 'Provided that a sentence of death shall not be passed in any case in which there is a difference of opinion among the members of the court as to the guilt of the accused.' I trust that will meet the Hon'ble Member's wishes. It is at any rate as far as the Government are prepared to go."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I should like to know the effect of the amendment moved by the Hon'ble the Home Member. Suppose there is a difference of opinion in the court about a sentence of death, then what is to happen, and what if it is about any other sentence that may be passed?"

**His Excellency the President:**—"I think it will be more convenient if the Hon'ble Member were to finish his speech."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I do not know if I can make a speech until I know what exactly the Government is prepared to accept."

**His Excellency the President:**—"The Hon'ble the Home Member has said quite clearly what he is ready to suggest Government should accept. I think it would be very much better if the Hon'ble Member were to proceed with his speech."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I submit that in a matter of this importance it is necessary that we should know . . . .

[ *The President; Mr. M. A Jinnah; Pandit Madan Mohan Malaviya; Sir George Lowndes; Sir William Vincent; Mr. V. J. Patel.* ] [13TH MARCH, 1919.]

**His Excellency the President**:—"I do not know what the Hon'ble Member refers to. The significance of Mr. Patel's amendment is that it relates to the sentence of death, and on that point the Hon'ble the Home Member is prepared to meet Mr. Patel, but not on this particular section; he proposes to meet him on another section."

**The Hon'ble Mr. M. A. Jinnah**:—"My Lord, it seems to me that the only difference between Mr. Patel and Government after what the Hon'ble the Home Member has said is that the amendment should properly come under clause 16 and not under clause 14. That section deals with the sentence of death and nothing else. With regard to the other sentences, it is left to the court to pass such sentences as it may think proper. That being so, my Lord, it is quite clear that Mr. Patel's amendment is practically accepted, only instead of coming under clause 14, it comes under clause 16. If that is so, I see no difference at all."

**His Excellency the President**:—"I do not think there is any difference, but I do not quite understand what the Hon'ble Pandit wants."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My Lord, I wanted to have the language which the Government is ready to adopt, so that we may know exactly what the effect of the change would be. It is rather a difficult task to deal with an amendment of such importance without having the language of it before us. If the Hon'ble the Home Member will be good enough to repeat it, I may be in a better position to understand it."

**The Hon'ble Mr. M. A. Jinnah**:—"My Lord, I understood really that the amendment is accepted in spirit. It is only a question of drafting, and the Hon'ble the Home Member has informed us that the Bill will be placed before the Council before it is finally passed."

**The Hon'ble Sir George Lowndes**:—"In this particular case the draft is my own final draft."

**The Hon'ble Sir William Vincent**:—"I am prepared to read the amendment out again. Though I am willing to explain it, I feel this may lead to a discussion that I am anxious to avoid:—

'Provided that a sentence of death shall not be passed in any case in which there is a difference of opinion among the members of the Court as to the guilt of the accused'."

**His Excellency the President**:—"Is it the wish of the Council to accept the amendment which has now been approved?"

**The Hon'ble Mr. V. J. Patel**:—"I think the Hon'ble the Home Member's amendment is perfectly clear and my suggestion is entirely met except that instead of under section 14 the amendment comes under section 16. As far as I am concerned I am perfectly satisfied."

The motion that clause 14 stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent**:—"May I rise to a point of order; I wish to make it clear that this amendment has to come in under section 16."

**His Excellency the President**:—"But we have just finished with section 14."

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 15 as amended by the Select Committee do stand as part of the Bill."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"Mr. Patel, if your Lordship permits, will move because his is a more detailed amendment on the same subject."

**The Hon'ble Mr. Srinivasa Sastri:**—"The same with mine."*

**The Hon'ble Mr. V. J. Patel:**—"Your Excellency, I have the honour to move the following amendment:—

"That to clause 15 the following proviso be added:—

'Provided that the Court shall not convict the accused of any offence referred to in clause (2) of the Schedule or of any attempt or conspiracy to commit any such offence or of any abetment of any such offence unless it is proved to its satisfaction that such offence, attempt, conspiracy or abetment is connected with a particular movement endangering the safety of the State.'

"I will invite in this connection the attention of the Council to the Schedule clause (2):—

'Any of the following offences, if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State, namely:—' and so and so.

"Now so far as the preliminary notification is concerned, the Governor General in Council may issue it if satisfied that the offences mentioned in the Schedule and connected with movements endangering the safety of the State are being promoted in any area; I do not also object to the Local Government laying information before the Chief Justice against a person if it is satisfied that such person has committed any scheduled offence connected with any movement endangering the safety of the State; but once such information is lodged and the case is before the Tribunal, my contention, your Excellency, is that the Tribunal must be satisfied, not merely that the offence is committed by the accused, but that such offence is connected with a particular movement endangering the safety of the State. What I mean is that, the opinion of the Local Government that the offence is connected with any movement endangering the safety of the State, should not be binding on the Court trying the accused person. If the Tribunal comes to the conclusion that, although a man has committed an offence under section 124-A, section 148 or any other section mentioned in the Schedule, that offence is an ordinary offence under the Penal Code, not in any way connected with any movement endangering the safety of the State; then the Tribunal must acquit the man. That is to say in such cases an accused person should not be deprived of the rights to which he is ordinarily entitled under the ordinary procedure, namely, the rights of trial by jury, of commitment proceedings, of appeal, if as a matter of fact the trying Tribunal finds that the offence is not connected in any way with any anarchical or revolutionary movement. The whole frame of the Act shows that it is enacted solely to deal with anarchical and revolutionary movement, and if the trying Tribunal comes to the conclusion that, though the Local Government thinks that the offence committed by the accused is connected with any movement endangering the safety of the State, the court thinks otherwise, it has no relation whatever to any such movement, then I submit the Tribunal must stay further proceedings, acquit the accused and leave it to the Government to proceed further against the accused in the ordinary court of law or not. It is therefore with a view to clear the intentions of the Government that I have moved this amendment, and I trust the Council will accept it."

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* "That to clause 15 the following be added:—

'Provided that the offence of which he is so convicted is connected with an anarchical or revolutionary movement.'

9-30 P.M. **The Hon'ble Mr. M. A. Jinnah**:—"My Lord, with regard to this clause 15 in the Bill what has puzzled me a little bit is this. Clause 15 runs as follows:—

'If at any trial under this Part it is proved that the accused has committed an offence against any provision of the law which is referred to in the Schedule, the Court may convict the accused of that offence although he was not charged with it.'

"Now if I understand the meaning of this clause correctly, it amounts to this that, although the original information charges an accused person with one particular scheduled offence, in the course of the trial it turns out upon the evidence that another offence, but a scheduled offence has been committed, then it empowers the Court to convict the accused of that offence provided it is a scheduled offence. That being so what I cannot quite follow is when you come to the Schedule. A scheduled offence is defined by clause 2:—'Scheduled offence means any offence specified in the Schedule.'

"If you turn to the Schedule you find under it:—

'(1) Any offence under Chapter VI (other than an offence under section 124-A) and sections 131 and 132 of the Indian Penal Code.' That I can quite understand. But when you come to (2) the words are:—

'(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State.'

"Well, now, here, my Lord, the words 'in the opinion of the Government' puzzle me to a certain extent, and my point is this, whether the opinion of the Government, namely, that the offence with which the accused is charged is a scheduled offence, will be conclusive upon the court or not. If that is going to be conclusive so far as the court is concerned, then that will be decided by the Local Governments and not by the court; otherwise I do not understand the significance of these words 'in the opinion of the Government' because in clause 1 of the Schedule you say nothing about the opinion of the Government. Those are the scheduled offences in clause 2. If you only leave it simply at defining scheduled offences, then there is no difficulty, but if you keep these words, then, my Lord, Mr. Patel's amendment is very significant because that clears the doubt. I submit there is a doubt. It clears the doubt and the amendment then comes in very forcibly because it says—

'Provided that the Court shall not convict the accused of any offence referred to in clause (2) of the Schedule or of any attempt or conspiracy to commit any such offence or of any abetment of any such offence unless it is proved to its satisfaction (*i.e.*, to the satisfaction of the Court not 'in the opinion of the Government') that such offence, attempt, conspiracy or abetment is connected with a particular movement endangering the safety of the State.'

"Therefore, personally, I would rather that clause 2 of the Schedule was put right than to have this long amendment."

**The Hon'ble Rao Bahadur B. N. Sarma**:—"I would request your Lordship to permit me to put my amendment separately, because I find that it differs in some respects from the amendment of the Hon'ble Mr. Patel. I might have misled your Lordship by saying in the first instance that they were practically the same. I do not want to make two speeches and I shall say what I wish to on this amendment, which in many respects agrees with Mr. Patel's amendment. I point that out and, if your Lordship wishes, you can put it separately."

**His Excellency the President**:—I understand you want to make only one speech."

**The Hon'ble Rao Bahadur B. N. Sarma**:—"Whether Your Lordship will permit me now or later, I will make only one speech.

**His Excellency the President** :—"You had better do it now."

**The Hon'ble Rao Bahadur B. N. Sarma** :—"This is a question of very great importance and I do not believe that the Government could have contemplated the actual effect which might perhaps be the result if clause 15 were to be left as it stands. Clause 15 says :—

'If at any trial under this Part it is proved that the accused has committed an offence against any provision of the law which is referred to in the Schedule, the Court may convict the accused of that offence although he was not charged with it.'

It may be that several accused may be put up at one trial on account of the connecting link that they were members of a revolutionary or an anarchical conspiracy and therefore have to be tried together, or it may be that one person will be put on his trial for an offence coming under any of the schedule-described offences. But in either case the gist of the offence is that it is an offence connected with a revolutionary or anarchical movement against which alone this Bill is directed. In the course of the trial under clause 15 it may be found that though the man is charged with hurt under section 326 he may be found guilty of mischief under section 435, etc. I can understand his being charged with an offence against the State, I can understand a charge of taking part in a murder and of his being convicted of culpable homicide not amounting to murder, a lesser offence, but I cannot understand that it is meant that if a person is charged with grievous hurt or with a similar offence he should be convicted of an entirely distinct offence, for instance, an offence under the Explosive Substances Act or an offence under the Arms Act or the offence of mischief or the offence of criminal intimidation, and so on. That would be the result if this section stands as it is. Section 236 and section 237 of the Criminal Procedure Code describe clearly the limitations under which a person can be convicted when the facts are capable of coming under the description of more than one offence. Section 236 says :—

'If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once.'

"Then section 237 says :—

'If in the case mentioned in section 236, the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section . . . .

**The Hon'ble Sir William Vincent** :—"May I rise to a point of order? There is a great deal of force in what the Hon'ble Member is saying, but I submit that it would come better in connection with an amendment which is to be moved by the Hon'ble Mr. Chanda at a later period. Of course the point to which the Hon'ble Mr. Jinnah adverted stands on a different footing."

**The Hon'ble Rao Bahadur B. N. Sarma** :—"I shall not deal with it at greater length. I only meant to say that there is that real difficulty, and that possibly the Government meant that the person may be convicted of an offence though it may not have been the offence with which he was charged on the ground that he was a member of a revolutionary conspiracy and in the course of a series of acts in pursuance of that conspiracy the various crimes are committed. That is the reason why I point it out; but I see clearly that the Government are likely to give some attention to it, so I shall not say more on that point.

"Then, my Lord, the amendment that I have suggested, which is largely covered by the Hon'ble Mr. Patel's amendment, is that the words 'in

connection with an anarchical or revolutionary movement' should be inserted after the word 'Schedule', so that clause 15 will run :—

'If at any trial under this Part it is proved that the accused has committed an offence against any provision of the law which is referred to in th Sc' dule in connection with an anarchical or revolutionary movement, etc.'

"I took it that the Government wished to proceed against a man not for any of these scheduled offences, but only if those offences are committed in connection with an anarchical or revolutionary movement, and that is the reason why I have suggested this amendment. Otherwise there would be this danger that if a man is to be convicted under this Chapter of an offence, even when it is not connected with a revolutionary or anarchical movement, he might be deprived of the benefits of a trial under the ordinary criminal law, and that would be so even though the Judges may find that he has committed no offence in connection with a revolutionary or anarchical conspiracy. That could not have been intended. Therefore I submit that it must be found as a fact before a person can be convicted under this Part of the Act that his offence is actually connected with an anarchical or revolutionary movement. The danger that I apprehended was this. If it is only to be the Local Government in its executive capacity that is to be the judge as to whether an offence is connected with a revolutionary movement or not, then there will be great danger of the Government being misled into taking action against an individual on the strength of a recommendation that might be made to it by one of its officers in the belief that he was really connected with a revolutionary movement though he might not be so connected. That is, we are substituting the judgment of the Local Government, which may virtually mean that of a Deputy Secretary or Under-Secretary in actual practice, for the decision of a judicial tribunal; and there would also be a great temptation in cases of riots such as those which occurred in Bihar or which recently unfortunately took place in the United Provinces. Of course it may be that the officer upon whose opinion the Government will act may at first think or imagine that there is some sort of a revolutionary movement in any part of a province in which these particular offences are committed, these riots or these murders or these acts of mischief or hurt, and that there is some connection between them; then the machinery is set in motion, and although as a matter of fact it may be clearly proved that those acts had absolutely nothing to do with an anarchical or revolutionary movement, the accused will not have the slightest chance of escape from the rigorous provisions of this Code—a state of things which cannot have been contemplated by the Legislature or the Government.

"The third point is that I have given notice of an amendment in connection with the Schedule itself, and I shall have to allude to it because I have to ask that in clause 15 the words 'revolutionary and anarchical' should be substituted for the words 'any movement endangering the safety of the State', because 'any movement endangering the safety of the State' need not necessarily be an anarchical or revolutionary movement. Disaffection between several classes of His Majesty's subjects—say between Hindus and Muhammadans, or between one sect of Hindus and another sect of Hindus—a movement directed against any one of those classes may be a movement which is likely to endanger the safety of the State, but at the same time it may not be an anarchical or revolutionary movement. I thought we were aiming in this Bill only at anarchical and revolutionary movements, and not at other movements which may be equally harmful to the State, which may be equally dangerous to the safety of the State, and which may not be and which need not be revolutionary or anarchical movements. I therefore submit that we shall be unwittingly or wittingly enlarging gravely the scope of the Schedule and the scope of clause 15, unless we limit the wording of the Schedule by the employment of words like those which I have employed in my amendment. I submit we should employ language to limit the scheduled offences connected with revolutionary and anarchical movements.

"That is my first suggestion. Secondly, I submit that we should not allow the opinion of the Local Government to be final in the determination of the

question as to whether any offence that a person may have committed is connected with an anarchical and revolutionary movement or a movement dangerous to the State. We should substitute for 'the opinion of the Local Government' 'the opinion of a Court of Justice'; and the moment a Court of Justice does not see any connection whatsoever between the acts of the accused and a revolutionary or anarchical movement the man must be released at that trial although he may stand trial for a different offence under the regular provisions of the criminal law. That is my humble submission. It is a matter of great importance, and I hope the Government will duly consider the representations made by us."

**The Hon'ble Mr. K. V. Rangaswamy Ayyangar:**—"My Lord, this is only a sub-division of the whole Bill, and so when the Bill is only intended for coping with anarchical and revolutionary crimes, there is no necessity to include the amendment here. Even the attempt to define 'revolutionary' has not been successful. Further, I conscientiously believe that the crimes scheduled in the latter portion of the Bill are not less heinous than revolutionary and anarchical crimes, and so I beg to oppose this amendment."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, the Bill contains an admixture of provisions of two characters. Part I of it contains provisions for a speedy trial in judicial form of certain offences; the other consists of provisions of a preventive character. The difficulty which the amendment seeks to deal with arises from this rather unhappy combination. Now, my Lord, so far as measures of a preventive character are concerned, the Schedule stands on the footing that if in the opinion of the Government certain offences are connected with any revolutionary or anarchical movement for the purposes of prevention, those offences shall be treated as such, and a certain course of preventive measures shall be adopted. The view that the Government will take of the connection of an offence with such a movement, will be decisive so far as these preventive measures are concerned. I understand the position without admitting the wisdom of it. But Part I does not deal with prevention. Part I deals with the trial of offences—the judicial trial of certain offences, and all the part that the executive Government plays in relation to Part I is that the Governor General in Council being satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of public safety to provide for the speedy trial of such offences, he has by a notification in the Gazette of India, to make a declaration to that effect, so that the provisions of this Part should come into force in the areas specified in the notification. This is a notification of a general character. It does not deal with any individual case; it ought not to, it is not expected to, it is not contemplated that it should affect the decision of any particular case with regard to the charge of guilt, or character of the guilt, which the court may have to try. The notification having been made, the Local Government has to initiate proceedings against any individual. The proceedings having been initiated against a person charged with having committed an offence which comes in the category of scheduled offences, a judicial trial—not in the ordinary regular constitutional form which we are familiar with in the existing law of the land, but a judicial trial under a special constitution and under certain special rules of evidence—has to take place. Now the trial of the accused may relate to an offence under Part I of the Schedule. In that case the Court has only to be satisfied, before it can pass any sentence upon him, that he is guilty of an offence or offences which are mentioned in the first part of the Schedule, namely, any offence in Chapter VI other than an offence under section 124-A, *i.e.*, an offence against the State or against the Army or the Navy: that stands on a different footing. A court can come to a conclusion with regard to any of those offences without their

being complicated with any other offences or considerations. But a trial for an offence included in the second part of the Schedule will be complicated. As section 15 stands the Court will have to find whether the man is guilty of any of the numerous offences other than those with which he may be charged which are mentioned in the second part of the Schedule. I need not repeat all the sections that are there referred to. But if a man is tried for any one particular offence this section as it stands would give the court permission to convict him of any offence against any provision of the law which is referred to in the Schedule, though the accused may not have been charged with it. Now, my Lord, these offences receive their grave character by reason of their being connected, as it is put in Schedule 2, with any movement endangering the safety of the State; that, therefore, is an important element in determining the character of the offence, the extent or gravity of the guilt of the accused. That will determine the attitude of the court in dealing out punishment to the man. Now the question arises: Has the court any power to deal judicially, to come to a judicial determination, on the question whether any of the offences described in Schedule 2 has been committed by the person who is on trial? That question necessarily involves a decision on two things, one that the offence should be one of those that is named in the Schedule 2 (*a*), and secondly that such an offence should be connected with any movement endangering the safety of the State. Obviously it should need no argument to show that it is the Court which is seized of the trial which should come to a determination on both elements which go to make up the offence which the Court is constituted to deal with. But then we tumble upon this expression in 2(*a*), namely, any of the following offences if in the opinion of Government such offence is connected with any movement endangering the safety of the State. That creates an insuperable obstacle; as the Bill stands, the Court must swallow this unjudicial executive decision, namely, that a certain offence which it is sitting to try is connected with a movement endangering the safety of the State. It can do nothing else unless what Mr. Patel has suggested is accepted. It should be left to the Court to come to a conclusion on both the two Parts which go up to constitute the offence which alone it is contemplated, that the special court should deal with. But if it is not to be, the court will then try the accused, find that he is guilty of a certain offence, and assume that that offence is connected with a movement endangering the safety of the State, and proceed upon that basis to determine the sentence which it should pass upon the man. Its judgment is also to be influenced by that circumstance in arriving at a conclusion as to whether the man is or is not guilty.

"I submit, my Lord, the Bill creates a very extraordinary position. So far as the first Part of this Bill is concerned, all that the Government has expressed as its desire to secure is a speedy trial of certain offences but still a judicial trial. But section 15 as it stands will mean much more than a speedy trial; it will mean a partial trial of an offence; it will mean a trial of an offence in determining which one important part of the judgment will have been arrived at by the executive government and imposed upon the court, which the court will have no power, no jurisdiction to question, to deal with, to determine; and another part which the court will have to determine.

"I submit, my Lord, that this should be avoided, that so far at least as Part I is concerned where a judicial trial is provided the Legislature should secure that the trial is a fair, impartial and complete trial, so far at any rate as the determination of the offence is concerned, namely, the complete offence with which a man is charged. If the court is not to try the fact, whether the offence is or is not connected with a movement endangering the safety of the State, then I submit the very least that should be done is that when the court does not feel satisfied that the particular offence with which a man has been charged has not been proved against him, that man ought to be acquitted. The man ought to be acquitted by the special Court. That does not mean that a man who may be guilty will be let go altogether. There are other provisions of the law under which he can be

tried, according to the ordinary regular procedure provided in our Codes. The advantage to him will be that he will not then be deprived of the constitutional safeguards of life and liberty which are provided for him. The moment the court feels that a man is not guilty of the particular offence for which he was placed on trial before it, I submit the court ought to stop its proceedings and let the man go. It is not an answer to this argument to suggest that the time of the court will have been wasted and that another court will have to sit to sift the facts and to try the man. It is essential, it is necessary in the interests of justice, unless justice is to be murdered to the extent to which the trial of an important element of the offence is concerned, unless justice is to be denied to the man so far as the trial of an essential element of the offence is concerned, I submit it is necessary that the man should be acquitted so far as the special tribunal is concerned.

"Now, my Lord, the result that would follow would be that if a person accused of an ordinary offence would have the right to be placed before a Magistrate in the ordinary course, committed for trial, if the Magistrate finds that there are grounds for it, he will have his trial in the Sessions court and have his appeal to the High Court. For all these reasons I submit that either these Schedules should be defined separately, differently, for the purposes of Part I and Parts II and III, namely, the judicial trial portion and the preventive measures portion; or it should be provided—if I might move an amendment—it should be provided that when it is proved to the satisfaction of the court in any trial under this Part that the accused has not committed the offence with which he was charged, he must be acquitted. If this is not acceptable to Government at this stage, then I submit that the very least that ought to be done is to accept the Hon'ble Mr. Patel's amendment. I hope, my Lord, the matter will be considered impartially. I hope that the proper course will be followed which will ensure that the decision in such a trial as is provided for in Part I, will not be vitiated by the inevitable necessity of the court accepting the verdict of the Executive Government with regard to an important element in the offence with which the man is charged before it."

**The Hon'ble Sir William Vincent**:—"My Lord, what the Court has to decide in this case as in every case is whether a certain accused person is guilty of a particular offence or not. Before the accused is put on trial before a court under this Part, the Government comes to a distinct decision as to whether that offence is connected with revolutionary or anarchical movements or not. And in accordance with that decision of Government the question of the tribunal before which a man is to be tried for a particular offence is decided. In no case is there any question putting him before a partial or unfair tribunal as has been suggested."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"I rise to a point of order. I did not say that it would be a partial or unfair tribunal. I did not attack the tribunal."

**The Hon'ble Sir William Vincent**:—"I was going to say that 10-1 P.M.
the Government then constitutes a singularly strong and impartial tribunal by which this offence will be tried. I have already explained to the Council that one of the objects for which this procedure is intended is to secure an expeditious and at the same time a perfectly fair and impartial trial. I ventured to put it to the Council now, that the procedure which the Hon'ble Mr. Patel suggests would be destructive of expedition, and would indeed make the trial of any offence by one of these tribunals almost impossible. Not only would the court have to decide points which ordinarily come before criminal courts that is whether the accused is guilty of murder or not, they would have to go into the further and abstruse question as to whether this murder was connected with some revolutionary conspiracies. May I take an instance. Let me take the case of a man like Pingley who was a well known revolutionary; let us

assume as was the fact in this case that there was the clearest evidence of guilt of an offence punishable with death. Let us assume as was actually the case that Pingley committed this crime in pursuance of a revolutionary conspiracy, and that this last information was derived from a number of facts which could not be placed before the court and the proof of which would have necessitated entering into a number of points entirely unconnected with the simple issue whether or not Pingley had committed murder. I want to know whether the Council thinks that such a man should be acquitted, merely because evidence is not tendered to show that the murder was connected with a revolutionary conspiracy.

"The question whether this murder was in furtherance of a conspiracy is really a condition precedent to putting the man before the court. If the Government is satisfied on this point, then only is the man put before this special tribunal appointed under this Part, but it would be impossible for the court again to go into that question of revolutionary conspiracy without trying a number of facts which are irrelevant to the trial; every inquiry would be protracted interminably. In fact the whole object of the part which is to secure an expeditious trial would be lost. It is for this reason that I regret I am unable to accept this amendment. Let me assume that an accused was before the ordinary courts, would that court have to decide such questions? Certainly not. The only question it would have to decide is whether this man had committed murder or not. If the court of three High Court Judges find ample evidence to show that a man has committed the offence with which he is charged, I submit the question whether it was committed in connection with a revolutionary conspiracy or not is not one that you can reasonably ask the court to discuss or to examine; for this reason I must oppose this amendment. It was a little surprising to find the Hon'ble Mr. Patel assuming complete ignorance as to the intention of Government in this matter. I do not know if I am divulging a secret but I may go so far as to say that the question was discussed at length considerably in Select Committee. The amendment of Mr. Sarma as to the Schedule is a separate matter with which I need not deal with at present."

10-18 P.M. **The Hon'ble Mr. Srinivasa Sastri:**—"Your Excellency, I am certainly aware of the circumstance that this point received attention in Select Committee. I think it was unfortunate that our views did not prevail in that Committee when we were considering the point; for it seems to me that it has an intimate bearing on the principle of the Bill as frequently enunciated by the Hon'ble the Home Member.

"The Council will remember that not once or twice but a good deal oftener the suspicion that has been expressed with regard to this Bill is that in times of excitement and trouble Government may be under a temptation to use it for purposes for which we do not at present intend it. Having been intended for the trial of offences connected with movements endangering the safety of the State, this procedure may come to be used for the trial of offences not coming under that description. This was the suspicion that we have frequently expressed that critics in newspapers and elsewhere who are opposing this measure in the country have often expressed. Our great suspicion has been, I repeat it, that this may be used to deal with ordinary political offences. We were told that we were entertaining unjust and unfounded suspicions; we were told that Government had no such intentions at all, and in order to make it clear that that was no part of Government's intention, the words 'anarchical and revolutionary movements' were introduced in the Preamble and in certain sections. So far it was satisfactory. But we find on examination that that would not fully allay the suspicions that have been created, and I am afraid what the Hon'ble the Home Member says now will help the continuance of this suspicion. To remove the suspicion entirely, I think it is necessary for the Hon'ble the Home Member to meet the Hon'ble Mr. Patel fully. For supposing an area, say Bengal, is declared by the Governor General in Council as a place to which this Part shall apply owing to the prevalence of anarchical and revolutionary movements;

suppose there the Local Government believing a person guilty of an offence connected with a movement endangering the safety of the State, puts him up for trial before this special tribunal, but actually in the course of the trial it turns out clearly that his offence, although say, it might have been grievous hurt, one of the scheduled things, although it might have been grievous hurt, had nothing whatever to do with any movement endangering the safety of the State, but arose say, from a boundary dispute or a domestic quarrel; supposing it was so. Then according to the interpretation of the Hon'ble the Home Member, the Court would still proceed with the trial and finish up with a conviction. Now as soon as the officers of the Local Government found out that even in a case of that kind where it was clearly established that the offence was not connected with a movement endangering the safety of the State, they could go on and get the court to record a conviction. I am perfectly certain that, as things go, in a proclaimed area under a state of excitement and public disturbance, the court will be filled every day with people brought up under one kind or another of offence coming under the Schedule, but not necessarily connected with movements of an anarchical or revolutionary nature. Once the officers find out that they can bring up people before courts, secure expeditious convictions and so contribute to the time when peace will be established in the province, the court will come more and more to be used for such purposes. Section 124-A and section 153-A with regard to which our feelings are most tender, sections dealing with sedition and offences connected with exciting feelings between different classes of His Majesty's subjects, it is just those sections which are likely in times of disturbance, with the best of intentions in the world but with no particular anarchical or revolutionary ideas as in many cases, I think, the officers of the Government are willing to grant, that it is just in those cases that the likelihood is the greatest of people actually being brought up before this trial and rushed through to a conviction without however really coming within its scope. That is why we are anxious that the court should in every case record a finding upon the question whether the offence is really connected with a movement endangering the safety of the State. It is only when the Hon'ble the Home Member admits this amendment and compels the court to record a finding on that that he will stand clear, that he will be acknowledged by us to have given full effect to the intentions, that he has so frequently expressed, that it is not the desire of Government to use this Act for anything but the trial of anarchical and revolutionary crime. There is great danger of the other thing taking place, and I would therefore beg the Hon'ble the Home Member to reconsider his attitude and not to allow any part of the impression to remain that perhaps this undesired effect will follow. I am prepared to concede this that it will lead to a certain waste of public time of the court. The court having tried an offence up to a certain stage will have to abandon it altogether when it finds that the crime charged is not, as the Local Government supposed, actually connected with anarchical or revolutionary movement. The thing will have to stop there. That amount of inconvenience and waste of time there is, but I think the Government, anxious as it is, to establish the character of this Bill as absolutely clear and not intended to deal with ordinary political crime, that amount of inconvenience is a risk that Government must be content to run.

"Your Excellency, there is just one other point which I wish to impress on the Government. Let it not be supposed that, even if the Hon'ble Mr. Patel's amendment be fully accepted, it will answer the case of those critics both here and outside this Council who tell us frequently that this is a weapon that Government are forging not merely for the purpose of dealing with anarchical and seditious crime, but actually to strengthen their hands and to put down political movements which become inconvenient to Government. To answer them fully Parts II, III and IV will have also to be radically re-cast. This is not enough, but if this be not done, then, I think, the criticisms will stand justified and the intentions that have been expressed, I am prepared to accept them at their face value, the intentions that have been expressed will, I think, remain without satisfactory proof that effect will be given to them in the sections."

**The Hon'ble Dr. Tej Bahadur Sapru** :—"It seems to me, my Lord, that there are two important stages which have got to be borne in mind. The first stage is that which is covered by clause 3 of this Bill, under which it is open to the Governor General in Council to declare that in the whole or any part of British India anarchical or revolutionary movements are being promoted, and if scheduled offences in connection with such movements are prevalent to such an extent that it is expedient, in the interests of the public safety, to provide for the speedy trial of such offences. Well, the Governor General having declared that such anarchical or revolutionary movements are being promoted, the next stage is reached when action is taken against a particular individual or a number of individuals connected with that movement. When such action is taken the question at once arises, what are the courses open to that individual or those individuals? Now the individual concerned may take one of two courses; either he may say he is not at all guilty, or he may plead guilty to the offence, and at the same time say he is not guilty of the offence within the meaning of this Act, that is to say, although he may have committed any one of these offences which are described in the Schedule, yet he may plead that he has not committed any one of those offences in connection with any anarchical or revolutionary movement. Well, if he does plead that the court has got to consider that question upon clauses 8 and 15, and I submit there is nothing to prevent the court coming to the conclusion, yes or no, as to whether that man is connected with that movement or not. But the answer to that argument is that the court cannot do it because in the Schedule that has been attached to this Bill it is not open to the court to go into the question as to whether the individual has committed that offence in connection with any movement or not, because that is a matter which depends on the opinion of the Government. The words in the Schedule are:—'any of the following offences, if in the opinion of Government, such offence is connected with any movement endangering the safety of the State,' and then the offences are set out. So that it seems to me, my Lord, that the function of the court will be simply to go on with the question as to whether the man has committed the offence or not and to shut its eyes to the further question whether that offence was connected with anarchical movement or not and to accept, without challenge, the opinion of the Local Government. It really means that the Local Government's or the executive Government's decision is super-imposed upon the will of the trying Magistrate or the Judge. My Lord, I submit that is not fair and that is not consistent with the avowed policy of the Bill. You allow the court simply to try the bare question as to whether the man had or had not committed that offence, but you do not allow the court to try the most vital question, namely, whether that offence is connected with the movement or not. I submit if you take out these words 'in the opinion of the Government' from the Schedule there will be no occasion for the amendment put forward by Mr. Patel. It is because those words are there that I think it necessary that that amendment should be accepted. My Lord, I think the question is one of very great importance, and if you take away that privilege and that right from the court, the privilege and right of deciding whether any particular offence is connected with that movement, I submit you take away a most valuable safeguard from the liberty of the individual."

10-37 P.M. **The Hon'ble Sir George Lowndes** :—"My Lord, whether this provision is right or wrong may be disputable, but the Council are rather in danger of losing sight of the thread of it. The Hon'ble Pandit has said that an important element of the offence is that it is connected with anarchical and revolutionary crime. He said at least twice, I think three times, that we were withdrawing from this tribunal the cognisance of this important element of the offence. Let us get right away from that at once. The tribunal has to decide whether a particular offence has been committed or not. The offences are set out in the Penal Code sufficiently for their purpose. We will take an illustration—murder, arson, dacoity, grievous hurt, those are the offences. Then what tribunal has to try them? Ordinarily they are tried by what we call here the ordinary courts of the country. In particular cases they will be

tried by special tribunals. But it is the same offences in each case; it is murder, yes or no, that the tribunal has to try; it is arson, yes or no, dacoity, yes or no. Those are the offences. Their connection with something else has nothing to do with the offences whatever So far from being an important element in the offence it has no connection with it whatever. A man is guilty under the laws of his country and he is liable to exactly the same penalty whether he has committed merely murder or dacoity, or murder or dacoity in connection with revolutionary conspiracy. The offence is an utterly different thing and utterly apart from the question whether it is connected with a revolutionary conspiracy. How the opinion of the Local Government comes in is this. Is the offence to be tried by a special tribunal or by the ordinary tribunals of the country? That is the question that the Local Government has to decide. Under what conditions has the Local Government to decide it? In the first place, it can only decide it if the Governor General in Council has declared that in the particular part of India to which Part I of the Bill may be applied, revolutionary or anarchical movements are rife and scheduled offences have been committed to such an extent that it is necessary to constitute a special tribunal for their speedy trial. Therefore you have got to have a part of India where it has been declared that revolutionary offences are rife and where these offences are being constantly committed before the Local Government can be called upon to decide whether it is necessary to try them by a special tribunal. But this has nothing to do with the offences; the offence that will have to be tried by that tribunal is murder, arson, dacoity, grievous hurt, or whatever it may be, exactly as it would be in any other court. It has no concern with anything else; it is merely that that tribunal will only take cognizance of any offences if the Local Government thinks that the particular offences are connected with a revolutionary movement. In fact, as one of my Hon'ble colleagues put it to me just now, what the Hon'ble Pandit and those who support him are asking is, that the tribunal should try the very cause that has brought it into existence. That is surely impossible. The question will be whether particular offences are to be tried in the ordinary course or by a special tribunal, and on that we propose, rightly or wrongly, that the opinion of the Local Government should be final; they are to decide whether a particular offence is to go to this tribunal or to the ordinary courts, and we propose that their decision on that should be final. My Hon'ble colleague the Home Member has pointed out why it is practically impossible that the tribunal should go into the question whether the offence is connected with such a conspiracy or not. Are you going to try the man for murder, first find he has committed murder, or arson, or whatever it is, and then solemnly sit down and consider whether the murder was connected with a revolutionary conspiracy, in order to see whether the court ought to have tried it or not? Surely you are not going to do that? But perhaps my Hon'ble friend would begin by trying whether there is a revolutionary conspiracy, and after he had tried that for a year or so try the offence, which is the real question the tribunal has before it."

**The Hon'ble Mr. Srinivasa Sastri:**—"I rise to make an explanation; revolutionary conspiracy is a matter to be decided by the Governor General in Council and declared by notification; that will not be part of the inquiry."

**The Hon'ble Sir George Lowndes:**—"My Hon'ble friend is quite correct. It proceeds by stages, there is first the declaration by the Governor General in Council that a state of what I may call anarchy exists and that offences specified in the Schedule are constantly being committed; then there is a special tribunal constituted to try the offences—we are not going to constitute it *ad hoc*; we are going to constitute a special tribunal to try all scheduled offences—and then there will be a trial of an offence by that tribunal if it comes under the Schedule and in the opinion of the Government is connected with any movement endangering the safety of the State.

"Therefore, when an offence goes to that tribunal it can only go to it under the orders of the Local Government. The tribunal cannot try any of these

particular offences unless, in the opinion of the Local Government, it is an offence connected with a movement endangering the safety of the State. We do not propose to leave that question for the decision of the tribunal; it is for the Local Government alone. Rightly or wrongly, that is the position.

"But we have my Hon'ble friend Mr. Sastri—I am sure he did not mean it—complaining that cases would be rushed through to conviction. Does he seriously think that, when you have got a tribunal of three High Court Judges, whom so many Hon'ble Members say they trust implicitly, cases will be rushed through to a conviction?"

**The Hon'ble Mr. Srivinvasa Sastri**:—"I am sorry to have been misunderstood. When I said 'rushed through' I only meant put through expeditiously."

**The Hon'ble Sir George Lowndes**:—"I am sorry, but I am afraid the word 'rushed' bears rather an unpleasant interpretation to my mind; I am glad the Hon'ble Member meant no more than that. And really is there any real fear of this provision being abused? You have got the conditions of a proclamation of the province, and the Local Government's opinion as to the character of the offence. There must be gross dishonesty on the part of a Local Government which wishes to try ordinary political offences by this procedure—gross dishonesty and nothing else. You have got similarly three High Court Judges to try the case. Is it to be supposed that they will sit down under this sort of thing knowing that offences which are being sent to them day after day for trial have no connection with the disturbances in the province? Is it supposed by my friend, the Hon'ble Mr. Sastri, that even a worm would not turn against this sort of thing? It is absurd, if I may say so.

"Rightly or wrongly, that is the proposal that we put to this Council that it shall be for the Government to decide whether particular cases are connected with these revolutionary movements or not, and that the tribunal will try the offence, it being no element of that offence that it is connected with an anarchical or revolutionary movement."

**The Hon'ble Dr. Tej Bahadur Sapru**:—"Perhaps the Hon'ble the Law Member might explain to the Council if he thinks that the tribunal will have absolutely no jurisdiction to go into that question, because it at once raises the question of jurisdiction."

**The Hon'ble Sir George Lowndes**:—"I am afraid I did not catch what the Hon'ble Member said, and I am unable, therefore, to reply to him, but, as I presume he was only making a personal explanation, it is perhaps not necessary for me to do so."

**The Hon'ble Pandit Madan Mohan Malaviya**:—"My Lord, I should like . . . .

**His Excellency the President**:—"The Hon'ble Member is a very old member of this Council and he knows perfectly well what the rules of this Council are, and yet he is frequently infringing them. His only right is to get up on a question of personal explanation, but he is continually getting up on points which are not allowed by the rules of this Council. Is it a personal explanation that he wishes to make?"

**The Hon'ble Pandit Madan Mohan Malaviya**:—Yes, on the point your Lordship has been pleased to put. As a member of this Council of ten years' standing and as a student of Parliamentary proceedings, I thought that it was permissible for any member to ask for an explanation whenever a matter was not clear to him. If your Lordship will permit me to explain, what I wanted to ask the Hon'ble Member was, whether if the question of an offence being connected with a revolutionary movement will not be a

matter for the court to decide, that circumstance will yet affect the sentence which a Court may pass upon the person who is tried? I should be very sorry if it should be thought that I was infringing the rules of this Council. I can assure your Lordship that I do not do so, so far as I can."

**The Hon'ble Mr. V. J. Patel**:—"My Lord, before I reply I should like to know whether the Court will have jurisdiction to go into the question whether the offence is connected with a revolutionary movement or not, or whether it must stay its hands and merely find that the man has committed one of the offences mentioned in the Schedule. I hope the Hon'ble the Law Member will make it quite clear whether the Court will be entitled to go into that question at all."

**His Excellency the President**:—"The Hon'ble the Law Member has made his speech; it is now for the Hon'ble Member to reply."

**The Hon'ble Mr. V. J. Patel**:—"I wish to know, before I reply, whether, according to the Hon'ble the Law Member, the Court will be entitled to go into that question at all or not? My reply will depend upon the answer."

**The Hon'ble Sir George Lowndes**:—"Perhaps it may be convenient for me to say that I must decline to be cross-examined in this Council by my brother lawyers."

**The Hon'ble Mr. V. J. Patel**:—"If that is so, I need not reply. I take it that the Court will be entitled to go into it and, therefore, my amendment is quite justifiable."

The motion was put and the Council divided as follows:—

*Ayes—15.*

The Hon'ble the Raja of Mahmudabad.
" " Dr. T. B. Sapru.
" " Pandit Madan Mohan Malaviya.
" " Mr. S. Sastri.
" " Mr. R. Ayyangar.
" " Mr. B. N. Sarma.
" " Mir Asad Ali, Khan Bahadur.
" " Mr. V. J. Patel.
" " Mr. M. A. Jinnah.
" " Sir Fazulbhoy Currimbhoy.
" " Maharaja Sir Manindra Chandra Nandi.
" " Khan Bahadur Mian Muhammad Shafi.
" " Sardar Sundar Singh.
" " Mr. G. S. Khaparde.
" " K. K. Chanda.

*Noes—35.*

His Excellency the Commander-in-Chief.
The Hon'ble Sir Claude Hill.
" " Sir Sankaran Nair.
" " Sir George Lowndes.
" " Sir Thomas Holland.
" " Sir William Vincent.
" " Sir James Meston.
" " Sir Arthur Anderson.
" " Mr. W. A. Ironside.
" " Sir Verney Lovett.
" " Mr. H. F. Howard.
" " Sir James DuBoulay.
" " Mr. A. H. Ley.
" " Mr. W. M. Hailey.
" " Mr. H. Sharp.
" " Mr. R. A. Mant.
" " Major-General Sir Alfred Bingley.
" " Sir Godfrey Fell.
" " Mr. F. C. Rose.
" " Mr. C. H. Kesteven.
" " Mr. D. de S. Bray.
" " Lieut.-Col. R. E. Holland.
" " Surg.-Genl. W. R. Edwards.
" " Mr. G. R. Clarke.
" " Mr. H. Monerieff Smith.
" " Mr. C. A. Barron.
" " Mr. P. L. Moore.
" " Mr. M. N. Hogg.
" " Mr. T. Emerson.
" " Mr. E. H. C. Walsh.
" " Mr. C. A. Kincaid.
" " Sir John Donald.
" " Mr. P. J. Fagan.
" " Mr. J. T. Marten.
" " Mr. W. F. Rice.

The amendment was therefore negatived.

The Hon'ble Mr. Sarma's amendment "that in clause 15, after the word 'Schedule' the words 'in connection with an anarchical or revolutionary movement' be inserted" was put and negatived.

The Hon'ble Mr. Sastri's amendment—

"That to clause 15 the following be added :—

'Provided that the offence of which he is so convicted is connected with an anarchical or revolutionary movement.'"

was by leave withdrawn.

10-45 P.M. **The Hon'ble Mr. Kamini Kumar Chanda :**—"My Lord, I beg to move this amendment to clause 15. I ought to explain, my Lord, that the latter part of this amendment,* I find, has been disposed of already. I shall therefore only move the first part, which runs as follows :—

* 'Provided further that the Court shall, when so convicting the accused, record a finding that such offence is connected with an anarchical or revolutionary movement.'

'That the following proviso be added to clause 15 :—

'Provided that before convicting the accused of such other offence the Court shall give him an opportunity of showing that he is not guilty of it by recalling and cross-examining or further cross-examining any prosecution witness, as the case may be, or examining any defence witness whether such witness has been previously examined or not.'

"My Lord, I confess I do not really know why this clause has been inserted. I have been told more than once in connection with my amendments that the provisions about which I have been moving amendments are already in the Code and there is no need to insert those provisions here. If the Council will turn to section 237 of the Criminal Procedure Code, they will see it runs like this :—

'If, in the case mentioned in section 236'—that is to say,

'If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.'

"Even if in the case mentioned just now

'the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it'.

"This section, my Lord, entirely covers the ground of clause 15. My submission is either this clause is not necessary, or if it is necessary, then you have to incorporate the other provisions from the Criminal Procedure Code. You have adopted the language of one section, and it follows that either you must omit this clause altogether or add a proviso that before the Court can convict the accused of any other offence, you must give him an opportunity to prove that he is not guilty of such offence, in accordance with the provisions of the Criminal Procedure Code, sections 227—231. Section 227 lays down that :—

'Any Court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.'

"Section 229 runs thus :—

'If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.'

"And section 231 says:—

'Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or resummon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.'

"My submission is that in view of this section of the Code there is no necessity for this clause; but having included this clause, you ought in justice to the accused, in fairness to the accused embody those provisions which my amendment seeks to reproduce here. Otherwise some difficulty might result. The Court might feel that as we have adopted only one section, it follows that our intention was that the other sections were not to be referred to; and the Court might try a man for an offence quite different from the offence with which he was charged. I move this amendment, my Lord."

**The Hon'ble Sir James DuBoulay:**—"My Lord, I think that the Hon'ble Mr. Chanda has touched a spot in this Bill on which we might possibly be able to meet him. Clause 15 is, I think, necessary, and the necessity of it is proved by the discussion which has just been completed. If the Hon'ble Member had any possible doubt as to whether the Court might convict an accused person of an offence against a provision of the law which is referred to in the Schedule, although it is not proved to be, or held by the Court to be, connected with a movement directed against the State, that has been set at rest by the decision which this Council has just reached. But it was never intended to be in doubt, and the absence of any mention of the matter in the rest of the Bill shows that a clause of this kind is essential.

"On the other hand, as the Hon'ble Mr. Chanda has pointed out, you might have a man charged with arson and under this section convicted of, say, murder. In such circumstances the provisions of section 236 of the Criminal Procedure Code ought to be complied with; they contemplate

'a single act or series of acts of such a nature that it is doubtful which of several offences the facts which can be proved will constitute,' etc., etc.,

before a man can be convicted of an offence he has not been charged with, and I venture to suggest that if we modified this section in the following sense it would meet the Hon'ble Mr. Chanda, and I ask your Lordship to permit me to move the following amendment to the Bill:—

'That for clause 15 of the Bill the following be substituted:—

'At any trial under this Part, the accused may be charged with and convicted of any offence against any provision of the law which is referred to in the Schedule."

"I would point out that the result of that clause would be to make it quite clear that a Court could charge a man with and convict him of any offence which is referred to in the Schedule, while at the same time he would have the benefit of all those various sections of the Criminal Procedure Code to which the Hon'ble Mr. Chanda has referred. The Criminal Procedure Code would come into play automatically under clause 7 of the Bill."

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I have heard the Hon'ble Member for Government, but the difficulty probably will be this. Supposing a man is charged with a certain offence under the Schedule and at the close of the case the Court finds that the man is guilty of another offence mentioned in the Schedule, then the Court can under the clause as it stands alter the charge, that is, frame a new charge and convict him. This will deprive the accused of an opportunity of cross-examining the witnesses in the matter of the new charge. That is the point my Hon'ble friend Mr. Chanda wishes to provide for by this amendment as I understand it . . . . .

**The Hon'ble Sir James DuBoulay:**—"Has the Hon'ble Member read section 231 of the Code?"

[*Mr. V. J. Patel; The President; Mr. Kamini Kumar Chanda; Sir James DuBoulay; Sir William Vincent; Khan Bahadur Mian Muhammad Shafi.*] [13TH MARCH, 1919.]

**The Hon'ble Mr. V. J. Patel:**—(*After reading section*). "That meets the difficulty I see."

**His Excellency the President:**—"Do you accept that, Mr. Chanda?"

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I think, my Lord, it will meet the requirements of the case. If I understood the Hon'ble Sir James DuBoulay correctly, section 231 will also be incorporated."

**The Hon'ble Sir James DuBoulay:**—"It is already incorporated under clause 7 of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"Then the alteration which is proposed in clause 15 is that the accused—will the Hon'ble Member please repeat the amendment he suggests?"

**The Hon'ble Sir James DuBoulay:**—"At any trial under this part the accused may be charged with, and convicted of, any offence against any provision of law which is referred to in the Schedule."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I accept the amendment proposed by the Government."

The motion as amended was put and agreed to.

The motion that clause 15 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that to clause 16 the following proviso be added: (it is the proviso I have just referred to):—

'Provided that a sentence of death shall not be passed in any case in which there is a difference of opinion among the members of the Court as to the guilt of the accused.'

The motion was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 16 as amended do stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I beg to move that clause 17 stand part of the Bill."

10-58 P.M. **The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, I beg to move that for clause 17 the following clause be substituted:—

'17. (*1*) An appeal shall lie from the judgment of the Court to a Full Bench of the High Court consisting of at least five judges.

(2) The High Court shall not have any authority to transfer any case from the Court or to make any order under section 491 of the Code or, save as provided in sub-clause (*1*), have any jurisdiction in respect of any proceedings under this Part.'

A comparison of the wording of the amendment which I have placed before the Council with the wording of the original clause will make it clear to

Hon'ble Members that the only change which I seek to introduce consists in giving a right of appeal to a person convicted under this Part to a full bench of the High Court. The remaining provisions of the original clause stand intact. Now, my Lord, in a case of special legislation intended to meet a particular emergency it is, I respectfully submit, unjustifiable to depart from the ordinary law of the land except to the extent to which it may be absolutely essential to meet that emergency. The question then arises whether the forfeiture of the right of appeal contemplated in the original clause is justified by the necessity of the case. We have been told during the debate on this Bill that the main object of the Bill in introducing Part I is to provide for an expeditious trial of the offence committed in tracts where anarchical or revolutionary movements may be in existence. Well, my Lord, that object is gained in two ways; firstly, by putting an end to the commitment stage, and secondly, by adopting a procedure at the trial which is more abridged than the ordinary procedure in trials under the Criminal Procedure Code. Therefore when the stage of conviction has been reached the main object which the Government had in view has already been achieved. What then is the necessity of putting an end to the right of appeal in a case like this? It seems to me that this cherished right of the people, that is to say the right which enables them to appeal against conviction in criminal cases, particularly where they are charged with serious crimes of the description mentioned in the Schedule, ought to be taken away only if there is justifiable necessity for it, and it seems to me that the main object of the Bill which the Government have in view having been achieved before the stage of conviction is reached, there is absolutely no necessity whatever for taking away that right of appeal. Then, my Lord, there is another important consideration to which I venture to invite the attention of Council. It is, I submit, in the conditions obtaining in India an axiomatic truth to say that the confidence of the people in the British administration of justice is the corner stone on which the edifice of the British Raj is built, and it seems to me that this Council should not be party to any legislation which is calculated even in the slightest degree to impair that confidence. My Lord, if the right of appeal which is deeply cherished by the people is taken away under Part I without any adequate reason, I for one have not the slightest doubt that there will be ground for that confidence being impaired, and in any case it will give opportunities to hostile critics of Government to go to the people and say 'Here is a special emergency for which the Government has provided a special procedure and has passed a special enactment; at the same time without any necessity whatever they have made away with your right of appeal.' This Council, I submit, should be very jealous in guarding the good name of Government; it should not be party to any legislation which is calculated to make the Government unnecessarily unpopular with the people; and it seems to me that this abolition of the right of appeal is such a departure from the ordinary law of the land which is calculated to make the Government unpopular with the people.

"There is another reason for which I commend my amendment to the acceptance of this Council. The amendment which was put forward by a number of my Hon'ble colleagues that conviction in the case of trials under Part I should be had only in the case of unanimity of opinion of the members constituting the special tribunal has already been rejected.

"Your Excellency, I submit that rejection has made it *a fortiori* necessary that there should be a right of appeal. It is clear to me that where one out of three Judges of the High Court is of opinion that no case has been made out against the accused, his conviction of the serious offence mentioned in the Schedule would be unjustifiable. At all events, in that case it is absolutely essential that the convict should be given a right of appeal to a full bench of five judges. For the element of doubt which the finding of one High Court Judge brings into the case—an element of substantial doubt—makes it very hard for the convict if he is to be deprived of his right of appeal. Possibly it may be said, as it was said on a former occasion, that there is no appeal in

criminal trials held in the High Court. But there is a difference between the trials before the special tribunal constituted under this Act and the criminal trials before the High Court under the Criminal Procedure Code. Trials under the Criminal Procedure Code are held with the assistance of a jury. The finding of fact in the case is arrived at not by a judge, but by a jury consisting of nine or less persons by which a judge is ordinarily bound; the judge applies the law to the finding and pronounces his judgment. Even in the case of a trial by jury held in a High Court, there is a right of appeal on the ground of misdirection in certain cases. I have put this amendment before the Council for an additional reason. The Irish Crimes Act does provide for an appeal against conviction in the case of special tribunals under that Act. The Act practically stands on the same footing and therefore the precedent of the Irish Act is in my favour. I submit, therefore, that my amendment ought to be accepted by the Council on this ground. On the ground that as a matter of principle the right vested in the subject should not be taken away, unless the taking away of the right is absolutely essential for the emergency in view, on the ground of public policy which requires that this Council should not be a party to the enactment of a measure which lays Government open to hostile attacks, and thirdly, on the ground of precedent I commend my motion to the acceptance of the Council."

**The Hon'ble Mr. G. S. Khaparde:**—"My Lord, I have an amendment very similar to that moved by the Hon'ble Mr. Shafi. I agree in the principle, but I think my amendment is better. I propose the following clause:—

'That for clause 17 the following clause be substituted:—

'17 (1) Any person convicted by a Special Tribunal under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the Court or against the sentence alone, to the Court of Criminal Appeal constituted under this Act, on any ground whether of law or of fact; and the Court of Criminal Appeal shall, subject to the provisions of this Act, have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence. Provided that—

(*a*) the conviction shall not be varied save by substituting a conviction for some less offence, for which the Special Tribunal had jurisdiction on the trial to convict the appellant; and

(*b*) the sentence shall not be increased.

(2) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Tribunal and shall be deemed to be the sentence of a Special Tribunal.

(3) If the appellant establishes want of jurisdiction in the Special Tribunal the Court of Criminal Appeal may quash the proceedings.

(4) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Tribunal.'

"I have taken this clause from section 2 of 45 and 46 Victoria, Chapter 25, that is the Irish Act. In this section it is made clear that in trials by a jury no appeal lies. In this case there is to be no jury but there will be three judges who have to decide a case; it might be urged that an appeal would not lie. I make it clear—or rather the section in the Irish Act makes it clear for me—that an appeal may lie on points of fact and points of law. It gives power which is usually given to the courts, namely, to confirm the sentence or to vary it, but in varying it the power to increase is taken away. This is in accordance with the Irish Act. There is also a clause No. (3) that 'if the appellant establishes want of jurisdiction in the Special Tribunal the Court of Criminal Appeal may quash the proceedings.' This, I think, requires an explanation. The Irish Act so far as I can gather and my object was that when these proceedings are taken by the Local Governments, the Chief Justice establishes a court and the accused is brought before it and tried, the accused has had no chance of saying that the Tribunal has no jurisdiction to try him for various reasons urged. There was an amendment moved, I think, that a man should have a chance of showing cause why he should not be tried by that Tribunal. That amendment has been rejected, and I have

introduced it here so that a man may not take that objection, it might cause delay and defeat the object of the Bill which is a speedy trial. After the trial is finished and a man has been sentenced, the object of the trial has been accomplished.

"There is no reason why this should not be permitted. I have put it in here as it is in accordance with the precedent of section 2 of the Irish Crimes Act. The reasons why there should be an appeal have been given by Mr. Shafi. I agree with them, but I think I can add to these reasons firstly, that though there are three judges and that though they are High Court Judges and gentlemen of great eminence and long experience, still it might be urged, why do you want an appeal? It is for this reason—I do not want to take away the right of a man to appeal, it is doing here an injury to his fundamental right. The fundamental right of the subject is that his liberty shall not be taken away without a sentence, and when it is taken away it must be possible for him to appeal. If the right is taken away his liberty is infringed. There is at the same time a very strong reason why a person should be allowed to go up before the highest court with the assistance of his counsel. That being a fundamental right, I am inclined to think that there is no injury done either to the scheme of this Bill or to the objects of this Bill in permitting an appeal. On the contrary, if you permit this appeal the great advantage is that the public at large would be satisfied that the accused person has had a careful and patient hearing in the first court, and that he had a chance in the appeal court also and that whatever human efforts could do had been done for the man. While if no appeal is allowed, there would always remain a grievance; the man himself may believe that he has not been properly tried, and the world at large may say 'Oh, there were three judges and yet the man did not get a proper chance of a careful and patient hearing in the highest court' and there the thing would end. That is to say, there would be room left for people to doubt the justice of the case. To remove all these doubts and difficulties in matters of this kind, and in order to instil confidence in the public as well as in the culprit, I submit that this provision is essentially necessary. As I said before, it is not enough to be right in this world and especially in matters of doing justice, but we should also appear to be right. For these reasons I submit that an appeal should be permitted. Of course I like to put the amendment in the terms in which I have drafted it, because I think my wording makes the amendment more specific and clear. With these words I submit this amendment for the judgment of this Hon'ble Council."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I support the amendment which has been moved by the Hon'ble Mr. Shafi, and I agree with the Hon'ble Mr. Khaparde that the form which he has suggested would be better. I would retain the latter portion of Mr. Shafi's amendment. I hope on a perusal of Mr. Khaparde's amendment Mr. Shafi will see the advantage of such a proposal. 11-18 P.M.

"Now, my Lord, the reasons in support of this amendment have been very well stated by both the previous speakers. I have, therefore, only to add a few words in support thereof. In the first place, I would lay emphasis on the fact that an appeal is an important safeguard against injustice being done. This right has been provided in the case of criminal trials for all these decades and centuries, and it ought not to be taken away unless there is a very strong and substantial reason for such a course being taken. This can only possibly arise in very special circumstances even during a period of war. But the situation now is entirely different. The provisions of the Bill are based upon the recommendations of the Rowlatt Committee. As they say in paragraph 182 of their Report, they have recommended in substance the procedure established under the Defence of India Act. The Defence of India Act substantially embodied the main provisions of the draft Ordinance originally proposed by Sir Michael O'Dwyer as is stated in paragraph 136 of the Rowlatt Committee's Report. Now, my Lord, in order to understand the

genesis of this proposal, I must ask the attention of the Council to the following passage in that Report. The Committee say:—

'In the middle of December the Punjab Government reported to the Government of India that the doings of the returned Sikh emigrants had more than any thing else engaged official attention, that the majority of these had returned expecting to find India in a state of acute unrest and meaning to convert this unrest into revolution. On the 19th of the same month the Provincial Government forwarded, for consideration and orders by the Imperial Government, a draft Ordinance dealing with the prosecution and suppression of violent crime. They asked for the very early promulgation of this Ordinance throughout the province.'

The letter of the Local Government summarised the situation, and it went on to say that the Lieutenant-Governor considered that 'it is most undesirable at the present time to allow trials of any of these revolutionaries or other seditionmongers who have been or may be arrested in the commission of crime, or while endeavouring to stir up trouble to be protracted by the ingenuity of counsel and drawn out to inordinate length by the committal and appeal procedure which the criminal law provides'. His Honour, therefore, submitted for approval a draft Ordinance which provided, subject to the sanction of the Local Government to its application in these cases, '(*a*) for the elimination of the committal procedure in the case of offences of a political or *quasi*-political nature; (*b*) for the elimination of appeal in such cases; (*c*) for the taking of security from persons of the class affected by a more rapid procedure than that prescribed by the ordinary law; (*d*) for the prompt punishment of village officers and the finding of villagers colluding with and harbouring revolutionary criminals.'

"The Lieutenant-Governor included various offences against property in addition to seditious offences and acts punishable under the Arms and Explosives Act. But 'the measure was exceptional and intended to cope with a temporary emergency'. This was the basis upon which the Government of India, with great reluctance, as the Committee point out in paragraph 140 of the Report, agreed to pass the Defence of India Act. The Committee say:—

'The Government of India was reluctant to supersede in any degree the courts and processes of ordinary law. But both in the Punjab and in Bengal the situation was rapidly deepening in gravity. The Defence of India Act, which substantially embodied the main provisions of the originally proposed draft Ordinance, was passed quickly through the Imperial Legislative Council. Its most important provisions were the appointment of special tribunals for the trial of revolutionary crimes. It allowed neither commitment proceedings to these tribunals nor judicial appeal from their decisions.'

"My Lord, the Defence of India Act thus was an enactment passed to meet the very special circumstances which came into existence owing to the war, and which were effectively dealt with by the war measure which the Defence of India Act was. That the troubles were effectively dealt with by this enactment does not admit of doubt from the Report of the Committee. The question now before the Council is, whether there is anything in the present circumstances of the country which should justify the elimination of an appeal as the Bill proposes. I submit the circumstances in which the elimination of the provision for an appeal was asked for have ceased to exist. Besides an appeal stands on a different footing from a trial. The Government have secured the object that there should be a speedy trial of certain offences, by the sections which have been already agreed to by the majority of the Council. If a man, who has been convicted, is allowed to have an appeal to a higher tribunal, no conceivable injury can arise to any interest, public or private. On the very hypothesis of the case the man will be under restraint, having been convicted by the trial court; he will be in custody. There is no danger of the man spreading any mischief or creating any further trouble, and if an appeal is allowed, the appeal will not take a very long time. Even if it took a month or two or three months, that will not be too long a period. But whatever the period may be, it will not affect any interest, public or private. On the other hand, the necessity for an appeal is patent, and should not require any argument in support of it before this Council. But unfortunately, as the Government have deliberately proposed to deprive persons who may be tried under this Part of the right of appeal, the

point has to be argued. And, my Lord, all I would say is that too much stress has been laid on the fact that the court will be constituted by three judges of the High Court and that confidence should be felt in the correctness of the judgment of three such judges. In the first place, my Lord, as my friend the mover of the amendment has pointed out, the decision to retain section 14 as it stands in the Bill is an important decision. It seeks to legalise again a provision which is repugnant to all ideas of justice which we have learned hitherto to appreciate and admire. It is repugnant to the rule that an accused person should have the benefit of doubt. The section that has been agreed to deprives a man who may have the misfortune of being tried under this Part of the Act of that benefit in disregard of all considerations of justice and fair play. That makes it all the more necessary that there should be an appeal provided against a judgment passed in accordance with section 14. The proviso to clause 16, which has been accepted by the Government or rather proposed and agreed to by the Government, has secured that a sentence of death shall not be passed where the court is not unanimous regarding the guilt of the person tried. That is one safeguard, a very valuable safeguard, but that is only one safeguard. It does not deal with other sentences which, though they may not be the extreme sentence which the law can inflict upon a man, may be equally severe, and in some cases even more severe, than a sentence of death. For transportation or the taking away of a man for a very long period of years from those near and dear to him, from his surroundings, from his country, may be as painful, and sometimes even more painful to a man than being hanged. If there is no appeal provided, the result will be that a man may suffer the most severe punishment, the most serious and long lasting deprivation of liberty at the hands of this tribunal, and yet he will have no remedy. My Lord, the three judges of the High Court who will form this prospective tribunal, will, after all, be human judges who are not infallible, and we should remember that the judgments of many judges of the High Court in this country, judgments pronounced by benches consisting of two High Court judges have been upset on numerous occasions by the Privy Council. On numerous occasions judgments on questions of fact arrived at by two judges of High Courts have been set aside by the Privy Council. This has been so largely in civil cases. In one criminal case also which went up from Madras, the Privy Council upset the judgment of two judges of the High Court of Madras. But criminal cases involve also questions of law. The offences which the special tribunal will be called upon to deal with will be offences a decision relating to which will in many cases involve not merely questions of fact, but also questions of law, particularly offences relating to sedition—sections 124-A and 153-A. Now, my Lord, if experience has established that judgments of two judges of the High Courts have frequently been upset by judges of the Privy Council, if in England also in numerous cases judgments of first courts have been upset by the court of appeal, even by the House of Lords in appeal, does it not stand to reason that we should not place too much reliance on the circumstance that three judges of a High Court have dealt with a case? Will it not be wiser, more humane, more reasonable to provide an appeal so that the correctness of the judgment of the special court might be properly tested in a regular appeal? I submit, my Lord, that the case for accepting the amendment which has been moved is a very strong one. It hardly requires to be supported by authority. But there is the precedent of the Irish Act to which attention has been drawn. In that Act Parliament considered it necessary that there should be a provision for an appeal, though there also the trial was to be before three judges of the High Court. I draw attention to a passage from a speech by Sir William Harcourt, who introduced that Bill, wherein he pointed out that, in order to create confidence in the system of trial which was provided in the Prevention of Crimes Act, the Government had taken care to provide important safeguards against injustice. He said :—

'The court will sit without a jury. They will decide the questions both of law and of fact, and their judgment shall be unanimous. Well, then, in order to give every security and confidence to this tribunal, we give in all these cases an appeal to the Court of Criminal Cases

Reserved—[I believe that is what it is called in Ireland. It is a body consisting of the residue of the judges of the Supreme Court. I believe that the ordinary quorum of that court is five judges, and upon the appeal the judgment will be by a majority of the court; so that you will see that no man can be convicted under these circumstances, without the assent of six judges],—three in the court below, and three in the court above'.

"The Council will note that the appeal court was to consist of five judges, but it was provided that the determination of the appeal would be by the determination of the majority of the judges, a provision which Mr. Khaparde proposes should be introduced in the proposed amendment My Lord, Sir William Harcourt pointed out that there was another security against error and injustice. I refer to it to show how anxious Parliament was that there should be every safeguard against injustice.

"Sir William Harcourt said :—

'Well we have another security. There will be an official shorthand writer, and the notes will go to the court above; but the court above may, if they think fit, hear other evidence and call other witnesses; so that, in point of fact, at their discretion, they may have a re-hearing of the case; and thereupon the court may either affirm the sentence of the court below, or they may alter the sentence,—that is to say, in the way of diminution and not of increase.'

"Such was the care taken by Parliament in enacting a special procedure for the fair and impartial trial of those unfortunate persons who might be connected with or suspected of being connected with a certain class of crime in Ireland. My Lord, this Council is legislating in very different times, and I submit that it is very necessary that a provision for appeal should be included in the Bill.

"There is another aspect of the case to which I will draw attention. I have said that judgments of divisional benches of the High Courts have often been upset on points of fact. The Council will also remember that the judgment of at least one tribunal constituted under the Defence of India Act at Lahore was upset by the Government of your Excellency's predecessor in an important case which came up before them. As I mentioned on a previous occasion, so far as I remember the facts, 24 persons were sentenced to death by that tribunal. The tribunal did not consist of High Court judges, but they were high judicial officers, one of them a district judge, and two others, and 24 persons were sentenced to death by that Tribunal. The persons so condemned made an application under section 401 of the Criminal Procedure Code to the Lieutenant-Governor of the Punjab. The Lieutenant-Governor of the Punjab rejected their applications. Then they applied to the Government of India, and the Government of India changed the sentences of death in the case of 17 persons to other sentences. It may be said that we may expect that a future Executive Government will also act similarly if circumstances will justify its doing so. But, my Lord, I would ask your Lordship and the Council to consider whether it is right, whether it is proper, to leave the decision of such important questions which affect the lives and liberties of individuals, to be disposed of by a Member of the Executive Government, assisted though he may be by his colleagues. It may happen that a particular Home Member may be more inclined to look into those voluminous cases that might come up as applications under section 401 than another; but it may also happen that a case may not be gone into with all the care, with all the consideration, that it may require. The Home Member, who must in the first instance deal with such cases, might feel that he ought not to sit in judgment upon three judges of the High Court who had dealt with these cases. If the matter is taken up, even before the Executive Council as a whole, I submit that is not a body which would be in a position to deal with the questions raised as an Appeal Court would be.

"For these reasons I submit, my Lord, that there should be a clear provision that from all judgments of the Special Court the persons convicted may appeal to a tribunal such as is proposed by the Hon'ble Mr. Khaparde and the Hon'ble Mr. Chanda, and I hope that this amendment will receive the most serious consideration of the Government and that it will be adopted. If it is adopted, it will be a very important safeguard against injustice. If it should,

unfortunately, meet with the fate which most other amendments have met with, the Bill will stand, my Lord, much more objectionable than was the Irish Bill of 1882."

**The Hon'ble Sir William Vincent:**—"My Lord, there are three other Members, I think, who have amendments on this clause. It would save time, if they are going to speak, that they should speak to them now."

**His Excellency the President:**—"Mr. Shukul is not here."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My amendment stands on a somewhat different footing, my Lord, and I would like to reserve my remarks. I ask for a Court of Appeal only when there is a difference of opinion."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My amendment is also somewhat different. I ask for a Court of Appeal only in case of a death sentence."

**The Hon'ble Sir William Vincent:**—"Very well, my Lord. The Hon'ble Members are of course entitled to hold up their speeches until they like to make them.

I want first to refer to the recommendations of the Committee. They, being themselves judicial officers, state:—

'Coming now to the measures themselves, we are of opinion that provision should be made for the trial of seditious crime by benches of three Judges without juries or assessors and without preliminary commitment proceedings or appeal . . . . . As regards the procedure and absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy both in order to secure the moral effect which punishment should produce and also to prevent the prolongation of the excitement which the proceedings may set up.'

"It was with this object in view that they proposed a particularly strong court of three High court judges. Moreover, they say 'As the right of appeal is taken away, the tribunal should be of the highest strength and authority.' The one object, therefore, that they had in view was to provide for a very strong court and an expeditious trial. We have accepted those recommendations and I really can see no reason to reconsider the position that we have taken up. If it had been proposed to have an appeal in the ordinary way, we should not have taken the trouble to have selected a tribunal of three High Court judges. It was for that reason that judges of this standing were put on to the original court. It is assumed that these trials will always be taking place in normal circumstances. I want to put it to the Council that this is really not so and that Part I of the Bill will only come into operation in abnormal circumstances and when revolutionary crime is dangerously prevalent, and then only in selected areas where urgent measures are necessary.

"It has been frequently said that this right of appeal is a fundamental right. Well, my Lord, I have never been able to understand why it is a fundamental right or anything of the kind. There is no right of appeal in many cases in this country, and there is certainly no right of appeal in England. If there was anything fundamental in it, there would be a right in all cases. The right, as I understand it, really arose from a suspicion as to the capacity of the court of original jurisdiction and in order to avoid any danger arising from that source. Under the Bill we have created a court, as I say, of the strongest character possible. I think really that three judges of the High Court are a much stronger court than any accused would get in an ordinary case before a Sessions Judge and assessors. In most cases an accused would be tried by a Sessions Judge and assessors, and subsequently

he would have a right of appeal, if convicted, to two High Court judges; no appeal would be allowed further than that.

"Complaint has been made of particular cases which were tried under the Defence of India Act. Well, all I can say is that that was a point which, I understand, the framers of the Report had in view when they proposed a stronger and better qualified tribunal than those which were constituted under that Act. I doubt very much whether Irish conditions can be accepted as a guide. The special courts there were constituted for very different reasons owing to the perversity of juries. Further, every man in Ireland was entitled to be acquitted unless he was convicted by the unanimous verdict of the jury, and for that reason when they changed the procedure, they put in further safeguards than have been customary in India.

"I would point out finally that the practical difficulties in the way of establishing a court of appeal would in my judgment be almost insuperable.

"The only other point to which I need advert is the suggestion made that a number of men were convicted wrongly in a particular case that was tried, I think, in Lahore, and that the remedies that exist at present for setting that error right are not provided under this Bill."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I did not suggest that it would not exist. I suggested that it was not a sufficient and satisfactory remedy."

**The Hon'ble Sir William Vincent:**—"My Lord, if there was any mistake in the decision or the sentence in that case—a fact about which there is considerable room for doubt—the same remedy is preserved under the Bill as was given to those men, for a man will have the same right to petition for mercy under section 401 to the Local Government and then to the Governor General in Council, as in ordinary cases. The difference will be that instead of being tried by a tribunal under the Defence of India Act, he will be tried by a tribunal consisting of three High Court judges; and I know of no case where the decision of three High Court judges is open to appeal."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, I venture to submit that in putting forward the case on behalf of the Government the Hon'ble the Home Member has not met a single one of the arguments that I ventured to submit in support of my motion. The first point taken by him was that this tribunal which the Bill sought to establish for the trial of these cases was a tribunal of very high standing. The tribunal may be a tribunal of very high standing, but what has that got to do with the question of taking away the right of appeal of the convict against the finding of such a tribunal? We know full well that these tribunals of high standing that the Hon'ble the Home Member has referred to have sometimes gone wrong, their judgments have had to be reversed by full benches of the very court of which the judges were members or by their Lordships of the Privy Council, or have been dissented from by judges of equally high standing in the other Provinces of India. Surely the mere fact that a person is a judge of the High Court, or that a bench of the High Court consists of two or three judges, is no guarantee of infallibility; and in the case of the trial of criminal cases of such grave importance as those which are mentioned in the Schedule, the mere fact that the judges presiding over these tribunals are Judges of high standing is neither here nor there, so far as a man's right of appeal is concerned.

"Then the Hon'ble the Home Member said that there will be three High Court judges constituting this bench. That is no reply at all to the case

which I put before the Council. Supposing of these three judges two are in favour of conviction and one is in favour of acquittal, then how can you say that this tribunal consisting of three High Court judges, not agreed in the final verdict, is a tribunal whose opinion ought to be given the same weight as if the three judges agreed in their final judgment? In such a case as this, that is to say, in case of a difference of opinion, you have only the majority of one judge—that is all; so that there is the opinion of one judge against the opinion of the other judge, and it is simply because there is in addition the opinion of one other judge that the accused is to be deprived of his right of appeal. It seems to me that this state of things is opposed to all right principles of trial of criminal cases.

"Then the Hon'ble the Home Member was pleased to say that there is no right of appeal in many cases in accordance with the law as it at present obtains in India. But so far as I am aware—and if I may venture to say so I am in a position to say that I know something about the law of appeal in criminal cases after 27 years' practice at the Bar—the Criminal Procedure Code deprives a convict of the right of appeal only in two classes of cases, one class being of cases which may be tried summarily under a certain Chapter of the Criminal Procedure Code, and the second in cases where a magistrate of the 1st class awards a punishment of imprisonment for less than a month or punishes merely with a fine below a certain amount. Well, the deprivation of the right of appeal in such cases is based on a particular ground. But even in these cases there is the power of revision in the High Court, who can revise the sentence. So that in this Bill you propose to take away the right of revision of the High Court, you deprive the convict of his right of appeal—not in petty cases, but in cases of a very serious nature—almost every offence specified in the Schedule is an offence of a very serious nature. So that this argument advanced by the Hon'ble the Home Member will not hold water for a single moment.

"Then the Hon'ble the Home Member was pleased to say that a man charged with any of the offences mentioned in the Schedule would ordinarily be tried by a Sessions Judge, and then he would have an appeal to a division bench of the High Court consisting of two judges. I cannot, with all deference to the Hon'ble the Home Member, see the point of this argument so far as the motion before the Council is concerned. No doubt he would, in the first instance, be tried by a Sessions Judge. But it must be remembered that he would be tried by a Sessions Judge with the assistance either of a jury or assessors, so that the Sessions Judge there will have the assistance of certain other persons also in coming to his conclusions. Then the accused person will have his appeal to the High Court, so that the case will have been heard by two distinct courts.

"Here the case is heard only by one court and the decision of that one court is made final even in cases where the judges presiding over the court may differ in their opinion. So the two cases are not identical. Then the Hon'ble the Home Member told us that there would be difficulties in the establishment of a court of appeal. I for one cannot see any difficulty at all. Almost all the High Courts in India are of sufficient strength to permit of a court of appeal being constituted in order to hear an appeal against a special tribunal in these cases; and of course the final argument put forward that there is an appeal to mercy, that is to say, to Government, that of course . . . .

**The Hon'ble Sir William Vincent:**—"May I explain: I merely put forward that with reference to a particular remark made by the Hon'ble Pandit Malaviya."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"The Hon'ble the Home Member admits that this of course can be no substitute for a right of appeal, and therefore I need not press that part of my argument,

I submit that the position which I took up in the first instance remains unanswered, and I therefore respectfully ask the Council to accept my amendment."

The motion was put and the Council divided as follows:—

| *Ayes—16.* | *Noes—36.* |
|---|---|
| The Hon'ble Raja of Mahmudabad. | His Excellency the Commander-in-Chief. |
| „ Dr. T. B. Sapru. | The Hon'ble Sir Claude Hill. |
| „ Pandit M. M. Malaviya. | „ Sir Sankaran Nair. |
| „ Mr. S Sastri | „ Sir George Lowndes. |
| „ Mr. K. Ayyangar. | „ Sir Thomas Holland. |
| „ Mr. B. N. Sarma. | „ Sir William Vincent. |
| „ Mir Asad Ali Khan Bahadur. | „ Sir James Meston. |
| „ Mr. V. J. Patel. | „ Sir Arthur Anderson. |
| „ Mr. M. A. Jinnah. | „ Mr W. A. Ironside. |
| „ Sir Fazulbhoy Currimbhoy. | „ Sir Verney Lovett. |
| „ Maharaja Sir M. C. Nandi. | „ Mr. H. F. Howard. |
| „ Raja of Kanika. | „ Sir James DuBoulay. |
| „ Khan Bahadur M. M Shafi. | „ Mr. A. H Ley. |
| „ Sardar Sundar Singh | „ Mr. W. M. Hailey. |
| „ Mr. G. S. Khaparde. | „ Mr. H. Sharp. |
| „ Mr. Kamini Kumar Chanda. | „ Mr. R. A. Mant. |
| | „ Major-Genl. Sir Alfred Bingley. |
| | „ Sir Godfrey Fell. |
| | „ Mr. F. C. Rose. |
| | „ Mr. C. H. Kesteven. |
| | „ Mr. D. deS. Bray. |
| | „ Lt.-Col. R. E. Holland. |
| | „ Surgeon-General W. R. Edwards. |
| | „ Mr. G. R. Clarke. |
| | „ Mr. H. Moncrieff Smith. |
| | „ Mr. C A. Barron. |
| | „ Mr. P. L. Moore. |
| | „ Mr. M. N. Hogg. |
| | „ Mr. T. Emerson. |
| | „ Mr E. H. C. Walsh. |
| | „ Mr. C. A. Kincaid. |
| | „ Sir John Donald. |
| | „ Mr. P. J. Fagan. |
| | „ Mr. J. T. Marten. |
| | „ Mr. W. J. Reid. |
| | „ Mr. W. F. Rice. |

The amendment was therefore negatived.

**His Excellency the President**:—"Shall I put your amendment,* Mr. Khaparde?"

**The Hon'ble Mr. G. S. Khaparde**:—"Yes, my Lord."

The motion was put and negatived.

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*That for clause 17 the following clause be substituted:—

"17. (1) Any person convicted by a Special Tribunal under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the court or against the sentence alone, to the Court of Criminal Appeal constituted under this Act, on any ground whether of law or of fact; and the Court of Criminal Appeal shall, subject to the provisions of this Act, have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence. Provided that—

(*a*) the conviction shall not be varied save by substituting a conviction for some less offence, for which the Special Tribunal had jurisdiction on the trial to convict the appellant; and

(*b*) the sentence shall not be increased.

(2) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Tribunal, and shall be deemed to be the sentence of a Special Tribunal.

(3) If the appellant establishes want of jurisdiction in the Special Tribunal, the Court of Criminal Appeal may quash the proceedings.

(4) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Tribunal.

**His Excellency the President:**—"In that case Mr. Khaparde's amendment No. 34, which was put off,* also fails."

The Hon'ble Rai Bahadur B. D. Shukul's amendment to the following effect was not put owing to his absence :—

'That for clause 17 the following clause be substituted :—

'17. (1) The accused shall have the right of appeal on facts and on points of law to a Full Bench or Full Court of Judges of the High court consisting of not less than five judges excluding such of them as formed the court which passed the sentence.

(2) In case the High Court does not consist of five judges excluding the Judges who formed the court the Appellate Court shall consist of judges of the High Court exercising jurisdiction over the area and some other High court with the consent of the Chief Justice of the latter.'

**The Hon'ble Rao Bahadur B. N. Sarma** :—"My Lord, I beg 12-1 A.M. to move—

'That to clause 17 the following be added :—

'Provided that where the decision of the court is that of a majority of the judges presiding at the trial an appeal shall lie to a Full Bench consisting of not less than five judges of the High Court and where the High Court consists of a smaller number of judges than five the appeal shall be transferred to a High Court consisting of five or more judges.'

"The reason why I ask that this should be separately put is that it stands on a higher and somewhat different footing from the amendments which have been just disposed of. I do not ask for a right of appeal in cases where the three judges constituting a tribunal are unanimous in convicting the accused. It might be said that inasmuch as the accused has the benefit of a specially strong tribunal consisting of three High Court judges, there is nothing unfair in depriving him of the ordinary right of appeal to which he would be entitled under the ordinary procedure. But, my Lord, the same cannot be said where there is a difference of opinion between the judges on the vital question of the guilt or innocence of the accused. I, therefore, submit that although Government might not have been able to see eye to eye with the amendments on the previous question, they might be pleased to consider as to whether at least in those cases where there is a majority judgment alone a right of appeal should not be conferred, and I have one or two other strong reasons to urge in favour of my proposition; one is although these offences are triable before a special tribunal on the ground that they are connected with anarchical or revolutionary crime, we know from the tenor of the discussion that has preceded that the courts are not to adjudicate as to whether the offences are really connected with revolution or anarchy. So we are to take it from the Local Government's decision that the tribunals will have jurisdiction over offences unconnected with this revolutionary or anarchical movement, although it may be proved clearly that those offences are unconnected with anarchical or revolutionary movements when once the machinery is started.

"Therefore is it right, I would ask, that the accused in such a case should be deprived of the ordinary rights simply because it so happens that the machinery was moved owing, it may be, to a mistake of the Local Government's or the officer who advised them on questions of fact as to whether an offence was connected with a revolutionary movement or not? The third point is that as the Schedule stands it need not be an anarchical or revolutionary movement. It may only be a case where the safety of the State is considered to be affected by reason, it may be, of factious fights between two sections of the community. I put it to the Council whether it is fair that these persons should be brought within the purview of this Act in this manner and that they should be deprived of the right of appeal which they would have had otherwise. It would be cruel if hundreds of persons had to undergo long terms of imprisonment or transportation because the Local Government or the official who advised them was of opinion

* See page 982 *et. seq.*

that their offences were connected with the safety of the State. As regards the invulnerability of the judges, there was only recently a case which was taken to the Privy Council when their Lordships were of opinion that the man should not have been convicted. The Privy Council differed from the High Court entirely, and their judgment shows that evidence of a particular nature should not have been admitted. After all judges are liable to err like others, they do not vary in any considerable degree from others, and they should not be elevated to the position of gods in the Hindu mythology. We are reminded constantly of the Rowlatt Committee's Report as if that Report has the sanctity of the Vedas, the Bible or the Koran. We are constantly told that the Rowlatt Committee said this or that, could there be any greater authority? We have here a tribunal of three judges, could there be anything better? These arguments are entitled to some respect, but I think too much has been made of them. These ancient creeds, which have supported doctrines which modern science has taught us it is not quite safe to follow, have been implicitly followed for ages, but are now beginning to be questioned. I think that too much reliance should not be placed on these reports and that on points where the judges differ a right of appeal should be allowed, and I hope the Government will give way here. As regards the second part, it was said that there was some practical difficulty in the way of constituting an appellate tribunal; the Government have heard what can be said against the proposition, and I hope that there will be no insuperable objections to transferring the appeal to a High Court where there are more than five judges. I have provided for that in the second part of that Resolution and I trust that the principle of the first part will be accepted."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I have shown that it was on the recommendation of the Lieutenant-Governor of the Punjab that there was no provision for an appeal in the rules made under the Defence of India Act. So far as the Rowlatt Committee are concerned, all that they say on the subject is as follows:—

'As regards the procedure and the absence of right of appeal, we think it essential that the delay involved in commitment proceedings and appeal be avoided. It is of the utmost importance that punishment or acquittal should be speedy, both in order to secure the moral effect which punishment should produce, and also to prevent the prolongation of the excitement which the proceedings may set up.'

"I submit that the argument is singularly weak when it is applied to an appeal. The delay of a month or two which an appeal may involve in actually inflicting the punishment which has been ordered cannot reduce its moral effect. Nor is the apprehension that any excitement caused by the proceedings might be prolonged till the pendency of the appeal entitled to serious consideration. Whatever value there may be in this argument, it would apply to the proceedings in the trial court, but would not apply at any rate to an equal degree to the proceedings in appeal. For these reasons I hope that the Government may yet see their way to accept this amendment. May be, I am hoping against hope. But we cannot abandon the hope that the life or liberty of a fellow-subject will not be taken away without giving him the opportunity of having his case considered by a court of appeal. It is not right that such drastic provisions as the Bill contemplates should be enacted without the safeguards so necessary to guard against miscarriages of justice."

**The Hon'ble Sir William Vincent:**—"I can add very little to what I said last time on this matter. I will draw attention to the conditions under which this Part of the Act will come into operation. It is this: 'If the Governor General in Council is satisfied that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to

provide for the speedy trial of such offences'. In these circumstances, and in these circumstances alone, will this Part come into operation. It is in circumstances of that character that we seek to have one expeditious and final trial before the best tribunal that we can introduce."

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda**:—My Lord, I move my amendment which runs as follows :— 12-13 A.M.

'That the following further proviso be added to clause 17 :—

'Provided further that—

(*a*) The accused shall have the right of appeal both on facts and on points of law from a capital sentence to a full bench or full court of judges of the High Court, consisting of not less than five judges, none of them having formed the court which passed such sentence. In case there are not five judges in the High Court, excluding the judges who passed the sentence, the Appellate Bench shall be formed of judges of the High Court in question and some other High Court with the consent of the Chief Justice of the latter; and

(*b*) On a point of law being reserved by the court on application by the defence or on a certificate being granted by the Advocate-General attached to the High Court concerned, and in cases where there is no such Advocate-General, on a certificate by any Advocate-General, the matter shall be considered by such full bench or full courts composed as aforesaid.'

"My Lord, the Council will see that the request I make here is still more limited than that of my Hon'ble friend Mr. Sarma. First I confine my request only to the case of capital sentence. Now here I think I can appeal to the Hon'ble the Home Member to legitimately follow what he himself is pleased to concede in reference to sentences of death when there is no unanimity among judges. He accepted the amendment that when the judges are not unanimous regarding the guilt of the accused, the sentence of death shall not be passed. But, my Lord, there is yet another case. Supposing the judges are agreed about the guilt of the accused but are not agreed upon the sentence to be passed, two are for death sentence and one for transportation. In that case, my Lord, it is necessary that we should take this case into consideration, and the only thing to do is to refer the appeal to a full bench. I, therefore, appeal, my Lord, to the Hon'ble the Home Member at least to accept this portion. I leave it to him to decide what the composition of the court should be.

"Then the second part of my amendment is this :—

'On a point of law being reserved by the court on application by the defence or on a certificate being granted by the Advocate-General attached to the High Court concerned, and in cases where there is no such Advocate-General, on a certificate by any Advocate-General, the matter shall be considered by such full bench or full courts composed as aforesaid'

"My Lord, on a former occasion on a complaint of my Hon'ble friend Pandit Malaviya that by this Bill you are taking away the right of appeal, the Hon'ble the Law Member remarked that this right of appeal in criminal cases did not exist in High Courts' decisions. This is what he said, my Lord :—

'There is no appeal in a criminal case in India where the case has been tried in the High Court in a criminal sessions. There is no appeal, then, why? Why have we adopted in India from very early times the right of appeal in criminal cases from the district courts, from mofussil judges, but not where the case is tried in the sessions of the High Court? We have juries in the districts just as much. But there is no appeal from a criminal trial in the High Court because of the higher status of the judges.'

"Then I interrupted the Hon'ble Member and asked him if it was not practically an appeal from decisions of a High Court on a certificate by the Advocate-General or on a point of law reserved? And the Hon'ble the Law Member replied as follows :—

'I am afraid my Hon'ble friend is not quite correct. He will, no doubt, remember clause 25 of the Letters Patent. It reads thus (I am reading from the Calcutta one) :—

'And we do further ordain that there shall be no appeal to the High Court of Judicature at Fort William in Bengal from any sentence or order passed or made in any criminal

trial before the courts of original jurisdiction which may be constituted by one or more judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law, for the opinion of the said High Court.'

"Now leaving this part alone, my Lord, from what was said on the last occasion, I think I may infer that if I can show that there is some power of appeal or revision from a decision of the High Court, he will be pleased to allow it in this case also. His ground was, there is no right of appeal from the decision of the High Court, and therefore we cannot grant a right of appeal in this also. I shall show now that we can have an appeal practically though in name revision to a full bench in two cases, first where there is a point of law reserved by the court at the request of the defence; and secondly, where there is a certificate by the Advocate-General. Now the portion which the Hon'ble the Law Member read out the other day was clause 25 of the Letters Patent. There is clause 26, which he did not read and which says:—

'And we do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said court, shall be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right'.

Therefore, my Lord, you will see that there are two sets of circumstances under which even a decision of the High Court in a criminal case is liable to be reviewed by the High Court. There are many cases, my Lord, which can be cited in support of my contention, and I shall place before the Council a very well-known case which has an important bearing on the point in question. There is a case reported in I. L. R. XVII, Calcutta, page 642, Queen Empress *vs.* O'Hara. In this case two soldiers of the Leinster Regiment were put up for trial on a charge of murder. The case was tried by Justice Norris and a special jury of Europeans. The jury found O'Hara guilty and sentence of death was pronounced upon him. Thereafter the Advocate-General gave a certificate that there was an error of law and the matter was referred to a full bench. Then what did the court do? I will read the last portion of the judgment of the full bench:—.

'In the view we take of the case, it is unnecessary to deal with the argument for the prosecution as to the powers of the court acting under section 26 of the Charter. We take it to be clear that in case of misdirection such as this and of improper reception of evidence such as took place in the present case, this court may and ought to exercise its power of review.'

"Then, after delivering the judgment, the court (the judges forming the full bench) sat to deal with the case on the evidence as it appeared from the notes of Mr. Justice Norris. Then the court on the evidence quashed the conviction and set aside the conviction and sentence.

"What is it, my Lord, if not an appeal? Therefore, my Lord, the Hon'ble the Law Member was not correct in saying that there is no appeal from the decision of a High Court. I submit, my Lord, I do not ask for more than this. Let us have the same power, that is with regard to the decision of the High Court here. I therefore submit, my Lord, that if we can find that there is a point of law reserved in a case or if we can get a certificate from any Advocate-General that there is an error in the judgment, such a case ought to be reviewed by a full bench. That is my submission, and the Hon'ble Pandit Malaviya has fully explained the matter from our point of view. In the case decided by the Madras High Court and quoted by the Hon'ble Pandit and mentioned by the Hon'ble Mr. Sarma, I think I could mention another fact in this connection, that in this case the Privy Council not only set aside the judgment of the Madras High Court, but by that decision they overruled the decision of a full bench of the Calcutta High Court, which is reported in I. L. R. 27, Calcutta. Therefore, not only the decisions of two judges, but the decisions of five judges have been set aside by the Privy

Council. I submit in a case like this where we are taking away every privilege possessed by persons under ordinary trial, it is very essential that this privilege at any rate ought to be conceded. I ask the Hon'ble the Home Member to consider this matter and allow my amendment to go forward."

**The Hon'ble Mr. M. A. Jinnah:**—"The arguments, my Lord, and the earnestness with which Mr. Chanda has presented them are such that they might melt the heart of anybody, and if I were a judge and he were to appear before me, I think he would win most of his cases; but I feel that the Government is sitting there hardhearted, absolutely determined not to yield. Nothing seems to move Government in the matter of these amendments. Amendment after amendment has been moved and been rejected. I am beginning to think, my Lord, at the end of these two days, whether it is not a sheer waste of public time that these amendments should be formally talked about in this fashion and rejected. Perhaps it would be better, my Lord, in the interests of public time if the Government declared once for all that these are the small minor amendments of yours which we are prepared to accept; as to the rest we have made up our mind and therefore, if you like to go on you can go on, but we have got the majority and they are going to be rejected. If that were declared, it would save a lot of time and put an end to this agony—it must be an agony to the Government; certainly it is an agony to me, to sit here and see this mockery of debate going on for two days and every amendment is rejected. Now, my Lord, what is the position? The position is this. We are told in the first instance that the Governor General in Council will notify that this Part I is to be applied to a particular area. The Governor General in Council is to decide as to the revolutionary movements according to the dictionary meaning. Very well, granted. And we are told that the Local Government will then apply to the High Court for a special tribunal, and we are told that when that tribunal is constituted, it is going to be governed by special rules of evidence, and procedure not normal rules of evidence, not normal rules of procedure, but extraordinary rules of procedure, and certainly abnormal rules of evidence. Then we are told that this tribunal can sit *in camera* in effect. Then we are told that this tribunal will have no jurisdiction to go into the question whether a crime with which a person is charged is connected with revolutionary movement or anarchical movement. Then we are told that the judgment of that tribunal shall be final and no appeal shall lie. Then we are told that even if there is a difference of opinion, no appeal shall lie. Now, my Lord, we come to the last straw. There is enough to break the camel's back, and that last straw is, will you or will you not agree to a higher tribunal as a corrective, as a revisional tribunal? I quite agree with the Hon'ble the Law Member that the Bill does not give the right of appeal, but it gives the right of revision. When the higher tribunal revises it has got the right of review, and I think Mr. Chanda was a little confused on that point. In reviewing it may go into the whole case, but there is a distinction between the right of appeal and the right of revision, and so to that extent the Hon'ble Member is correct, but what Mr. Chanda is asking for is revision and are you going to deny that also? On what ground? Because the Rowlatt Committee has said so? But, my Lord, is the Government of India going to surrender its judgment to the Rowlatt Committee? Is the Council going to surrender its judgment as a whole to the Rowlatt Committee? Surely, my Lord, this Rowlatt Committee has not acquired that sanctity and that infallibility. I ask the Government still to consider this. We know that in cases of a trumpery character, of a civil nature, to the amount of ₹10,000 of property value, you can appeal against the judgment of the High Court judge who tries it, and we have known times out of number when there were questions of law, and there were full benches of three and five judges on trumpery civil questions involving more than ₹10,000 which were taken to the Privy Council. Well, my Lord, when a question of ₹10,000 is involved you have got these rights, but where you have a question of life and death, where you have laws of an exceptional character which are admittedly subversive of ordinary procedure, of ordinary principles of law

and justice, intended for a special peculiar case, are you going to be so hard as to deny to that criminal, as Mr. Sastri very well put it the other day, even the opportunity to carry his case as far as he can and prove his innocence if he can Why should that revision right be denied to him? Under the ordinary Criminal Procedure Code in cases of a trumpery character—now I am talking of criminal cases—what do you find? An order is made by the magistrate, an appeal is carried to the Sessions Court and it is carried to the High Court. You have three benches of three courts dealing with that case and the object of it is not that the High Court judges are eminent lawyers and therefore it is a very good bench and therefore you do not want another bench. I do not for a moment say that even a revision court is infallible. Of course if you go on arguing like this, there is no finality, but the important question is this, that if you have one tribunal that has decided a particular question and you have an appeal or a revision, you have a different tribunal that brings its mind afresh to bear upon that particular case, and that is the importance of having a second tribunal. They may be all High Court judges, but you have a different tribunal. My Lord, I do not wish to keep the Council any more at this late hour, but I really do press this upon you, that you, should, in fairness even to these revolutionaries, these anarchists against whom you feel so bitterly, and I assure you I feel equally bitterly, give them a fair chance and let them have at least the revision."

12-34 A.M. **The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, it seems to me that the amendment of the Hon'ble Mr. Chanda is, in one material respect, very different from the amendments which we have been considering this morning. My Lord, the Hon'ble Mr. Chanda wants that in capital cases the accused shall have the right of appeal both on facts and on points of law, and, in so far as his amendment is confined to cases of capital sentence, it has a great deal in its favour which distinguishes it from the preceding amendments. My Hon'ble friend Mr. Jinnah has very emphatically pointed out that you allow the right of appeal in cases not only of a civil nature, but also of a criminal nature, and it does not seem at all to stand to reason that in a case where there is a question of life and death you should say that the judgment of the trying court must have finality about it.

"My Lord, have we not known cases tried by some of the most eminent judges of the High Courts in which their judgments have been upset by their own colleagues or by the Privy Council? It is perfectly true that the Privy Council does not, as a matter of course, entertain appeals in criminal matters, but during the last 6 or 7 years we know that some cases have gone to the Privy Council from the Madras High Court and the Central Provinces and, I believe, one other court, and we find that the Privy Council have had some very unpleasant things to say of some of the most eminent judges of the High Courts in India.

"My Lord, it seems to me that in depriving an accused person in cases of this character of the right of appeal you are taking away a great deal from the professions with which this Bill has been introduced into this Council. I feel very strongly on this subject, and I would remind the Council that the importance of these capital sentences has been recognised by this Council itself in a preceding amendment to-day. I refer to the amendment which asked for a unanimous judgment in capital cases. Well, you may have a unanimous judgment in capital cases, and yet that unanimous judgment may be open to question.

"Well, my Lord, it seems to me that, so far as Part I of this Bill is concerned, it stands on a very different footing from the remaining Parts of the Bill. It seeks to conform itself as much as possible to judicial procedure, and unless you mean to depart from well-settled principles of criminal law in India, it seems to me that there is absolutely no reason why a person who knows that his life is at stake should not have the satisfaction of feeling that he has taken his case before an appellate court."

**The Hon'ble Sir William Vincent:**—"My Lord, the first part of this amendment deals with the question of a right of appeal from a capital sentence. Now, when the question of capital sentences first came under consideration, I accepted the view that the three judges forming the members of the tribunal should be unanimous as to the guilt of the accused before a capital sentence was pronounced, and that, I think, goes sufficiently far. Where you have three judges all satisfied as to the guilt of the accused I cannot see why any further appeal is needed. If an accused were ordinarily prosecuted for murder, who are the authorities before whom he would go? He would go before a Sessions Judge assisted by assessors, and after that before two High Court Judges . . . .

**The Hon'ble Mr. M. A. Jinnah:**—"May I rise to a point of order? The Hon'ble the Home Member is not quite right there. In the city of Bombay a case can go to a full bench of the High Court even from a judge of the High Court assisted by a jury."

**The Hon'ble Sir William Vincent:**—"The Hon'ble Member is quite right as regards Bombay city, but there are many other parts of India where the position would be as I say, and in such cases one Sessions Judge and two High Court judges would be all the judicial authorities who would examine the records. Under the system that we propose at least three High Court judges would have heard the evidence. Of course it may be said that these three judges might make mistakes. Well, so might any court; the full bench is equally likely to make mistakes; there is no certainty about this in any court. We have just been told of a certain appeal to the Privy Council against a decree of a full bench. I remember the case. It was a case of misjoinder of charges. You cannot get any finality by allowing an appeal to a full bench, but we say that by providing a strong tribunal and by further providing that in any death sentence the judge must be unanimous as to the guilt of the accused, we think we have done all that is necessary to meet the abnormal circumstances in which this Part of the Bill will be used.

"It is very late, my Lord, and there is only one other matter to which I wish to refer, and that is the statement of the Hon'ble Mr. Jinnah that all amendments put forward are neglected . . . .

**The Hon'ble Mr. M. A. Jinnah:**—"I said all important ones."

**The Hon'ble Sir William Vincent:**—"I suggest to the Hon'ble Member that that is scarcely fair after the modifications made in the Bill. I may cite one which was made just before dinner, when a very important amendment proposed by an Hon'ble Member was accepted in this Council."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I have not heard a word from the Hon'ble the Home Member about the second part of my amendment, namely, 'when a certificate has been obtained from the Advocate General'."

The motion was put and negatived.

The motion that clause 17 stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 18 as amended by the Select Committee stand part of the Bill."

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move—

'That for clause 18 the following clause be substituted:—

'18. Depositions recorded under section 512 of the Code may, in the circumstances specified in that section, be given in evidence at the trial of an accused under this Part.'

51 is a misprint for 512. The amendment, my Lord, amounts to this, that I want to retain sub-clause (2) of clause 18 and I want the Council to drop the first sub-clause. The first sub-clause is this :—

'18. (1) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, where—

(*a*) the statement of any person has been recorded by a magistrate, and such statement has been read over and explained to the person making it and has been signed by him, or

(*b*) the statement of any person has been recorded by the court, but such person has not been cross-examined,

such statement may be admitted in evidence by the court if the person making the same is dead or cannot be found or is incapable of giving evidence, and it is established to the satisfaction of the court that such death, disappearance or incapacity has been caused in the interests of the accused.'

"Now, my Lord, the position is this. You have, for the trial of certain offences, a specially constituted tribunal. This tribunal is not empowered to go into the question whether the alleged offence is connected with any revolutionary movement or not. In fact, the tribunal has to take as a matter of course the finding of the Local Government on that question. Secondly, that tribunal, even though it is not unanimous, is bound to convict the accused according to the majority finding. Thirdly, whether the finding is unanimous or by majority the accused has no right of appeal. There are no commitment proceedings, there is no jury, and on the top of all this you have provisions for special rules of evidence. It is for you to accept these provisions or not."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I support the amendment, and I do so for this reason, that the statement referred to in sub-clause (*b*) of the section will be a statement of a person which has been recorded by the court. That means a statement recorded in the proceedings of the case, and in my opinion that is the utmost limit to which the Council might go, in admitting a statement which has not been subjected to cross-examination. In Act XIV of 1908, the Criminal Law Amendment Act of 1908, section 13 laid down that 'the evidence of a witness taken by a magistrate in proceedings to which Part I of that Act applied, would be treated as evidence before the High Court if the witness were dead or could not be produced, and if the High Court had reason to believe that his death or absence had been caused in the interests of the accused.' The statement was, therefore, one made in the course of the proceedings of the case under trial. Sub-clause (*a*) of section 18 goes much beyond that. It would admit 'the statement of any person which has been recorded by a magistrate and such statement has been read over and explained to the person making it and has been signed by him.' I submit there is no justification for going even beyond the provision of the Act of 1908. For this reason I support the amendment."

**The Hon'ble Mr. G. S. Khaparde:**—"My Lord, I have a somewhat similar amendment, asking that the first clause, the whole of it, be omitted altogether, and my reason for sending in that amendment was that I have not been able to discover any authority for this provision in any published law book or Code. It is rather a difficult situation. I do not like to say it and yet I feel I must say it—as some of my practice has been to plead such cases and my experience has been that it is not really the accused but those people who are against the accused that procure the absence of witnesses. The difficulty of bringing home offences of this kind is so great that even Government feels it, as this whole legislation shows; and unfortunately the accused stands in very great danger of being run in by his enemies. So this first part, apart from its not being supported by any authority, is also open to this danger, that a witness may have said something, or made some statement, which he will not be able to prove in cross-examination, and the man is made to disappear by the enemies

of accused. Now what evidence can be brought for that kind of thing? It will ultimately depend on the skill of the lawyers on either side. As we know, no case is bad. It all depends on who is defending it. A strong man defending a bad case may carry it, while a weaker man, not commanding eloquence, may not be able to carry a true proposition; but in that case it comes to be that bad evidence is accepted against the accused, and there is serious danger sometimes of his being hanged on the strength of it. I, therefore, propose that this first clause be altogether omitted from this section."

**The Hon'ble Sir William Vincent:**—"My Lord, the clause in question is based on paragraph 185 of the Report itself, where it is said that it is essential that the protection of important witnesses and the perpetuation of their testimony should be provided for. The Committee go on to say that they think that the evidence of dead or absent witnesses should be made available for use by the court—(1) statements made to a police officer not below the rank of Superintendent, and (2) statements made at the trial and not yet cross-examined upon. Well, we found on looking into this matter that it was impossible to include statements made to police officers, because the statements mentioned in the Report have to be signed and the Criminal Procedure Code, as Members of this Council are well aware, prohibits police officers from taking the signatures of persons examined on documents of this kind. Therefore, no statement to a police officer is included in the Bill which is now before the Council. But we think it is reasonable that statements made to magistrates by witnesses who are subsequently murdered by co-conspirators of the accused, or kept out of the way, should be admissible in evidence *quantum valeant*. We do not suggest that these statements will have the same value as the statements of witnesses who have been cross-examined. If the records of these conspiracy cases are read, or even if this Report is read, it will be seen what desperate efforts are made by these revolutionaries to attempt to get rid of any man who attempts to give assistance to the authorities or give evidence against them. I think many of us yesterday were much struck by the instances that the Hon'ble Mr. Emerson gave to this Council on this matter. One of the devices of these revolutionaries is to murder persons whose statements have been recorded before their cross-examination, in the hope that that may prevent these statements being used as evidence. Directly they know a person has made any statement, then attempts are made on his life. In fact, we have been told quite definitely that the lives of any informants to the police or magistrate are known to be forfeit. 12-44 A.M.

"I have got two cases here in which persons who had given evidence to the authorities were murdered immediately after doing so; and it will interest Council to know that on an inquiry made from Bengal I find that the total number of informers or supposed informers murdered has been no less than 20. We do not, however, see why the accused person should benefit by the fact that a witness is murdered, as I say, either by the person himself or at his instigation or by co-conspirators with him. It is to remove the temptation for murdering these witnesses that this clause is enacted. I must oppose this amendment."

**The Hon'ble Mr. M. A. Jinnah:**—"When the Bill was introduced, my Lord, I think I referred to this point as an objectionable one, and on that occasion the Hon'ble the Law Member seemed to take it that it was the gravest objection that I had raised. I think he said that, but unfortunately I think he did not hear what I said. Undoubtedly that was one. My first objection was on principle. My second objection was that it would create a trial within a trial. That was not the only objection. On that occasion the Hon'ble the Law Member said this (I am quoting from his speech): 'I think my Hon'ble friend forgot that possibly it was an unwise thing to argue this in an assembly which contains so many lawyers.' My Lord, if he had said 'in an assembly which contains an able Law Member' and

therefore that it was unwise on my part to argue, forgetting that there was an able Law Member, I would acknowledge that. But I do not know what the suggestion means. Does the suggestion mean, my Lord, that I forgot that I should be found out in this Council? Because I am sure that even a minor lawyer of a few years' standing, much less an able Law Member, is acquainted with section 33. Now, my Lord, we know what section 33 is, and why I emphasise this point that it will create a trial within a trial is for this reason, that more value will be attached to statements which are not subjected to the conditions laid down in section 33 than to statements and evidence which have gone through the requisite conditions laid down in section 33 Under section 33 you first of all have the evidence of a man who has given evidence in proceedings where the parties are there or their representatives. He is cross-examined, and when a man is cross-examined there would not be the same trouble to get in the evidence of a man who has already been cross-examined because he has gone through the test and therefore there would not be that temptation as there would be in a case where the man has made a statement behind the back of the other party and that statement is produced in court and tendered as evidence not subjected to the test of cross-examination, which after all is the greatest possible test of truth. If you can possibly find out whether a man is telling the truth or not, you can only do it by cross-examination and not otherwise. Under those circumstances I impress upon the Government and those who are responsible for this Bill that you will have much greater chance, more likelihood of there being a trial within a trial, and I will illustrate my point in one word. Suppose I am right to this extent, that the police themselves are very anxious to get in the statements of X, Y and Z without putting them forward to the test of cross-examination, because they are greatly afraid that if these men are cross-examined they will break down. Well, the natural thing for them to do is to say to the court 'X, Y and Z have made their statements. They have been spirited away by the accused; we cannot produce them.' 'Oh!' says the court 'It satisfied me.' We know, and I can say with a certain amount of confidence, that you can always get two or three witnesses who will come forward and tell a story which will *primâ facie* satisfy the court that, we will say, X was seen with the accused on the day previous—somebody will come and say that; also that Y was seen with the accused on the day he was leaving the station and is not to be found, and that Z was last seen in the company of a brother of the accused and cannot be found. Well, what is the accused to say to that? What answer has the accused to give? He can only say he knows nothing about it; and what will the court do? The court will say 'I have got three witnesses and these three witnesses say that X, Y, and Z were seen either in the company of the accused or a relation of the accused just a day or two before and they are not to be found any more.' I say that would be quite enough to induce the court to admit the evidence. Then I quite appreciate the point of the Hon'ble the Law Member. He says 'Of course that might make out a case for admitting the evidence, but what value is to be attached to it is a different point.' I quite appreciate it; it is perfectly true. The court may not be misled by that evidence. But notwithstanding that, may I point out—and I am sure the Hon'ble the Home Member who has himself been a judge and knows better than I do because I am sure that he has dealt with more criminal cases than I have, as a Sessions Judge and as a District Judge—does it or does it not leave some impression on your mind if *ex parte* statements are admitted? Would you or would you not begin to wonder perhaps that they are true? Will they or will they not affect you? Further, may I point out to the Hon'ble the Home Member who has got the experience of having tried these cases as a judge that if these stories are concocted, they are so cleverly concocted that even a very shrewd judge may fall into the snare and take them to be true? Therefore, my Lord, I submit that. I know there is a similar provision in the Act of 1908, and probably that will be trotted out and I shall be told that there is such a provision already. My answer is that two black does not make one white; that is my answer; and the fact that you have already a similar provision in another Act, that you have already committed one blunder, does not warrant that you should commit the same blunder again. That is all that I can say."

[13TH MARCH, 1919.] [*Sir George Lowndes; Mr. V. J. Patel; Mr. G. S. Khaparde; Mr. Kamini Kumar Chanda; Sir William Vincent.*]

**The Hon'ble Sir George Lowndes:**—"My Lord, this is no time of day or night for legal dialectics. I propose to answer what my Hon'ble friend Mr. Jinnah said in a very few words. I do not suppose there is anybody in this Council who does not know as well as he does that evidence that has not been cross-examined to is not of the same weight as evidence that has been cross-examined to. The question is not as to the weight which should be attached to such evidence, but whether it should be admissible under this section. Then there was the suggestion that the police might keep a witness out of the way and then come to the three High Court judges, as my learned friend said, and would try and persuade them on the evidence of two or three false witnesses that they had been spirited away by the accused.

"Well, I have some experience of courts, and I have listened to plenty of members of my profession trying to convince one High Court judge of something of this sort. But in this case they would have to convince three High Court judges. Do they think that High Court judges are fools? It is really an absurdity. Therefore I say that no answer of any sort has been made to the point by my Hon'ble and learned friend."

**The Hon'ble Mr. V. J. Patel:**—"Much has been made as regards a similar provision in the Criminal Law Amendment Act. The provision in that Act is on altogether different grounds and under different circumstances. There is a magisterial inquiry there, here there is no magisterial inquiry. It is there laid down that—

'Notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused.'

"Under this Bill there will be no magisterial enquiry."

The motion was put and negatived.

**The Hon'ble Mr. G. S. Khaparde:**—"I beg to move my amendment which runs as follows:—

'That sub-clause (1) of clause 18 be deleted.'

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to withdraw my amendment—

'That in clause 18 (1) for the word 'statement' wherever it occurs the word 'evidence' be substituted and after the words 'of the court' the words 'by the sworn testimony of witnesses whom the accused will have the right of cross-examining' be inserted.'

The amendment was by leave withdrawn.

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I formally move my amendment—

'That in clause 18 (1) sub-clause (*a*) and the letter and brackets (*b*) be deleted.'

**The Hon'ble Sir William Vincent:**—"My Lord, I oppose the amendment for the reasons I have already given."

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move that to clause 18 the following proviso be added:—

'Provided that the accused had the right and opportunity to cross-examine such person mentioned in sub-clause (1) (*a*). Provided further that the accused shall have the right of calling evidence to disprove the allegation that the death or disappearance or incapacity has been caused in the interest of the accused.'"

**The Hon'ble Sir William Vincent:**—"So far as this amendment deals with the question of an accused having the right to disprove allegations that the death or disappearance or incapacity of a witness had been caused in the interest of the accused I do not doubt that the accused has the right already. It is the ordinary right to produce rebutting evidence. As to the other portion of the amendment I have already explained why it is impossible to limit the application of the section to cases in which the witness has been cross-examined. The fact is that these young revolutionaries often murder witnesses before their cross-examination was recorded with the deliberate object of preventing these statements being used in evidence. If cross-examinations were a condition precedent to the admission of these statements in evidence the new clause would give us very little more in it than is contained in clause 33 of the Evidence Act. I am afraid, therefore, I must oppose the motion."

The motion was put and negatived.

The motion that clause 18 as amended by the Select Committee stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 19 as amended by the Select Committee stand part of the Bill."

**The Hon'ble Sir George Lowndes:**—"Perhaps the Hon'ble Member will allow me to say a few words and I may be able to meet him on this amendment. I don't think he means what he says in his amendment:—

'Provided nevertheless that the accused shall have the right to claim a *de novo* trial if any judge not having been present throughout the trial finds him guilty.'

"I do not think my Hon'ble friend means that the accused can go on to the end of the trial and take his chance, and if found guilty then ask for a trial *de novo*. I think what he wants is that where there has been a change in the constitution of the court it shall be open to the accused to have an order that the witnesses be recalled. We might put it in as a substantive clause and not as a part of clause 19, which is a rule-making power. It might provide that if there is a reconstitution of the court during the trial the accused shall be entitled to demand that the witnesses or any of them shall be recalled and re-heard."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I accept that."

The following motion was put and agreed to:—

'That after clause 18 a substantive clause be inserted to the effect that in case of any reconstitution of the court during the trial the accused shall have the right to demand that the witnesses shall be re-summoned and re-heard.'

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move that in sub-clause (2) of clause 19 after the words 'custody of the accused,' the words 'and his release on bail' be added within the bracket.

"The intention of the amendment is quite evident, and it does not require any explanation."

**The Hon'ble Sir William Vincent:**—"My Lord, I am quite prepared to accept this amendment."

The motion was put and agreed to.

The motion that clause 19 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move that the following new clauses be inserted:— 1-15 A.M.

'19-A. The Government shall provide for the payment of the reasonable expenses in the case of poor persons charged with murder or sedition for the payment of Counsel required for the defence of a person brought for trial before the Special Court and certified to be so required by such court.

19-B. The court shall have the power to award any amount which seems proper to it as compensation to the accused when it acquits him and finds that there was no reasonable or probable cause for prosecuting him, such compensation being payable by Government unless the court directs otherwise:

Provided that the award of compensation and receipt thereof by the accused shall be no bar to any suit for damages which the accused may have the right to institute for false and malicious prosecution but in decreeing any damages in such suit, if any, such amount paid as aforesaid shall be deducted'."

**The Hon'ble Sir William Vincent:**—"My Lord, I will deal with one of the new clauses which the Hon'ble Member proposes to insert, 19-A. The position is this, that Government does provide by the rules payment of legal advisers to persons charged with murder who are unable to pay for Counsel themselves and the same rule will apply in the case of trials under this Part. I do not exactly know what offence the Hon'ble Member refers to as sedition unless it is an offence under section 124-A. But I submit to the Council that any person accused of an offence under section 124-A is not entitled to any more consideration than an ordinary criminal. Nor indeed is there any section of offence of sedition pure and simple."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, the only point is that in cases of sentences for life, all reasonable expenses may be paid. That is why I want these clauses to be inserted." 1-18 A.M.

The motion was put and negatived.

The Council then adjourned till Friday the 14th at 11 A.M.

DELHI,
*The 26th March, 1919.*

H. M. SMITH,
*Offg. Secretary to the Government of India,*
*Legislative Department.*

SGPI, Delhi,—870 L D—6-4-19—750.