LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

LOK SABHA

Thursday, 25th November, 1954

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair.*]

QUESTIONS AND ANSWERS

(See Part I)

11.57 A.M.

PAPERS LAID ON THE TABLE

NOTIFICATION *re*: AMENDMENT TO DELHI ROAD TRANSPORT AUTHORITY (ADVISORY COUNCIL) RULES, 1951.

The Deputy Minister of Railways and Transport (Shri Alagesan): I beg to lay on the Table, under sub-section (3) of section 52 of the Delhi Road Transport Authority Act, 1950, a copy of the Ministry of Transport Notification No. 18-TAG(20)/54, dated the 19th October, 1954, making certain further amendment to the Delhi Road Transport Authority (Advisory Council) Rules, 1951. [*Placed in Library. See* No. S-429/54.]

OPINIONS ON INDIAN ARMS (AMENDMENT) BILL, 1953.

Shri U. C. Patnaik (Ghumsur): I beg to lay on the Table a copy of each of Papers Nos. VI and VII containing opinions on the Indian Arms (Amendment) Bill, 1953, which was circulated for the purpose of eliciting opinion thereon by the 31st August, 1954. [*Placed in Library. See* No. S-430/54.]

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

PRESENTATION OF FIFTEENTH REPORT

Shri Altekar (North Satara): I beg to present the Fifteenth Report of the Committee on Private Members' Bills and Resolutions.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL—*Contd.*

Clauses 2 to 15

Mr. Speaker: This House will now resume further discussion on clauses 2 to 15 of the Code of Criminal Procedure (Amendment) Bill, 1954. Of the 3 hours allotted to this group of clauses, 2 hours have already been availed of yesterday and one hour yet remains. This would mean that this group of clauses will be disposed of by about 1 P.M.

Shall we have voting at that time or shall we postpone it to 2-30 P.M.? Discussion will go on up to 1 P.M. Do we have the voting at 1 p.m.?

The Minister of Home Affairs and States (Dr. Katju): At 1 P.M.? Let us have it at five or ten minutes to one.

Mr. Speaker: Would he like to have it postponed to 2-30 P.M.?

Dr. Katju: I thought it might be lunch time, but there is no lunch hour as such.....

Mr. Speaker: There seems to be some confusion. Though we do not adjourn for lunch hour, we are observing a convention that from 1 P.M. to 2-30 P.M. the House is not counted.

Dr. Katju: Then, we might have the voting at five minutes to one.

Mr. Speaker: That means that the voting has to be completed before the House goes on to the next group of clauses. After the present group of clauses has been disposed of, the House will take up the next group of clauses, namely, 16 to 19, for which, as Members are aware, four hours have been allotted.

12 NOON.

Pandit Thakur Das Bhargava (Gurgaon): I propose to speak on clause 3 to start with. Under section 9 of the principal Act, the State Government is authorised by general or special order to direct at what place or places the Court of Session shall ordinarily hold the sitting. Apart from that, we have got a section—section 539B of the principal Act which runs as follows:

> "Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection."

Yesterday a view was expressed that if these words remain, that is, "with the consent of the prosecution and the accused," the Court may be at the mercy of the two parties and the Court's work may suffer on account of this consent not being given by both the parties. Now, it is quite clear that so far as inspection, etc., is concerned, the Court, according to this provision, is not deprived of the liberty to go to the place and inspect the site of the offence or any other place.

Shri Gadgil (Poona Central): Those powers are not affected.

Pandit Thakur Das Bhargava: They are not affected. So far as the question of ordinary sitting is concerned, it was said that, as a matter of fact, the interests of justice should be furthered if the Court is allowed to hold a sitting at its own will. Now, I understand it is not considered by any person that the Court will always hold its sitting, if the permission is given, in the very village or at the very place where the offence took place. If this were so, it would be most difficult in practice. Ordinarily, if the prosecution or the defence wants to have the sitting at a place which is not the ordinary sitting place of the Court,—I can understand in a taluk or in a tehsil—the Court may hold a sitting for the time being. My humble submission is that the suggestions and the expectations of Members who have taken part in this Bill on this clause—namely, if the Court holds a sitting at a place near about the place where the offence was committed, then there is a likelihood of the witnesses speaking less falsehood—are not correct. I must submit that it does not make much difference if the Court holds a sitting at the taluk area or in a district area. The person will speak falsehood or truth according to what he thinks or likes even if the Court meets at another place. So, as a matter of fact, ordinarily, the question becomes very difficult if the Court, of its own will, decides this question. The Select Committee has acted very wisely in giving the power both to the prosecution and the defence to agree or not to agree, to see that the Court holds a sitting at its ordinary place of sitting. Perhaps my hon. friend, Mr. Bogawat, is not aware of the usual practice: that is, even if a counsel who is engaged for the headquarters is asked to go to the mofussil, he charges a new fee. I can understand that people change their habits, and some honest lawyers—whether they are senior or junior—may also change their practice,

but that is a different matter. We know the practice, and it may be that another junior counsel may be available in the mofussil. But a person will be deprived of the choice—of the fundamental right,—I should say—given in the Constitution, of defending himself by an advocate of his own choice, and they may demand higher fees than what a poor person can afford to pay. Therefore, in the interests of the accused, it should be at his will whether the Court will hold its sitting at another place or not. I should think that this is a very salutary provision and it may be adopted. Nor am I impressed by the argument that the Court will lose its dignity in asking the accused or the prosecution for the consent. In ordinary law, all persons, whether they are the accused or others, are equal before the law. The Court or the accused or the prosecution should not think of any dignity whatever. What is dignity? All are equal before the law, and there is no question or point in the Court asking the accused or the prosecution to give consent, of any dignity. In the interests of justice, they will request the Court, and the Court is the final arbiter and it will decide whether to go to another place or not. I think these amendments should be rejected and the section, as it stands, should be passed.

[SHRI BARMAN *in the Chair*]

Then, we had a very important discussion about Honorary Magistrates. It was stated by those who were in favour of keeping this institution alive, that in England and other places there were retired persons of eminence, Judges, etc., who were Honorary Magistrates. They said there were Justices of the Peace in England who were Honorary Magistrates, and that this was a good institution. Well, I do not doubt that after some time, ten, fifteen or twenty years hence conditions in the country may change and persons may like to serve as Honorary Magistrates and also be subject to the conditions which should govern such an institution. But today, I must submit for the consideration of the House that even Justices of the Peace are not appointed in their own constituencies, in England. I doubt very much whether any person would like to be appointed as an Honorary Magistrate in a place where he does not reside. The rule in England is, Justices of the Peace, when appointed, are not appointed in the constituencies from which they come. They are Justices of the Peace for other constituencies.

Dr. Katju: What is the constituency in regard to a Justice of the Peace?

Shri S. S. More (Sholapur): That is applicable to the recorder

Pandit Thakur Das Bhargava: This is applicable to the Justice of the Peace also. For reference in this matter, I request the hon. Home Minister to go through a document which has been supplied to us by the Lok Sabha Secretariat. You will find from there that Justices of the Peace are not appointed in the places which are called their constituencies. I understand that what is meant by constituency is, the place where they live or reside. As a matter of fact, the difficulty is that they are local people, and local people have got local connections and local prejudices. One advantage which I find in the old institution of Honorary Magistrates was—and this is to be said in their favour—that usually, good Honorary Magistrates always get the cases compromised. We had Honorary Magistrates who got the cases compromised. It is a very good thing. I like these Honorary Magistrates. But my own difficulty is that in the present circumstances of our country, I do not feel myself justified in agreeing to this provision. There are good Honorary Magistrates also, but usually, the Honorary Magistrates are not appointed for the purpose of seeing that people are put to any inconvenience. They are appointed by way of nepotism, by way of political influence,

[Pandit Thakur Das Bhargava]

and I do not like the institution on that ground. There are two points: first of all, they do their work without any payment; it is very good, and their services could be utilized. Secondly, the Honorary Magistrates being local people, bring about compromises. It is also very good. These are two matters which appeal to some so far as the Honorary Magistrates are concerned. I am not wedded to this view or that view. I am submitting for the consideration of the House the different arguments why they should be accepted or rejected.

So far as the other matters are concerned, I for one do not think that we will be justified—even apart from those good points in favour of the continuance of the Honorary Magistrates—in keeping this provision. After all, it has been said that retired engineers and retired civil surgeons and other retired officials will become Honorary Magistrates. First of all, the object is to see that the qualifications are there, and the qualifications must at least be legal qualifications. I do not know how the retired engineers and retired civil surgeons will discharge their responsibilities in this regard. If retired High Court Judges were appointed, I do not know whether they would like to be controlled by District Magistrates or Sessions Judges. Their appeals will go to the Sessions Judges and to such Courts over whom they had always exercised control. So, in the long run, you will not find many High Court Judges liking this work. If they are superannuated, they will not be able to do their work well. If they are young people, they will have some influence and connections with local matters. There will be local prejudices also with them. Now that the elections are there, with so many animosities and so many parties, I think the interests of justice will not be furthered by keeping this institution. But for the time being, unless better conditions evolve, I think we should rather depend upon stipendiary Magistrates and not have these Honorary Magistrates enlivened.

Apart from that, I beg to submit in regard to clause 6, about section 30, that in the Punjab section 30 Magistrates have worked well.

Pandit K. C. Sharma (Meerut Distt.-South): Punjab is a very good State; do not compare it with U. P.

Shri Raghunath Singh (Banaras Distt.-Central): U. P. is better than Punjab.

Pandit Thakur Das Bhargava: Now, the hon. the Home Minister has been pleased to put the amendment here. Apart from that I have been submitting, before this Criminal Procedure Code (Amendment) Bill came, that this institution of section 30 Magistrates is very good. Many cases go to the Sessions Court, and we have got some figures given by the hon. the Home Minister: he has been pleased to say that 75 per cent. of the accused in the Sessions Court are acquitted in the Punjab. What is the percentage in regard to section 30 Magistrates? So far as they are concerned, the figures of convictions are, I should say from the point of view of those who think that more convictions should take place, very much higher.

Pandit K. C. Sharma: Do you want more convictions?

Pandit Thakur Das Bhargava: I want more convictions. I am rather ashamed that 75 per cent. of the accused in criminal cases should be let off.

Pandit K. C. Sharma: Are you ashamed of your freedom?

Pandit Thakur Das Bhargava: There is no question of freedom. I do not want this freedom if 75 per cent. of those who have committed crimes are to be let off.

Shri S. S. More: What do you mean by let off? Do you mean to say that

they should be convicted when there is no evidence?

Pandit Thakur Das Bhargava: That is not the point. The real difficulty, as has been pointed out by the hon. the Home Minister many times, is that now the number of convictions is very small. It may be due to certain causes.

Shri S. S. More: What are those causes?

Pandit Thakur Das Bhargava: There are a good many causes. The hon. the Home Minister has stated them.

Shri S. S. More: He did not state the correct causes.

Pandit Thakur Das Bhargava: It may be that he has not stated the correct causes, or it may be that he has stated the correct causes and they do not appeal to Mr. More.

Dr. Katju: The second assumption is correct.

Shri S. S. More: They do not appear to be correct even to the Justices of the Supreme Court.

Pandit Thakur Das Bhargava: One thing is quite clear in my mind, that Mr. More and the hon. the Home Minister are at one in wishing it to be brought about that there should not be so many acquittals.

Shri S. S. More: No. I am not prepared to accept that proposition.

Pandit Thakur Das Bhargava: Then I leave Mr. More to his own fate. Let him not accept it. But I do want that in my country those who have committed offences should not be acquitted. (*Interruption*). There is no question of many persons. It is a very sad state of affairs that the investigation is so bad that persons are acquitted.

Shri V. G. Deshpande (Guna): You want that innocent persons should not be let off?

Pandit Thakur Das Bhargava: There is no question of innocent persons only. Are all the 75 or 83 per cent. that are let off innocent? I have experience of conducting 700 to 1,000 sessions cases and I know much better than my friend Mr. Deshpande whether guilty persons are acquitted or not.

As a matter of fact we should see that we bring about conditions in this country that so far as investigation is concerned, the investigation is reliable, the investigation is such or our police are such that they do not record the statements wrongly, or the courts are such that they take a good and correct view of things. I am not in favour that innocent persons are punished for nothing. That is not my purpose. My friend Mr. More knows it very well.

Shri S. S. More: I accept.

Pandit Thakur Das Bhargava: If he accepts this, then the previous statement of his in which he said that he wants more people to be acquitted is not consistent with this.

Shri S. S. More: I accept about yourself.

Pandit Thakur Das Bhargava: I thank the hon. Member for his compliment.

Shri S. S. More: I have a soft corner for Pandit Thakur Das.

Pandit Thakur Das Bhargava: But what I was submitting was, as a matter of fact the attempt of the law and the attempt of the hon. the Home Minister is that the right persons should be convicted and innocent persons should be acquitted. This he has repeated.

Shri S. S. More: Who is to decide. I am seeking some clarification from the eminent counsel who always appears for the accused. I am seeking clarification as to who is to decide whether a person has been rightly convicted or not.

Shri Raghunath Singh: The Judges.

Shri S. S. More: Dr. Katju or the Supreme Court?

Pandit Thakur Das Bhargava: This question is not very difficult. Neither Dr. Katju nor Mr. More nor myself are required to solve this question. The whole village knows, the whole country perhaps, those round about where the offence is committed, know who has committed the offence, and they know that a right person has been convicted or a wrong person has been acquitted. They know all about it. What is the difficulty?

Shri S. S. More: That is, by the method of election, taking the viewpoints of the people for conviction?

Pandit Thakur Das Bhargava: If my friend is not satisfied with this system and taking evidence, let him devise a better method.

Mr. Chairman: Let the hon. Member develop his own argument.

Pandit Thakur Das Bhargava: I know only of this method, that Judges are appointed, evidence is taken, cases are decided. If the investigation is proper and the Judge has a proper frame of mind and if the witness speaks the truth, the man is convicted or acquitted. Otherwise leave it to God that whoever has committed a crime, God shall give him the reward or the punishment. If it is to be a human institution, this is the best form of institution in which Judges sit and witnesses come in. All those days when persons suspected to be guilty of an offence were asked to dip their hand in boiling oil have gone. We cannot expect the sorcerers or those who read the hand to tell us who is the real guilty person. Those days are gone.

Pandit K. C. Sharma: I can read the face.

Pandit Thakur Das Bhargava: Here is a gentleman who can read the face. Let him go out of this Assembly and find out. He is out of court!

Shri S. S. More: He reads the faces in the Central Hall!

Mr. Chairman: May I just say that one Member from the Opposition wants to say something. Instead of stopping at every interruption the hon. Member may give his arguments and go on and leave some time for another hon. Member.

Pandit Thakur Das Bhargava: I am not interrupting, I am being interrupted.

Mr. Chairman: The hon. Member need not mind the interruptions.

Pandit Thakur Das Bhargava: It is for the Chairman to control the interrupters and not control me. If I am interrupted I am by courtesy bound to give a reply.

This institution of section 30 Magistrates has worked very well in the Punjab and I wish that this system was accepted in the whole of the country. Who are these persons who are made section 30 Magistrates? According to this provision they will be Magistrates of the first class who have for not less than ten years exercised as Magistrates powers not inferior to those of a Magistrate of the first class. That means very experienced people, and it will be very easy for them to decide the cases rightly.

In sessions cases and very serious cases, when the cases are taken to the Sessions Court, the atmosphere is quite different; whereas in section 30 Magistrates' cases, the cases are heard regularly and without much delay. And the procedure also is a warrant case procedure, at least today, when there is double cross-examination. I would wish that this warrant procedure were kept intact and the persons are allowed to have two cross-examinations. These section 30 Magistrates would deal out even-handed justice.

In regard to clause 8 I have to submit a word. The First Class Magistrate's powers in regard to fines have been increased from one thousand to two thousand rupees; the Second Class Magistrate's powers from two hundred to five hundred rupees; and the Third Class Magistrate's powers from fifty to one hundred rupees. I do not know why the proportion has not been kept up in regard to the Second Class Magistrates. The powers of the First Class Magistrate have been doubled; but the powers of the Second Class Magistrate have not only been doubled, they are two and a half times the original powers. I have given notice of an amendment to the effect that the amount should be made four hundred rupees. Even a fine of four hundred rupees for a Tehsildar to inflict will be considered too much, but our Home Minister is of the opinion that the value of the rupee has decreased. To mulct a man five hundred rupees will be too much in the mofussil. Therefore this may be reduced from five hundred rupees to four hundred rupees and the ratio kept up. In clause 13, the original words "the person residing" are sought to be substituted by the words "any person residing". The reason given for this change is that some of the High Courts have interpreted these words as indicating a person who was in charge of the House. I can understand that if there are several persons in a house, the person who is in charge of the house or the head of the family is the person on whom responsibility should be fixed If some guests come and stay in a house for a week or so, it can be said that they are residing in the house.

Pandit K. C. Sharma: No.

Pandit Thakur Das Bhargava: My hon. friend says 'No'. I do not want any interruption. I only want to submit that when you put a certain sort of responsibility or liability upon a person, you must see that it is put on the right person, because the person who offends against the law will be held responsible in a court of law and will be punished. Suppose there are minors there; suppose there are guests living; or ladies living alone. My submission is that the words "the person residing" are good enough. It is wrong to suppose that responsibility should be fixed on all persons residing there. I am not in favour of this change, and suggest it should not be made.

Shri Sadhan Gupta (Calcutta—South-East): In discussing such a diverse group of clauses one is naturally apt to seek for a thread which binds all those clauses. It is not difficult to find such a thread or find at least two such threads. Those threads are: firstly, the denial of the right of the accused and secondly, the enhancement of the power of the executive.

Now, Sir, as regards the right of the accused, we find that the extent of summons cases has been increased and the prosecution has been given a veto in deciding the locality of the trial in the matter of Sessions cases.

Let me first deal with the aspect concerning the extension of the Summons procedure. Now, I must say at once that I am not in favour of the new warrant procedure proposed. I want the warrant procedure to remain much as it is, perhaps with some minor amendments or improvements made. But, on the whole the warrant procedure, as it is today is a salutary procedure, is a procedure which is conducive to justice and it should be allowed to remain as it is.

The Summons case procedure which prevails at present was introduced by the British who were not too eager to give us, natives, the right of defence. That is why offences punishable with imprisonment up to six months were made triable as Summons cases. Sir, I think even that is too much for the accused. The maximum limit which should be prescribed the maximum limit of punishment

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for which an accused should be asked to take a risk by curtailing his right of defence is I think three months and that is quite enough. Therefore, we have proposed on behalf of our Party an amendment which limits the extent of Summons cases to only three months instead of the original six months. One year is too big a curtailment of the right of the accused, too great a jeopardy and we are naturally opposed to it.

Now, Sir, the other aspect of the denial of the right of defence is involved in clause 3 by which it is provided that the prosecution should be able to veto a decision of the Sessions Judge in determining the locality of the trial. It is quite true that in most cases the district headquarters would be the best place for trial both for the prosecution and for the accused, because lawyers will be available at much less fees and other facilities will be available there at the district headquarters. But there are certain places which are far away from the district headquarters, from where it is not easy to get witnesses for the accused and therefore, if the accused wants, if it will suit the accused, it may be provided, subject to the convenience of parties and other kinds of conveniences, the convenience of the Sessions Judge, the venue may be changed.

Now, Sir, in the matter of change of venue the prosecution does not come in at all, because the prosecution has resources enough to have a case conducted in any place. The only difficulty that the prosecution might encounter in the matter of shifting the place of trial is perhaps to make arrangements for the custody of the accused. There may not be a convenient jail near-by when the accused is not on bail. Now in these matters the Sessions Judge will judge for himself. He is not a mad man; he is quite capable of judging all these conveniences and inconveniences and it is best to leave that to him. Now what is provided is that even if the accused feels that a certain place would be good for him, a place near the locality of the crime, for example, would be good, would be fair to him, would enable him to get justice, and the Sessions Judge also feels that way, yet, because the prosecution does not consent, the Sessions Judge will not be permitted to give the accused that particular right which is essential for his defence. Now this is an enormity which cannot be tolerated. Sir, I can understand that the accused should be allowed to give his consent because after all if the place is shifted he is likely to be the greatest sufferer. There is nothing derogatory to the dignity of the Court in this matter. I do not agree with Shri Tek Chand that this is making the Sessions Judge a petitioner or the accused a Court. The simple point is, this is a right given to the accused party for having a better kind of defence. On that right, the only veto imposed should be the convenience of the other parties, the convenience of the Sessions Judge and so forth. That is why consent should not be made the only determining factor. But, consent should be essential in order to shift the venue of the trial and it is only the consent of the accused that should be essential. Therefore, we have proposed an amendment whereby only the consent of the accused should be taken and the consent of the prosecution should not be insisted upon. In that way, the greatest justice will be done and the Sessions Judge will be able to decide the place for a fair trial. If the accused agrees to that place, of course, he will have regard to the inconvenience of the prosecution, inconvenience of a kind on account of which the case cannot proceed. Therefore, I would urge upon the Minister to accept our amendment which prescribes for the

consent only of the accused in this matter.

Now, I come to the other aspect of enhancing of executive power which is one of the worst kinds of defaults which the present Bill is guilty of. We have as many clauses as clauses 6, 7, 8, 9 and 13 which are guilty of this default. We find that instead of separating the judiciary from the executive, we still retain, not only retain, but still more extend the system of Special Magistrates under section 30. Pandit Thakur Das Bhargava said that Section 30 Magistrates have done good work in the Punjab. I do not know what kind of good work he had in mind. He said that there have been more convictions by the Section 30 Magistrates.....

Pandit Thakur Das Bhargava: Less cost and delay.

Shri Sadhan Gupta: .....than by Sessions Judges. If this is the criterion of judging good work, I do not agree with him. That convictions do not take place or that acquittals take place may be due to the fact that the wrong person has been put in or it may be due to the fact that the investigation was faulty. In our country, if often happens that the police is so corrupt that the criminal who is more able to tamper with the police is let off and the police rope in others with whom, perhaps, they do not agree or against whom, perhaps, they have some cause of complaint or grudge, where a wrong person is put up before the Court, evidence is fabricated, witnesses are suborned and they do not stand the test of cross-examination. That may be the chief reason why so many acquittals take place in the Punjab.

Apart from all these, the main consideration in respect of Section 30 Magistrates is that these Magistrates are arms of the executive and it is very wrong in principle to entrust them with such wide powers which normally belong to the judicial officers, which normally belong to Assistant Sessions Judges or Sessions Judges. We are entirely opposed to it on principle because we do not want the executive to get more powers, particularly more judicial powers in its hands, thereby enabling the Government to pervert the administration of justice. We want the entire separation of the judiciary from the executive. We do not want the Executive Magistrates even to have the power to convict for a single day. But, if you must retain the old British system of Executive Magistrates and pervert the administration of justice, we have at least the right to demand that they should not be given such wide powers as Section 30 Magistrates are given. That is why we have given an amendment that this particular section 30 should be altogether omitted.

Pandit Thakur Das Bhargava: In many places, separation of the judiciary from the executive is taking place. In five districts in the Punjab, it has already been done. All these will be separate Magistrates under section 30 under the separation scheme.

Shri Sadhan Gupta: I do not know where the separation of the judiciary and executive is taking place. We know that in many States we are far from it. Still, the administration of justice at least so far as offences which are not triable by the Session Judge or which are triable concurrently, are concerned, is very much in the hands of the executive. Therefore, until this separation takes place, we shall have nothing to do with the Section 30 Magistrates. When the separation of the executive from the judiciary will take place, it may be that they will perhaps be as good as Assistant Sessions Judges. That, we can see later. That is why we put in an amendment for omitting this clause.

Then, comes our alternative amendment. In spite of opposition, if this clause is retained, what we suggest is

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that the jurisdiction of tese Magistrates should be limited only to offences punishable with five years and that their sentencing power should be restricted only to three years, just one year above the ordinary Magistrates.

I have only to make a few remarks on clause 13. There, I entirely agree with Pandit Thakur Das Bhargava because the amendment proposed will put all sorts of persons into jeopardy, who should not be held guilty of not allowing ingress to police officers. Clause 13 seeks to amend section 47. What does section 47 say? Section 47 makes it obligatory on certain persons to allow ingress to police officers into certain places. In our country where family tradition is so strong, where the authority of the head of the family is so strong, it is impossible to conceive that a person who is not the head of the family or whom the head of the family has forbidden to open the door or who knows that the head of the family does not wish him to open the door, will take the responsibility of opening the door to a police officer. In that case, the head of the family should be punished. The real person who prompts others not to allow ingress to a police officer should be punished. Why punish someone who cannot act against the head of the family? Even as Pandit Thakur Das Bhargava has said, guests may be involved, ladies may be involved and even children may be involved in this mater. So, I would urge the Minister to withdraw this particular clause, not to press this particular clause, or to accept the amendment which we have proposed which is No. 193, and we say only the person in charge of the place should be made responsible for not allowing ingress to police officers.

That is all I have to say on this point.

Pandit K. C. Sharma *rose*—

Mr. Chairman: If the hon. Home Minister wants to speak now, he may. We shall finish the discussion by 1 O'Clock, including the vote.

Shri U. M. Trivedi (Chittor) *rose*—

Pandit K. C. Sharma: I want only two minutes.

Dr. Katju: The hon. Member may have two minutes, and two minutes to Mr. Trivedi.

Shri U. M. Trivedi: What about the time?

Pandit K. C. Sharma: My amendment is, as Mr. Sadhan Gupta said, for the total abolition of section 30 of the Criminal Procedure Code.

My respectful submission is that I do not agree with Mr. Bhargava that there will be more convictions as against acquittals. There is a callous indifference to the fact that once you send a man to the jail, he becomes a permanent criminal. Actually, in the long process of getting justice, the man is punished enough for the crime he has committed. It is much better that through this long harassment the man is punished and is still a free man to contribute something to the common welfare. Otherwise, you send a man to jail. I have been to jail and I have very bad experience of the jail conditions, and I am certain that the more people you send to the jail, the more criminals you make. So, you do not do justice to the community, and you do great injustice to the community. You do not add to the welfare of the State.

Pandit Thakur Das Bhargava: Then abolish the Indian Penal Code.

Pandit K. C. Sharma: The Indian Penal Code and the Criminal Procedure Code are all meant to do justice under the circumstances with a certain objective in view, not for sending the people to jail, to make them, to turn them into permanent criminals and add to the worries of the ordinary citizens.

I would simply point out that this is a fact, that the Magistrate has a different mentality, a different way of doing things and understading things than a Sessions Judge. And justice is a thing which must be provided to the unfortunate accused with as many facilities, as greater facilities, as possible.

Suppose I argue a case before a Magistrate. I put the ruling before him. He says: "Well, Mr. Sharma, these rulings are meant for the Sessions Judge across the road. These are general things." He refuses to understand the law. His outlook is that of a practical man.

Therefore, I beg to submit that the unfortunate accused has a better man to adjudge his guilt rather than a Magistrate whose mentality is more in accordance with the police methods rather than with the well-considered judgment of a Sessions Judge.

Dr. Katju: Mr. Chairman, let us be quite clear about one thing. I mentioned it yesterday or some days back, and I repeat it once again. This Parliament is concerned with the administration of justice neither inclining towards the accused nor inclining towards the prosecution. People are interested that justice should be administered and offenders should be punished, the innocent man should not be harassed.

Pandit Thakur Das Bhargava: Quite true.

Dr. Katju: It is not interested whether they become permanent criminals or temporary criminals. According to that argument, nobody should be punished at all. If I cut anybody's throat or pick his pocket, I should be just admonished and asked to go home and behave better. That is not the test here.

Pandit K. C. Sharma: That would certainly be a better Government.

Dr. Katju: Regarding these section 30 Magistrates, I tell you, nothing has caused me greater sorrow and greater distress than this readiness to attribute all sorts of imperfections, if not something worse, to our Stipendiary Magistrates, to our honorary Magistrates, to every Magistrate. I really do not know who is safe. Everybody is said to be under the thumb of the police, under the heel of the District Magistrate, under something else of the Minister—I do not know. And look at the very comment which my hon. friend made. Mr. Sadhan Gupta said that the Magistrate is good enough to try cases up to two years, but if that offence is punishable with a sentence of seven years or three years or four years, well, he is unfit. I can understand a man saying: "This man is unfit to be a Magistrate at all", but to say that a Magistrate is good enough to send me for two years, but bad, absolutely rotten, to try a case in which the sentence may be five years maximum—he may give the man only three years—is something I cannot understand.

Shri Sadhan Gupta: We have not said a Magistrate is good enough to punish for two years. We said a Magistrate is not good enough to punish for one day. We said we want judicial officers.

Dr. Katju: Very well, then I understand that. According to the friends of the Communist Party, every case should be tried by the High Court of Calcutta.

Shri Sadhan Gupta: Judicial officer, I said. The Magistrate is an executive officer. We want a judicial officer.

Dr. Katju: We are becoming ridiculous in this fashion. I can understand your saying there should be separation of judiciary from the executive which is something which we all want—because I do not want to vilify my own countrymen in this fashion. The whole country has undergone a change. Is there any illustration, any instance, where Magistrates have become executive-minded. And then,

[Dr. Katju]

please remember one thing. I come from an Appellate Court, practising in the High Court. There is the Sessions Judge. There is an appeal in every case. There is the record. My hon. friend said Sessions Judges are perfect. Very well.

Pandit K. C. Sharma: Nobody is perfect. I simply said they are better fitted to do justice.

Dr. Katju: Sessions Judges are better. But then, they hear the case on appeal. The Magistrate acquits. The few people whom he convicts are entitled to appeal. (*Interruption*). My hon. friend is just repeating his arguments—because the Magistrate does not understand, he will not allow cross-examination etc. The cross-examination is limited, should be limited, not going about days and days, sort of a babbling brook.

So, Mr. Chairman, I want to make it quite clear that these section 30 Magistrates have functioned well.—Mr. Bhargava says, the other gentleman says. Wherever the system is in practice nobody is complaining. My hon. friend who practises in Meerut, who has no experience of section 30 Magistrates is very angry with them, just as I have found that people who have not any experience whatsoever of juries are very angry with juries. You ask the man from Bengal. He says they are good. The men from Punjab who have never seen a set of jurymen, say they are rotten.

Pandit Thakur Das Bhargava: I never said....

Dr. Katju: I do not provoke you. Why do you intervene? Similarly, my hon. friend says he just goes by the word Magistrate,—the Magistrate is fine for two years, he becomes absolutely undescribable for seven years. I deprecate, speaking very seriously, this tendency on our part to vilify our own people, as I said just now. They are all highly educated, B.As., M.As.

Shri Sadhan Gupta: Inherited from the British bureaucracy.

Dr. Katju: They do not deserve to be treated in this fashion by Parliament.

Then, secondly, we come to this question of Honorary Magistrates.

Pandit K. C. Sharma: It is no question of vilification. It is simply examination.

Dr. Katju: Then we come to the question of Honorary Magistrates. On the floor of the House opinions have been expressed both ways. There is just one point that you should bear in mind, and that is, the Criminal Procedure Code does not say, this amendment does not say that there must be Honorary Magistrates in every State. It leaves complete discretion to every State. If in a particular State public opinion is very strong and they hate all Honorary Magistrates, very well, the Government may not appoint Honorary Magistrates there. Public opinion may express itself strongly in their own Legislative Assemblies: it is open to them.

Shri V. G. Deshpande: If the party in power wants, they may appoint.

Dr. Katju: This is a discretionary matter. In the U.P., with which I am familiar, about 60 per cent of the judicial business is discharged by Honorary Magistrates. There may be blacksheep here and there, but they do their work very well. Honorary First Class Magistrates or Second Class Magistrates sitting in Benches give some expression to their desire for public service.

Shri S. S. More: Then why do you complain that there are too many acquittals even in Uttar Pradesh?

Dr. Katju: Every observation that my hon. friend Shri S. S. More is making has got no sense in it. What

has it got to do with what I said? Simply for the sake of interruption, he is getting up. What has it got to do with the acquittals? I never complained one word about acquittals before Magistrates. I was complaining of acquittals in murder cases.

Shri A. K. Gopalan (Cannanore): You complained, and you forgot about it.

Dr. Katju: I shall leave it at that. What I was saying was that there is no compulsion. In the Uttar Pradesh,—I have not worked it out, but I feel—Honorary Magistrates save the public exchequer about Rs. 50 lakhs a year, or probably more. Similarly, you find that kind of saving everywhere. My hon. friend Pandit Thakur Das Bhargava, with his wide experience of the Haryana part of the Punjab State, where he has not come across good Honorary Magistrates, says that they should not be anywhere in the whole of India right up to Tuticorin or Trivandrum. He said, we do not want them, because I have had the misfortune of having seen some bad Honorary Magistrates in the Punjab. So, let us leave the discretion to the people.

Next, we come to this question of the Sessions Court holding its sittings in different parts. The Communist Party says, they are all for liberty. If the accused should have liberty, and he wants it, let him have it. The suggestion that has been made is that there may be cases of all kinds. First, you should have some good suitable place where it should be lodged. If it is a trial in which the number of accused is about seven or ten, leading dacoits to be tried under a section 302 case, then it may be very difficult to manage about their accommodation; the witnesses may be far away; therefore, it is said that the Judge will be given the last voice, as Shri N. C. Chatterjee said. The prosecution and the accused put their heads together, and they say we should like to have the trial elsewhere; they approach the Judge, and if the Judge agrees, well, everybody is agreed and the trial takes place there. My hon. friend Shri Sadhan Gupta said, no no, the accused should have it, because he will not be able to engage a lawyer. I entirely agree. This is an innovation, and we say, if the prosecution and the....

Shri Sadhan Gupta: It is a misinterpretation.

Dr. Katju: I am not yielding.

Shri Sadhan Gupta: The Home Minister has no right to misinterpret me. I said it is only the business of the accused and the Sessions Judge, and the Sessions Judge is the best judge of the conveniences of the prosecution.

Dr. Katju: I understand the position taken by my hon. friend perfectly clearly. With that I do not agree. I say the prosecution, poor fellows, are not just playing there; they should have as much voice as the accused, and Government should be able to say whether proper arrangement can be made for the accommodation of witnesses, the accommodation of the Judge, the accommodation of the lawyers, and the accommodation of everybody concerned. If everybody agrees, then the trial may take place there. It is an innovation that we are providing.

Lastly, something was said about the increase of fine. I think fines should be increased, because the money value has decreased very considerably. A fine of Rs. 100 or Rs. 200 today is not to the extent of what it was years ago.

Shri S. S. More: May I seek one clarification from the hon. Minister?

Dr. Katju: I would not answer the question.

Shri S. S. More: It is my right to put a question.

Dr. Katju: I would not answer it.

Shri S. S. More: On a point of order. Is the hon. Minister in order in saying that he would not answer the question without hearing that question? It is prejudice against a person.

Dr. Katju: I do not answer the question of Shri S. S. More in this case, because I can anticipate what the question would be.

Shri S. S. More: With your permission, I want to seek a clarification. If the amount of fine is to be linked up with the fluctuating money market, is it going to be urged by the hon. Minister that when the prices fall and the money value goes up, the fine will be reduced, and there will be an amendment of the Criminal Procedure Code to that effect?

Dr. Katju: That may be a matter for consideration, when that question arises.

Finally, in section 47, it is proposed to substitute the words 'any person residing' in place of 'the person residing'. A police officer comes with a warrant and he wants to serve it. The owner of the house, let us say, is away. His sons are there. What the police officer wants is that the person who is residing there may know about it. Where does the question of propriety, the question of the mastership of the house, or of somebody being the head of the family, etc. come in? It is a question of giving assistance to the public officer in carrying out his duties. I, therefore, will not be able to accept that particular view which has been advocated by my hon. friend there.

Mr. Chairman: We may proceed to the voting on the clauses now. Let us take clause 2 first, and the amendments thereto.

Dr. Katju: Voting was postponed only on warrants case and summons case The rest of the clause was open for voting.

Mr. Chairman: First, there is amendment No. 339. Do any of the hon. Members who have moved their amendments want to press them?

Shri Sadhan Gupta: I want to press my amendment No. 168.

Mr. Chairman: Then, there is amendment No. 340 in the name of Pandit Thakur Das Bhargava. Does the hon. Member wants to pass his amendment?

Pandit Thakur Das Bhargava: I want to press all the amendments that I have moved, including 340.

Mr. Chairman: The question is:

In page 2, *for* clause 2, *substitute*:

"2. *Amendment of section 4, Act V of 1898.*—In section 4 of the principal Act.....

Pandit Thakur Das Bhargava: May I submit one word, before you put the question? So far as section 4 is concerned, so far as warrant case and summons cases are concerned, the voting on these should take place subsequently, and the Deputy-Speaker agreed to that yesterday. So, kindly do not put it to vote at this stage.

Mr. Chairman: So, the voting on amendment No. 340 is postponed. Then, there is amendment No. 167 in the name of Shri S. S. More.

Shri S. S. More: The system of mukhtiarship should be abolished. I did not get a chance to explain it, but that is what this amendment means.

Mr. Chairman: The question is:

In page 2, line 7, *after* "principal Act" *insert* "in clause (v) of sub-section (1) the words, brackets and figure 'and (2) any other person appointed with the permission of the Court to act in such proceeding' shall be omitted and"

The motion was negatived.

1 P.M.

Mr. Chairman: Amendment No. 15 of Shri Dabhi, postponed. Amendment

No. 36 postponed. Amendment No. 168, postponed. Amendment Nos. 339 and 35 are also postponed.

All the amendments except those relating to sub-clause (w) are before the House.

An Hon. Member: Except that what else is there?

Shri S. S. More: The Minister in charge should guide the Chair.

Mr. Chairman: All voting on clause 2 is now postponed. Let us take up clause 3.

Mr. Chairman: The question is that amendment No. 172 of Mr. More be accepted.

Shri U. M. Trivedi: Why not put all the amendments together?

Mr. Chairman: The question is:

In page 2, line 11, *before* the words "For sub-section" *insert*:

"(a) In section 9 of the principal Act, for the words 'State Government' wherever they occur, the words 'High Court' shall be substituted; and **(b)"**

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 14, *for* "State Government" *substitute* "High Court".

The motion was negatived.

Mr. Chairman: The question is:

In page 2, lines 16 to 22, *for* "if in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein" *substitute*:

"until such order is made, the Court of Session shall hold its sittings as heretofore."

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 18, *after* "witnesses" *insert* "or for any other reason".

The motion was negatived

Mr. Chairman: The question is:

In page 2, line 19, *for* "place" *substitute* "Taluka or Tehsil".

The motion was negatived

Mr. Chairman: The question is:

In page 2, line 19 and 20, *omit* "with the consent of the prosecution and the accused,"

The motion was negatived

Mr. Chairman: The question is:

In page 2, lines 19 and 20, *omit* "with the consent of the prosecution and the accused".

The motion was negatived.

Mr. Chairman: The question is:

In page 2, lines 19 and 20, *for* "with the consent of the prosecution and the accused" *substitute* "with the consent of the accused."

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 22, *add* at the end:

"But until such order is made, the Court of Sessions shall hold its sittings as heretofore."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Chairman: The question is:

In page 2, *for* clause 4, *substitute*:

"4. *Omission of section 14, Act V of 1898.*—Section 14 of the principal Act shall be omitted."

The motion was negatived.

Mr. Chairman: The question is:

In page 2, *for* clause 4, *substitute*:

"4. *Amendment of section 14, Act V of 1898.*—For sub-section (1) of section 14 of the principal Act, the following sub-section shall be substituted:—

'(1) The State Government, after obtaining the approval of the High Court, may confer upon any person, who holds or has held any judicial post under the Union or a State, or has for at least five years been an advocate of a High Court specified in the First Schedule of the Constitution of India, all or any of the powers conferred or conferable by or under the Court on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally or in any local area outside the presidency-towns.'"

The motion was negatived.

Mr. Chairman: The question is:

"In page 2, line 24, *after* the words "principal Act", *insert*:

"(a) after the words 'State Government' the words 'after consulting the High Court' shall be inserted; and (b)"

The motion was negatived.

Mr. Chairman: The question is:

In page 2, lines 26 and 27, *for* "in consultation with the High Court" *substitute* "in accordance with the opinion of the High Court"

The motion was negatived.

Mr. Chairman: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

Shri Amjad Ali (Goalpara-Garo Hills): Sir, I press my amendment No. 280.

Mr. Chairman: It is the same as 184.

The question is:

In page 2,—

(i) lines 39 to 41, *omit* "who has, for not less than ten years exercised as a Magistrate powers not inferior to those of a Magistrate of the first class"; and

(ii) *after* line 44 *add*:

"Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class."

The motion was adopted.

Mr. Chairman: The question is:

In page 2, *for clause 6, substitute*:

"6. *Omission of section 30 in Act V of 1898.*—Section 30 of the Principal Act shall be omitted."

The motion was negatived.

Mr. Chairman: The question is:

In page 2, lines 37 and 38, *for* "in consultation with" *substitute* "with the approval of"

The motion was negatived.

Mr. Chairman: The question is:

In page 2, line 44, *for* "seven years" *substitute* "five years"

The motion was negatived.

Mr. Chairman: The questiin is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Mr. Chairman: The question is:

In page 2, line 48, *omit* "of imprisonment for life or"

The motion was negatived.

Mr. Chairman: The question is:

In page 2, lines 48 and 49, *for* "of imprisonment for life or of imprisonment for a term exceeding ten years" *substitute* "imprisonment for a term exceeding seven years".

The motion was negatived.

Mr. Chairman: The question is:

In page 2,—

(i) line 46, *after* 'principal Act', *insert* '(a)'; and

(ii) *after* line 49, *add*:

"(b) to sub-section (3), the following proviso shall be added, namely—

'Provided that no Assistant Sessions Judge who has not worked as an Assistant Sessions Judge for four years shall pass a sentence of imprisonment exceeding seven years.' "

The motion was negatived.

Mr. Chairman: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Mr. Chairman: The question is:

In page 3, *for* lines 3 to 8, *substitute*:

"(i) in clause (a) for the words 'two years' the words 'three years' and for the words 'one thousand' the words 'two thousand' shall be substituted;

(ii) in clause (b) for the words 'six months' the words 'one year' and for the words 'two hundred' the words 'five hundred' shall be substituted;

(iii) in clause (c) for the words 'one month' the words 'three months' and for the word 'fifty' the words 'one hundred' shall be substituted."

The motion was negatived.

Mr. Chairman: The question is:

In page 3, *for* lines 3 to 6, *substitute*:

"(i) in clause (a)—

(a) the words 'including such solitary confinement as is authorised by law' shall be omitted;

(b) after the words 'one thousand' the words 'and five hundred' shall be inserted; and

(c) the word 'Whipping' shall be omitted;

(ii) in clause (b),—

(a) the words 'including such solitary confinement as is authorised by law' shall be omitted; and

(b) for the words 'two hundred' the words 'four hundred' shall be substituted."

The motion was negatived.

Mr. Chairman: The question is:

In page 3, line 4, *for* "two thousand" *substitute* "one thousand two hundred".

The motion was negatived.

Mr. Chairman: The question is:

In page 3, line 4, *add* at the end "and the word 'Whipping' shall be omitted"

The motion was negatived.

Mr. Chairman: The question is:

In page 3, line 6, *for* "five hundred" *substitute* "four hundred".

The motion was negatived.

Mr. Chairman: The question is:

In page 3, line 6, *for* "five hundred" *substitute* "two hundred and fifty".

The motion was negatived.

Mr. Chairman: The question is:

In page 3, lines 7 and 8, *for* "one hundred" *substitute* "seventy-five".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Mr. Chairman: The question is:

In page 3, *for* clause 9, *substitute*:

'9. *Amendment of section 34, Act V of 1898.*—In section 34 of the principal Act, the words "or of transportation for a term exceeding seven years" shall be omitted.'

The motion was negatived.

Mr. Chairman: The question is:

In page 3, *for* clause 9, *substitute*:

'9. *Amendment of section 34, Act V of 1898.*—In section 34 of the principal Act, for the words "seven years" the words "three years" shall be substituted.'

The motion was negatived.

Mr. Chairman: The question is:

"That clauses 9 and 10 stand part of the Bill."

The motion was adopted.

Clauses 9 and 10 were added to the Bill.

Mr. Chairman: The question is:

In page 3, line 18, *after* "panchayat" occurring for the first time *insert* "other than a judicial panchayat".

The motion was adopted.

Mr. Chairman: The question is:

In page 3, *for* clause 11, *substitute*:

'11. *Amendment of section 45, Act V of 1898.*—In sub-section (1) of section 45 of the principal Act, clause (e) shall be omitted.'

The motion was negatived.

Mr. Chairman: The question is:

"That clause 11, as amended, stand part of the Bill."

The motion was adopted.

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

Clause 12 was added to the Bill.

Mr. Chairman: The question is:

In page 3, *for* clause 13, *substitute*:

'13. *Amendment of section 47, Act V of 1898.*—In section 47 of the principal Act, for the words "the person residing in, or being in charge of" the words "the person, residing and being in charge of" shall be substituted.'

The motion was negatived.

Mr. Chairman: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clauses 14 and 15 were added to the Bill.

Clauses 16 to 19

Mr. Chairman: The time allotted is four hours. Those Members who want to move their amendments may please send the notice to the Table Office.

Shri U. M. Trivedi: My amendments are Nos. 417, 419, 422 and 423.

I wish to remind the House that at the initial stage and at the consideration stage, we have always taken for granted that the Criminal Procedure Code of ours is merely a procedural law, but in taking stock of it, we have not taken into consideration the provisions of section 107, which is a sort of preventive detention section. I am principally drawing the attention of the House to the provisions of this section. It would have been much better if we had look into this law from a different angle, and if the hon. Home Minister was agreeable to the

proposal that was mooted in the beginning that this aspect of the law may be looked at by a regularly appointed Law Commission. Unfortunately, that stage is past, and it is now being pushed down our throats and we have to swallow sections 107, 108, 109 and 110—mischievous sections that exist in the Criminal Procedure Code. There are other sections with which we will deal when the time comes which provide a sort of substantial provision of law and interfere with some salutary principles of justice that are obtainable all over the world. Section 107 is a section which has been often made use of, and more particularly, in these days for political purposes. In the days of the British also it was used for political purposes and all Congress workers who could not be rounded up for anything that they were doing were rounded up under section 107. The same thing is happening today and section 107 is used as an oppressive machinery for putting down the ideas of people or the assembly that is being formed for the purpose of fighting the Government and challenging their authority to continue to rule this State of ours. I give you an illustration which happened very recently. During the last general elections, not very far from this place, that is, at Hindaun, it so happened that just one day before the election was to take place in a particular sub-division or *tehsil*, all the workers of a particular party were arrested and put behind the bars. Unfortunately, it was in those areas where there were no newspapers in which this news could percolate. I would request the Members of the House to read the judgment delivered by the Jaipur Election Tribunal in which even one of the Union Ministers has been castigated for indulging in such activities. It is for this reason that I have tabled my amendment, which is to the effect that even if you want to retain this section, it should be provided that during the election days,—fifteen days before the election is to take place—the provisions of section 107 should not be brought into force, except on the sanction being obtained from the District and Sessions Judge to the effect that there is some substance in the allegation which is being made. This oppressive portion of the section must go away, and it is for that reason that I have tabled my amendment. Any desire to put down political thinking, to put down free thinking, should not be indulged in by the government which may be in power. If we cannot do away with the whole provision in 107, this much at least may be granted to the public and to the parties contesting elections, that is, that they shall not be hampered within their rights to approach the electorate, in this oppressive manner.

There is another provision in section 145 and this also has not acted to the advantage of the public. On the contrary those persons who are better able to approach the executive officers of the Government, generally the Magistrates, take an upper hand in it and not only forcibly dispossess a person carrying on with this litigation, but also get a sort of decision in their favour. Ignorant people do not know the law, go on fighting one way or the other, carry on some fruitless litigation and at the end of it find that the provisions of the Limitation Act are standing against them so that all the remedies are completely wiped out by the peculiar provisions of the Limitation Act. A desirable amendment has been made to this provision by a subsequent provision in clause 19, that is to section 146, but there again there is something peculiar, that is, after having passed on the powers of making a decision to the Civil Court, the Civil Court is a sort of a dummy. It takes all the evidence and comes to a decision, but then again it is left to the Magistrate to pass an order. I say that whenever a civil right is to be decided, let the Civil Court give its own decision. Why should that judgment come back again and why should there be this lengthy procedure?. Our Home Minister has been saying that he wanted to provide a speedy trial. Will it be a speedy trial if you make a reference first, and after the reference is

[Shri U. M. Trivedi]

made, send back the record and so on? All this will take time because evidence will be necessary and it has to be taken.

Mr. Chairman: It is only on the question of possession; it is on the fact of possession only.

Shri U. M. Trivedi: It is not on the fact of possession. The provision says—

> "The Civil Court shall, as far as may be practicable, within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding together with the record of the proceeding to the Magistrate by whom the reference was made: and the Magistrate shall, on receipt thereof, proceed to dispose of the proceeding under section 145 in conformity with the decision of the Civil Court."

Once it decides, why are we again handicapped by this decision, that no appeal shall lie from any finding of the Civil Court? Why should that Civil Court be given higher powers unnecessarily? Because you do not want that the Magistrate's order must not be interfered with; ultimately it is the Magistrate's order which we want to keep intact. I submit that once it goes to the Civil Court, and if the decision is of the Civil Court, allow the law to take its own course. If you fear, if the Government fears, if the Magistrate fears, if the executive officers fear that there is a likelihood of breach of peace, then attach their property by all means, but allow the law to take its own course. If it goes to the Civil Court, let the Civil Court's judgment be amenable to all the appeals which will follow from any other order that the Civil Court will be entitled to pass within its competent jurisdiction. We will presume that only such Civil Courts will decide the case as have competent jurisdiction over that particular property, and once it goes before that Civil Court, if there is a District Court to hear an appeal from his order, let that appeal be heard.

Pandit Thakur Das Bhargava: Does the law provide an appeal?

Shri U. M. Trivedi: My learned friend obviously refers to section 9 of the Specific Relief Act. It is true that no appeal is provided, but then the remedy is also provided for and you can pursue the other remedy notwithstanding the decision under the section.

Why should you have a double jeopardy and double litigation. I say I want to avoid a multiplicity of proceedings. It is very desirable to have an end of litigation. Our ordinary principle of law is that litigation must be ended as soon as possible. It should not be continued from time to time, and the man must not be allowed to run to two different sources of litigation. That is why, when everything is decided, if there is a section which interferes with the decision and if there is some Civil Court of such a nature as not to take into consideration the evidence that may be on record and still perversely decide on a particular thing, why should there not be an appeal? If it is provided for,—that is, instead of the records being sent back to the Magistrate to pronounce the judgment, if it is left in the hands of the Civil Court to pronounce the judgment itself and that judgment will be subject to all such appeals as can be filed from that particular Court to the highest Court in that State—then, that would be something, and that will end litigation for all purposes. In such cases, the judgment regarding possession will be the final judgment.

One more point remains. It is the question of possession. It is my very humble submission to the House that the question of possession should not be left to be determined as provided by sub-section (6) of section 145 of the

principal Act, by the Magistrate. He may no doubt attach. He may make reference to a Civil Court and subject to the amendment that I have suggested, let the Civil Court decide the question of possession, but under no circumstances it should be left in the hands of the Magistrate to decide who had the possession and then to restore the possession to the party in whose possession he wants it to be restored. That is the general principle. The mischief is caused only on account of that particular power which the Magistrate exercises over such valuable rights regarding properties. If that right is curtailed, the provision under section 145 may still remain a salutary principle of law for all purposes. I would therefore humbly submit that if this amendment is taken into consideration, then, simultaneously with it, the section of the Limitation Act which extinguishes the right of the party for determination for all times to come and the provision that if a suit is not filed within one year this poor man will lose all his property for all time to come, must also be amended.

Mr. Chairman: I may announce that an intention has been expressed by the Members to move the following amendments subject to their being admissible:

Amendment Nos. 358 and 417 to clause 16, amendment No. 203 to new clause 16A, amendment Nos. 285, 99, 360, 209 to clause 17, amendment No. 419 to clause 18, and amendment Nos. 286, 362, 363, 364, 422, 421, 423, 365 and 424 to clause 19.

Clause 16

Shri Sadhan Gupta: I beg to move:

In page 3, *after* line 40, *add*:

"Provided that if the place, where the breach of peace or disturbance or wrongful act is apprehended, is outside the local limits of such Magistrate, proceedings under this section shall not be taken before him unless the permission of the Sessions Judge empowered to hear appeals from the order of such Magistrate has been obtained by an application made in this behalf before such Sessions Judge."

Shri U. M. Trivedi: I beg to move:

In page 3, *after* line 40, *add*:

"Provided however that no proceedings under this section shall be taken by any Magistrate during the fifteen days immediately before any election taking place in that district unless the case is reported to the Sessions Judge of the district and his sanction to such proceedings has been obtained in writing beforehand."

New Clause 16A

Shri S. V. L. Narasimham (Guntur): I beg to move:

In page 3, *after* line 40, *insert*:

"16A. *Omission of sections 108 and 109 in Act V of 1898.*—Sections 108 and 109 of the principal Act shall be omitted."

Clause 17

Shri R. D. Misra (Bulandshahr Distt.): I beg to move:

In page 3, *for* clause 17, *substitute*:

"17. *Amendment of section 117, Act V of 1898.*—Sub-section (4) of section 117 of the principal Act shall be omitted."

Pandit Thakur Das Bhargava: I beg to move:

In page 3, line 46, *for* "summons cases" *substitute* "warrant cases".

Shri Sadhan Gupta: I beg to move:

In page 3,

(i) line 46, for "summons cases" substitute "warrant-cases except that no charge need be framed;"

[Shri Sadhan Gupta]

(ii) *after* line 46, *add*:

"Provided that nothing contained in this section shall prejudice the right of the party proceeded against to postpone the cross-examination or further cross-examination of the witnesses produced against him until the examination-in-chief of all such witnesses has been concluded."

Shri S. V. L. Narasimham: I beg to move:

In page 3,

(i) in line 41, *before* "For sub-section" *insert* "(a)"; and

(ii) *after* line 46, *insert*:

"(b) to section 117 of the principal Act, the following proviso shall be added, namely:

'Provided that no person shall be directed to furnish security for good behaviour or breach of peace on facts on which there has been a prior proceeding of a similar nature.'"

Clause 18

Shri U. M. Trivedi: I beg to move:

In page 4, *after* line 28, *insert*:

"Provided also that any order of the Magistrate restoring possession to any party to the proceeding shall not extinguish the right of any of the parties under any of the provisions of the Indian Limitation Act, 1908 (IX of 1908)."

Clause 19

Shri R. D. Misra: I beg to move:

In page 4, *for* lines 34 to 48 *substitute*:

"(I) If the Magistrate is of opinion that he is unable to decide as to which party is entitled to possession of the subject of dispute, he shall decide as to which party was, or shall under the first proviso to sub-section (4) of section 145 be treated as being, in such possession of the said subject and he shall issue an order declaring it to remain in possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4) of section 145, he may restore to possession the party forcibly and wrongfully dispossessed and if he finds that it is necessary for keeping the peace that the other party should execute a bond for keeping the peace, with or without sureties he shall make an order accordingly, and further he shall draw up a statement of the facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any or which of the parties was entitled to possession and was in actual possession of the subject in dispute at the date of order passed under sub-section (1) of section 145 and if any party was forcibly and wrongfully dispossessed within two months next before the date of such order, and shall direct the parties to appear before the Civil Court on a date fixed by him."

Shri U. S. Dube (Basti Distt.-North): I beg to move:

(i) In page 4, lines 39 to 42, *for* "to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in sub-section (4) of section 145," *substitute*:

"to determine the rights of the parties therein or the person entitled to possession thereof;"

(ii) In page 5, line 5, *omit* "of possession";

(iii) In page 5, line 7, *for* "three months" *substitute* "six months".

Shri U. M. Trivedi: I beg to move:

In page 5,

(i) line 8, *for* "and transmit its;" and

(ii) *for* lines 9 to 12 *substitute*:

"and pronounce its judgment regarding possession to be given to any of the parties and such order shall be final subject to any appeal which may lie to any appellate court to which such Civil Court is subordinate."

Shri Amjad Ali: I beg to move:

In page 5, line 8, *omit* "conclude the inquiry and".

Shri U. M. Trivedi: I beg to move:

In page 5, *omit* lines 16 to 21.

Shri U. S. Dubc: I beg to move:

In page 5, *for* lines 16 to 21, *substitute*:

"(ID) An appeal shall lie against the order of the Magistrate passed under sub-section (IB) to the court to which appeals ordinarily lie against the order of the Civil Court deciding the reference."

Shri Venkataraman (Tanjore): I beg to move:

In page 5, *for* lines 19 to 21, *substitute*:

"(IE) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction."

Mr. Chairman: All these amendments are now before the House subject to their being admissible under the rules.

Shri Venkataraman: The amendments which have been introduced to sections 145, 146 and 147 by this amending Bill seek to give, as far as possible, final decision on the question of possession in short proceedings without much cumbrous waste of time. But if you actually analyse these sections, these amended provisions, I am not quite sure that the intention is carried out. So far as section 145 is concerned, the law as it stands provides for a summary examination by the Magistrate of the relevant claims of parties with regard to the possession of property and allows him to come to a conclusion if he can. If, on the evidence placed before him, the Magistrate finds that he can, without difficulty, come to the conclusion as to who was in possession at a particular time, then the law allows him to come to that decision and to see that the property is restored to the person who is dispossessed within two months of the date.

Now, the amendment which the Joint Committee has suggested calls upon the Magistrate to receive also evidence by way of affidavits. I am not at all impressed with the evidence tendered by affidavits. Even when it is not possible to get at the truth when a person is subject to cross-examination, it should be more so when a person is asked to tender only evidence through affidavits. Once you allow the Court to receive evidence by affidavit, then it may be that both the parties will flood the Court with any number of affidavits. So, ultimately, either the Magistrate will not have the time to go through all these affidavits or he may be induced to come to the rather easy solution on counting them and saying that so many affidavits have been filed on the one side as against so many hundreds of affidavits have been filed on the other, and therefore, the weight of the paper, at least on which these affidavits are tendered, is greater on the one side than on the other. I am not at all happy about this provision, but I find from the Dissenting Minutes of the report that not one of them except Shri Syed Ahmed has said that the receipt of evidence by a Magistrate through affidavits is not satisfactory. So, I must take it that the collective wisdom of the Joint Committee is in favour of receiving these affidavits as evidence in an enquiry under Section 145. I must record my emphatic protest against this sort of evidence being admitted in Courts. I think that evidence from affidavits is wholly unsatisfactory. I am afraid that

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the enquiry under section 145 by receipt of affidavits is only likely to confuse and perhaps prolong the enquiry than it might under the normal circumstanees.

So far as section 146 is concerned, I am entirely in favour of the Bill as it was introduced. The Bill, as it was introduced, said that if the Magistrate is not able to come to the conclusion or come to a decision as to the person who was in possession, then he attaches the property and directs the parties to go to a Civil Court. That is the most sensible thing to do, because it is a matter relating to civil rights of parties, and the duty of the Criminal Court is only to see that there is no breach of the peace. The Criminal Court ought not to take upon itself the duty of saying who is the person in possession. The Criminal Court is only there to see that there is no breach of the peace. The object would be easily served by the Criminal Court not going into the disputed evidence as to possession, but by merely attaching it and preventing both the parties from entering into that. I know that during the discussion of this Bill, before it was referred to the Joint Committee, considerable apprehension was expressed in this House as well as in the other House, that if the provision stood as it was, probably any person who merely wants to create a mischief might bring about a breach of the peace or attempt to bring about a breach of the peace and thereby deprive the person who is in possession of the property of such possession and see that a Court attaches the property. That is an apprehension which I think is justifiable. But for that it is not right in my opinion to make the change which has been made by the Joint Committee, namely, to make the procedure more cumbrous than it is. Under section 146 he merely attaches and then he leaves the parties to go to the Civil Court and abide by its decision. What the Joint Committee has done is to recommend to this House that this disputed question of possession should be referred by the Magistrate's Court to a Civil Court of competent jurisdiction, and the question referred will only be that particular issue, namely the possession. And the finding will come back to the Magistrate and will be embodied in his decision.

Let me look at this from one point of view, namely multiplicity of proceedings. Even as clause 19 stands there is a proviso that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof. Therefore, even after the Civil Court has given its finding, the party feeling aggrieved may go to the court. And the court to which he will have to go is the very court to which reference has been made previously by the Magistrate. Is it right to refer to the same court the question which has been dealt with by that court in some form or another and on which some impressions have been formed?

Shri Tek Chand (Ambala-Simla): It is not the same question.

Shri Venkataraman: I will come to that, whether it is the same question or not.

Pandit Thakur Das Bhargava: Ninty per cent. of it is the same.

Shri Venkataraman: In a suit for temporary or permanent injunction the question is the same notwithstanding the way we start. Here also it is a question of title to the property and possession is based on such title. Technically it may be said it is not the same question, but in fact and in substance it is the same question. And to go to the court which is, I will not say, prejudiced, but which has come to a prior conclusion on the facts before it, will not be in the very best interests of justice. I am not at all happy about this reference. I would have preferred the section to have remained as it was in

the original Bill that was introduced by the hon. the Home Minister.

Pandit Thakur Das Bhargava: What is the difference between the provisions of the Bill as introduced and the old section 146, except for affidavits?

Shri Venkataraman: There is no difference at all. In fact the old section 146 merely says that when the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver; and then, in the event of a receiver being subsequently appointed by any Civil Court, possession shall be made over to him. Therefore, it is the Civil Court which will have to decide.

I have very serious objection to the proviso as it stands. The proviso says that only a suit for title can be brought by the aggrieved party after a decision has been given by the Magistrate. The Magistrate can enquire into and restore possession of the party dispossessed only if he has been dispossessed two months before the date. In section 145 you will find that if the Magistrate finds that the party has been dispossessed within two months of the date, he may restore possession. Under the Specific Relief Act a person who has been dispossessed can always sue for being put back into possession. Section 9 of the Specific Relief Act gives him the right to sue for possession without suing for title. In the large majority of cases of holders of property in the mofussil, in the villages, you will find that they have no title deeds. Very often as members of a joint Hindu family they would have inherited, on an oral partition, certain property. And when the possession of that property is disturbed, they will establish in a court their possession. And the other party who wants to displace them, not being able to prove a proper title to that property, will not succeed.

What we have done under clause 19 is, if a person has been dispossessed more than two months before the date of the order, he is prevented from suing for possession; he will have to sue on the basis of title. And if he is to sue on the basis of title, then he will find it difficult to establish his title in the light of the way in which property is held in this country. You are taking away a substantive right granted to a citizen in this country under section 9 of the Specific Relief Act by saying that once a possession has been given under section 146 as amended by clause 19, he can sue not on the basis of possession but on the basis of title only.

Let us examine the position in sections 145 and 147 where a Magistrate has given a decision under section 145 saying that he thinks that "X" is entitled to possession of the property. Then that decision is subject to a decision by the Civil Court. If the Civil Court comes to a different conclusion, either on a suit for possession under section 9 of the Specific Relief Act or on a suit for possession based on title, in either of these cases the decision of the Civil Court would prevail, and the person who is entitled to possession on the basis of the decision of the Civil Court will be put into possession.

Now, take section 147 in respect of easement rights. The District Magistrate makes his enquiry and comes to some final conclusion. Under clause (4) of section 147 an order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction. This also would mean that a court which gives its decision on the basis of section 9 of the Specific Relief Act as well as on the basis of title would be entitled to have his rights established in supersession of the order of the Magistrate. The proviso as it stands in clause 19 would show that in a case in which a decision has been given by a Magistrate under section 146 as amended, the person dispossessed can succeed not on the basis of possession but only on the basis of title. This is a serious inroad on

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the rights which have been guaranteed to the citizen, a substantive right which has been given to the citizen under the ordinary law.

I do not think it was intended. It may be argued that the fact that the Civil Court has once looked into this matter and decided the question of possession may be taken to debar another suit in respect of the same matter on the basis of possession. But these two proceedings are entirely different. You know very well in a suit under section 9 of the Specific Relief Act there is a plaint, a written statement, issues are framed, evidence is let in. In a case under a Magistrate in respect of a small point the way in which the trial is held, evidence is led and the way in which the decision is arrived at would be very different from a decision taken in a Civil Court.

Secondly, in the case of a finding under this amended section, even the Civil Judge who enquires into it can look into possession only for a period of two months prior to the date of the order. He will have to come to a finding as to who was in possession two months before; whereas under the Specific Relief Act even if he was in possession before two months he would be entitled to relief.

I have therefore suggested an amendment (No. 424) to delete the existing proviso and substitute in its place the words that "and order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction." If Government is agreeable to this amendment, I am willing to drop the words "Civil Court" and insert the words "any Court of competent jurisdiction" instead of restricting it only to a Civil court of competent jurisdiction. There may be other courts, revenue courts, which may have the power to decide the question of possession. Therefore, I do not want to make it restrictive in its application. It may be that a revenue court may be entitled to give a decision on the question of possession.

Mr. Chairman: When it is said that the proviso gives power to a Civil Court to decide as regards possession, it is suggested that it is only for the purpose of the dispute regarding the possession of the property. If subsequently it is found by a Civil Court that possession really belongs to another person.

Shri Venkataraman: There are two suits possible. One is suit based on possession for possession; the other is suit based on title for possession. In a suit based on possession for possession of that property.....

Mr. Chairman: This is exactly the matter on which the Magistrate is enquiring: it is regarding the possession of the property, nothing more.

Shri Venkataraman: But the proviso debars me from filing a suit under Section 9 of the Specific Relief Act for possession of the property based on my previous continued possession.

Mr. Chairman: You can file a suit for establishing your possession.

Shri Venkataraman: That is why I say that in the majority of cases in the mofussil, title to the property is well established; it is all based on possession. Very few people have title deeds. Their claim to continue in possession of the property is based on the fact of their possession. In the case of Joint Hindu Families, partitions take place orally on the basis of continued possession of the property. This is a summary trial: a regular suit appears to be barred.

Mr. Chairman: That is what I am asking—can a Criminal Court bar a civil suit?

Shri Venkataraman: Then the proviso is absurd and should not be there at all. If it had not been there then we can say that a suit on possession as well as a suit on title may be instituted.

In this matter I feel it is better to follow the previous legislation. The provision sought to be made in section 147 is: "the Order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction." Now, if as you say there is no need for a clause of this kind, the Civil Court's rights will, I would say, be preserved. Then Section 147(4) would not be necessary. Then Section 145(6) says: "He shall issue an order declaring such party to be entitled to such possession thereof until evicted therefrom in due course of law." In the case of 147 an exception to the effect that an order of the Civil Court shall be final in supersession of an order of the Magistrate's Court appears to be necessary.

Pandit Thakur Das Bhargava: 146(1) also gives the same view as you are propounding.

Shri Venkataraman: There he may attach it until the competent Court has decided the rights of parties thereto or the persons entitled to possession thereof.

Therefore, my submission is that this proviso should go and the amendment which I have suggested should be accepted. As I have said, I am prepared to drop the word "Civil" because there may be other courts of competent jurisdiction which may be entitled to give relief in regard to possession.

Shri S. S. More: Sir, I will first refer to the amendment of Section 107. The amendment proposed by this clause 16 is a retrograde amendment. It is taking us back to the provision in the Criminal Procedure Code of 1882. My question is: are we progressing, or are we going back? I do not wish to quote from the Codes previous to 1882. I shall make a reference to the Code of 1882.

According to the provisions of the 1882 Act the place where the breach was apprehended was required to be within the jurisdiction of the Magistrate or the person. So, according to that Section the Magistrate described therein was competent to issue a summons a prohibitory order, if the place was within his jurisdiction, where the breach was apprehended, or the person was within his jurisdiction. According to that a Magistrate having a territorial jurisdiction, if the place where the breach was apprehended was within his jurisdiction and some persons coming, say either from Assam or Travancore-Cochin were likely to offer *satyagraha* at that particular place within the jurisdiction of that Magistrate, then he had a right to issue a sort of summons on any person coming from any part of the country. In 1888 the Britisher realised the absurdity of that particular provision and he effected a change. He gave this sort of privilege only to the Presidency Magistrate or a District Magistrate, but the other Sub-Divisional Magistrates or Magistrates of the First Class were robbed of these special sweeping powers.

Now, Sir, this amending Bill reverts back to the provisions of 1882. Under this provision, if it is enacted, what will happen? The place where a breach is apprehended might be within the jurisdiction of Magistrate of Uttar Pradesh. Some agrarian trouble, or some other trouble, might be there and persons belonging to a particular party which has started the struggle for legitimate reasons might be flocking to that place from different places. Either the Magistrate where the *satyagraha* is offered, a proper and legitimate agitation is being carried on in a very peaceful manner, will issue summons and call upon persons from the different parts coming to that place, or intending to come to that place.....

Mr. Chairman: I have to announce that out of the amendments that have been moved, amendment No. 203 suggesting insertion of a new clause 16A is out of order.

Shri S. S. More: My contention is this. Is it desirable that we should

[Shri S. S. More]

give such powers. I know, Sir, that the regime of the Britisher has gone, and the so-called democratic Government has come into office. But, in spite of this democratic Government in office, there are so many grievances which people still have. People might agitate for the removal of these grievances in the right Gandhian manner. *Satyagraha* is one of the instruments of Gandhism which has been placed in the hands of the people to get some of their grievances removed. For instance, there is some struggle about irrigation dues in the U.P. A particular party which is wedded to peaceful agitation takes up that cause. That party has branches all over the country. As the cause of the entire agrarian community will be the same, persons belonging to the agricultural sections from different parts of the country, in order to demonstrate their economic solidarity, their class unity, might flock to this place in order to help the peasants to get their grievances removed. That sort of give and take, that sort of participation in the common struggle is desirable and it is a development which we should anticipate and encourage. This section will be used by the executive as an instrument to repress and stop such a struggle. My submission, is—I need not waste many words on this—that it is extremely retrograde. It smacks of the British bureaucratic mentality. It looks like this. The Government is bringing about forces of repression in order to undo the peaceful agitation of the people which are likely to be started in different corners of the country.

Shri Nambiar (Mayuram): Government are going back to the days of the British: still worse.

Mr. Chairman: Of course, it is quite relevant. But I may observe that the main section is there already. It is only a modification suggested in that section.

Shri S. S. More: I am referring to the modification. The modification takes us back. I do not say that a section is being newly introduced. What is being done? The section is there. Improvements which were effected in section 1882 by amendment of 1888 are being set aside and removed by this amendment with the result that we are again reduced back to the position of law which prevailed in 1882. In Volume I of Chattaley's Criminal Procedure Code, the original Section of the Code of 1882 is given *in extenso*. I am confining my remarks to that. I do not want to take the time of the House by reading this section from the Code of 1882. I only referred to the section without reading it. We are reduced to that position. Is our march in the direction of something new or are we marching towards the old and antiquated, something bureaucratic which was undesirable, which was an attempt on the part of the Britisher to stifle all our agitation for removal of our legitimate grievances. This reactionary amendment is very important and significant to show unmistakably in what way this present Government is going.

There is another matter. Take, for instance, amendment to section 117. Under this amendment, under section 117, all the procedure will be the procedure for summons cases. Take, for instance, section 108. It refers to seditious matter—security for good behaviour from persons disseminating seditious matter. Section 124A has gone. But, this is also a section which refers to the offence of sedition. There will not be a direct prosecution for the offence of sedition in the sense in which the Britisher interpret the word "sedition." But, the Magistrates having these powers under this particular provision, accept the word 'sedition' as interpreted by the British Government which meant any criticism of the present Government so as to bring it into contempt, and proceed any agitation for the purpose of peaceful removal of grievances. Even such agitation will

be treated as sedition. This executive regime will come upon those who are out to peacefully criticise the Government, to point out its blemishes, and acts of commission and omission which are doing the greatest harm to the economic and social life of the country and even such peaceful agitation will be coming under the guillotine of this section.

Shri Tek Chand: Do not commit breach of the peace.

Shri Nambiar: It is not a case of committing. It is a question of one's interpretation.

Shri S. S. More: My hon. friend advises me not to commit a breach of the peace. Who is to decide whether a breach of the peace is committed or not? My hon. friend must have been knowing the various incidents, the hundred and one or thousand and one incidents in the course of the national struggle. Even the most peaceful agitation was held to be conducive to breach of the peace by the bureaucratic bosses in the country and people were held up for that. My submission is that some people might say, we are in seats of office and there is no necessity for a change, because they run the risk of losing the saddle and the horse too. But, those who are in opposition, who are fighting for the cause of the people. It will not be possible even for the Prime Minister to say that all the grievances of the people have been entirely removed under his beneficient rule. We agitate in our own way. Even the Congress people are agitating in their own way. Therefore, if we peacefully criticise this Government, it will be said that it is sedition, and some order will be passed. I do not mind the order. What is the procedure which is likely to be followed? The summons case procedure. Under the original section 117, the procedure to be followed in proceedings under section 107 was summons case procedure, but for other sections 108, 109, 110, the procedure that had to be followed was the warrant case procedure. Section 108 refers to seditious matter. Section 109 refers to vagrants and persons who have no ostensible means of living. It is admitted even by the Government that unemployment is going up. If there is continuous unemployment, naturally, the purchasing power of the people will go down and you will find growing hordes of people who are unemployed. They will not be in a position to have any ostensible means of livelihood. Such persons are the miserable sufferers from the economic policy pursued by this Government and the Government, whose economic policy is the mother of all these children i.e. unemployment, poverty etc. will be punishing persons for being without any means of livelihood. They are not given the means of livelihood and will further not be receiving any fair trial. The summons case procedure will be there. I feel that the Government may be very keen on suppressing the seething discontent in the burning hearts of the unemployed. This is not the way by which you can do it. You will have to remove the causes of unemployment. You will have to give every young man out of work sufficient employment. Then only can this section be said to be removed from the statute book in effect, though not as a matter of fact.

I would go to make a further submission. We fear, with some justification, that these provisions, in the play of party politics, are likely to be used by the executive officers against those who happen to be opponents of the party in power.

[MR. DEPUTY-SPEAKER *in the Chair*]

I am not saying this with reference to the Congress Party. Under democracy, the Congress may be in power today but tomorrow it may be out of power. So many events predicting such a change have happened. What has happened in Travancore-Cochin? The Congress is displaced from power. We hope what happened in

[Shri S. S. More]

Travancore-Cochin will be spread over different parts of the country. I am not going to take a pessimistic view of the matter and say that you will be all along in the saddle till eternity. I believe in the dynamics of democracy.

Some of the civil servants of the Government try to please their masters whosoever they may be. They will try to please even the Communists if they come into power. Such is the adaptability of our civil servants. They will try to please their masters by issuing processes under these particular provisions on the political opponents of the party in power. These sections are likely to be more used for smashing opposition, for stiffing criticism and for the purpose of doing the greatest disservice to the cause of democracy which must tolerate free and frank criticism.

Shri Nambiar: Why should they bring it?

2 P.M.

Shri S. S. More: Mahatma Gandhi said that criticism is like a broom which will clean things. The party in power, inspite of their party discipline, due to so many other considerations, their own critics, who frankly and fearlessly point out the blemishes and defects in their own administration. It is the noble role of the Opposition, the role which the Congress was playing for more than sixty years, to criticise those who are in office. But we fear that these sections, these reactionary sections, these retrograde provisions which were hammered out by the Britishers for their own imperial purposes, will be utilised against the Opposition Members, and they will be used as instruments of harassment, instruments of persecution for smashing the Opposition in an indirect manner where the party in power cannot smash it at the polls.

Then, I will come to clauses 18, 19 and 20. I was one of the Members of the Select Committee, and I am very glad to say—and this will please even the Home Minister—that as far as these provisions are concerned, which have been made by the Select Committee, I stand by these provisions. I feel that the original proposal in the Bill itself was undesirable, was something which was open to very serious criticism, but the amendments which have been made by the Select Committee are very reasonable and will be effective enough to do justice, to hold the scales even between the parties who are accused to disturb the peace of the country.

Now, Mr. Venkataraman who preceded me was pleased to say that the proviso will come in the way of those who are intending to file a suit under section 9 of the Specific Relief Act. The proviso reads:

> "Provided that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof."

I do not feel that this proviso will come in the way of those who are intending to file a suit under section 9 of the Specific Relief Act. There is no exclusion, no specific exclusion. It is only by implication one might say that since this proviso permits suits for establishing title, and argue that other suits which are going to agitate points of possession, though mixed with questions of title, are also automatically barred. I feel that I am not prepared to take that sort of view of this particular proviso. But, for the purpose of clearing doubt, I do not want to make it the subject of judicial interpretation by leaving it so vague. If there are Members who have raised this point in this House, it is quite possible that Members from the Bar will be raising such points when the matters go before the judicial authority. So,

I would request the Minister in charge of this Bill to find out a suitable amendment so that all doubts on this point will be sufficiently cleared. This is the only point I want to say as far as these provisions are concerned. I do appreciate the reasonableness of these clauses but I want to direct your attention to one point.

Sub-clause (1A) of clause 19 reads:

> "On receipt of any such reference, the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively....."

These particular words "take such further evidence" are unnecessary. If speed and expedition is our object, then according to some of the previous clauses, the Magistrate takes all the evidence, the documentary evidence, and the affidavits which the parties want to produce before him. And then after collecting all that evidence he is not very sure about the legal position, he makes a reference to the Civil Court. My submission is that the Civil Court should be permitted to proceed to its decision on the evidence which has been collected or filed before the Magistrate, because these particular words "such further evidence as may be produced by the parties respectively" will open the doors very wide for the parties to produce additional evidence. This clause does not say "as he might deem necessary". I can even understand that. The Civil Court might say that some further evidence is necessary to clarify a particular point in dispute which is shrouded in suspicion. (*Interruption.*) But the Civil Judge will be in difficulty because according to this first clause the parties have a right to give further evidence; then the time limit will come in. That means the parties will make it difficult for him to finish the reference or send it back to the Magistrate within that particular period.

Shri Tek Chand: If practicable.

Shri S. S. More: So, it might be left to the discretion of the Civil Judge. If he deems it necessary, some evidence might be given. But here, "such further evidence as may be produced by the parties respectively", without any restrictive clause will be undesirable. And when we are giving freedom to the parties to go to a Civil Court either under section 9 of the Specific Relief Act or other provisions for agitating this title, I think that sort of restriction will not do any harm to any party, because either of the parties will be unaffected by this particular provision.

I think my suggestion will carry some influence with the Home Minister who is in the habit of taking me not very seriously. With these words, I close.

Shri Tek Chand: I heard the speech of the last speaker with very great respect. So far as the earlier portion of his speech is concerned, that portion which he devoted towards criticism of clause 16, I am not at all *ad idem* with him. The only change that has been now brought about in clause 16 is that the right to proceed against a person for committing a breach of the peace is conferred upon a Magistrate within whose territorial jurisdiction is, or within whose jurisdiction the place where the breach of peace or disturbance is apprehended is located. What is wrong about it?

If a person who is determined to commit a breach of the peace announced from the house tops and says: "I am restrained here in this particular locality. I propose to go to another locality, within the jurisdiction of a different Magistrate, with a *morcha*, with a procession, and there I intend to commit a breach of the peace", in logic I put it to my hon. colleague who spoke last that, if you pay due homage to the law that a person may be apprehended against whom there is an apprehension of the breach of the peace, it makes no difference in principle

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whether he is to be apprehended at the place where he announces his intention or at the place where he is going to commit that breach of the peace.

Shri V. P. Nayar (Chirayinkil): Is it necessary for action under this section that he must declare that he intends to commit a breach of the peace also?

Shri Tek Chand: If there is convincing evidence whereby it is possible for a fairminded Magistrate to conclude.....

An Hon. Member: Fair-minded.

Shri V. P. Nayar (Chirayinkil): Underline the word "fairminded".

Shri Tek Chand:..... that a particular person is about to proceed to another place in order to commit a breach of the peace, is it not better to nip the mischief in the bud and say: . "The intentions that you intend to carry out at a different place you will not be permitted to carry out, and you will be stopped from carrying out those intentions here". (*Interruption*).

Shri Nambiar: Very nice logic.

Shri Tek Chand: As I gather from my friends the interruptors they virtually say, "so long as I profess that I propose to commit a breach of the peace not within the territorial limits of this Magistrate, I should be considered safe. Let me preach, let me make speeches so long as I take care to say that I will not commit a breach of the peace in Delhi, but I will commit it in Hyderabad. Please permit me to carry on, doing so, and I should remain inviolate from the clutches of the Magisterial jurisdiction of Delhi. But you are at liberty to catch me only and if and when you find me in Hyderabad". The result therefore is you keep on collecting all your ammunition here, you keep on collecting all the forces with a view to break the peace, but you want a certain immunity. I sumbit that that lacuna in the law has been very properly filled by this clause, as it ought to be.

Shri Nambiar: Lacuna in the law which was made by the Britishers has been met by the Congress Government. That is the point.

Mr. Deputy-Speaker: Because there is freedom now, according to the hon. Member.

Shri S. S. More: Freedom may be reactionary also.

Shri Nambiar: After 150 years of British rule, now our friends have found a lacuna.

Mr. Deputy-Speaker: Order, order. Let the hon. Member go on.

Shri Tek Chand: I wish my hon. friend Shri Nambiar remembers that with improved means of communication and developments of transport, mischievous tendencies have got a bigger scope. Therefore, those people who are mischievously minded—I do not say, Shri Nambiar.....

Shri Nambiar: It may be Shri Tek Chand also.

Shri Tek Chand: Or may be myself. If the mischief of those who are mischievously minded can be discovered, and discovered at the place where the person is, it is meet and proper that the Magistrate of that area should have jurisdiction.

Now, I come to clause 18. My hon. friend Shri Venkataraman had some objection to this clause on the ground that he thought that evidence through affidavits was a flop. I am afraid I have to join issue there. He has not, to my humble way of thinking, appreciated the true import of the provisions of section 145. The law, as it was, contemplated putting in written statements only. Under section 145 (1), written statements have to be put in before a Magistrate. Later on, the Magistrate calls for evidence.

What the present clause provides is that not only written statements, but in addition, certain documents also can be put in, that certain affidavits also can be put in. They do not conclude the matter. That is not the end of the material for purposes of inquiry. After that has been done, the Magistrate, under new sub-section (4) hears the party and then concludes the inquiry. At the inquiry stage, the Magistrate is empowered to hear the parties. Not only that. The first proviso provides that it is open to the Magistrate, if he so thinks fit, to summon and examine any person whose affidavit has been put in. If it is necessary to contradict the deponent of an affidavit, he may be sent for. If the information supplied by the deponent in his affidavit is inadequate, he may be called upon to supplement the information that he has given in the affidavit. After this has been done, and the Magistrate finds that there is sufficient material to conclude the inquiry, he will come to that conclusion. But where he finds that there is not sufficient material, or that the material that is before him is not enough to justify conclusion one way or the other, then, and it is only then, that the new sub-section 1A in clause 19 functions. Then, the matter is referred to the Civil Court, and the Civil Court's decision is not going to be circumscribed by the documents or the affidavits or the depositions of the parties, because the Civil Court is free to take such further evidence as may be produced by the parties respectively. My hon. friend who spoke last said, no, there should be a certain amount of restriction imposed, that is to say, it should be for the Civil to find out what further material he stands in need of. That will be restricting the scope of the inquiry. Let the parties be free, as provided in this sub-clause, to lead such evidence as in their respective judgments conduces to the proving of their respective cases. Therefore, it is no error at all. If at all there is an error, then it is an error in favour of the contending parties, giving them fuller scope, and fuller freedom, in order to present their respective cases before the Civil Court.

Then there is criticism of sub-section 1D provided for in clause 19.

Shri S. S. More: With your permission, may I bring to the notice of the Hon. Member that the Report of the Select Committee says as follows on this point:

> "The Civil Court should take into consideration the evidence on record and such further evidence as it may think necessary."?

This is what the Select Committee have said. But unfortunately, there is a divergence between what the Select Committee has recommended in this particular paragraph, and the actual provision of the Bill. Here, the words are 'as the parties may deem necessary'.

Shri Tek Chand: This is a very happy divergence. My hon. friend, more than anybody else, knows that the Report of the Select Committee is not a guide for the Courts. For the Courts, the guide is the *litera legis*, or the *ipsissima verba* of the law. So, on the receipt of any such reference, the Civil Court shall peruse the evidence on record, and take such further evidence as may be necessary, and produced by the parties respectively. If the recommendations of the Joint Select Committee were broader, and their intention had not been adequately clothed in the draft of the clauses, then the objection of my hon. friend may be in point, but not so when it is *vice versa*.

Coming to sub-section 1D in clause 19, certain apprehensions have been expressed by some of the speakers. According to one of them, under sub-section 1D proposed, the scope of the Civil Courts in inquiries to follow has been restricted. That opinion of

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theirs, I say with the utmost of deference, is based upon incomplete comprehension of the language. The sub-section reads:

> "No appeal shall lie from any finding of the Civil Court given on a reference under this section nor shall any review or revision of any such finding be allowed:"

This is certainly as it ought to be. The finality is given to the finding of the Civil Court, which the Magistrate invites the Civil Court to give under sub-section 1A.

So far as the other offshoots of the dispute are concerned, the present rights that are available to the parties remain untouched and inviolate. There is no question of encroachment upon the rights, whether those rights are to be exercised under section 9 of the Specific Relief Act, or in suits for possession, or in suits for declaration etc. etc.

Shri A. M. Thomas (Ernakulam): But should not section 9 of the Specific Relief Act also be referred to in that proviso?

Shri Tek Chand: I was concentrating, for the time being, on the first three lines of (1D); I am coming to the proviso a second later. Therefore, so far as clarity of language is concerned, I feel that that part of (1D), which is outside the proviso, is absolutely clear and admits of no doubt. But the difficulty arises when we come to the proviso. The object of the proviso appears to be to make an attempt at a further clarification and my fears are that, in that attempt at a further clarification, there has been a certain amount of confusion introduced instead. I agree with Mr. Venkataraman when he says that the proviso ought to be deleted altogether. Because I do feel that the retention of the proviso is apt to mislead. When the language is absolutely clear, the proviso, to a certain extent, contradicts the language above. The proviso says:

> "Provided that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof."

I feel, with the greatest deference for those responsible for the proviso that this proviso is redundant.

Shri S. S. More: The party responsible is the Select Committee.

Shri Tek Chand: The proviso is redundant and if at all the proviso is called for in order to indicate that what has been stated above in no way interferes with the respective rights of the parties under civil law, then other language ought to have been used and it ought not have been confined to the words, 'to establish his title to the property'. The word 'title', it appears, has led to some confusion. There are hon. friends who have expressed the view that 'title' means ownership. I differ. Title means any claim.....

Shri A. M. Thomas: 'Title' means title to possession.

Shri Tek Chand: Title means any claim, whether the claim is mere possessory claim or the claim of a lessee or the claim of a mortgagee. Therefore, the possessory claimant has got a title to the possession as any other. Therefore title to the property should not be confined to mean only title to ownership over property; it may be title to possession of the property.

Shri S. S. More: May I ask, Sir,.....

Shri Tek Chand: Just as a lessee has a title.....

Mr. Deputy-Speaker: He does not give in.

Shri S. S. More: I am asking for some clarification. Under the Civil jurisdiction, there are suits on title

and suits for possession. Under the Suits Valuation Act and others, there are different categories of title and there is separate court-fee on such suits. His interpretation is very interesting. But the question is whether it is in accord with the provisions of the Suits Valuation Act and other provisions which do visualise suits on title and suits for other purposes.

Shri Tek Chand: It appears that I have not been able to make myself intelligible to my hon. friend.

Shri S. S. More: I want to give you that opportunity.

Shri Tek Chand: The position is this, Sir. The title to property is not confined to a claim for ownership of that property. The lessee has a title; it may be a restricted title in the extent of its scope; it may not be the same title as that of an owner. But, none the less, the lessee has a restricted title. Similarly, the tenant has a title, a mortgagee has a title, the mortgagor has a title. But so far as the word 'title' is concerned, it means merely a claim. Claim or title to what? Title to ownership, title to mortgagee rights, title to mortgagor rights etc. Therefore, my feelings are that the proviso ought to be omitted. Its retention may lead to a certain amount of confusion as I feel that the language of (1D) is as clear as any language could be. That is what I wish to say.

Mr. Deputy-Speaker: I shall call first Pandit Thakur Das Bhargava. A number of hon. Members want to speak. Therefore, hon. Members will be pointed and as brief as possible. (*Interruptions*).

Pandit Thakur Das Bhargava: In regard to section.....

Pandit Munishwar Dati Upadhyay (Pratapgarh Distt.—East): Pandit Thakur Das Bhargava will take more time because he has minutely studied and shall go into points of details.

Pandit Thakur Das Bhargava: I have no objection if other hon. Members want to speak.

Shri Gadgil: I think Pandit Thakur Das Bhargava is in possession of the House and his possession should not be disturbed.

Pandit Thakur Das Bhargava: I have yet to begin and if you want to call any other hon. Member, I shall sit down.

Mr. Deputy-Speaker: Every hon. Member is entitled to be heard subject to the limitations of time. I am not going to change the procedure.

Pandit Thakur Das Bhargava: There are four clauses which have been the subject of comment. In regard to clause 16, I also sent in an amendment but after hearing the hon. Minister, I am convinced that this should remain as it is. It is quite true that in the Code of 1882, these were exactly the provisions—which we have got here. I am also quite anxious to see that the scope of the section relating to preventive detention is not widened. I am at one with Mr. More that we should see that so far as preventive detention is concerned, it ought to be confined within limits. But, at the same time, I do not see any objection whatsoever to clause 16, for the reason that if the law is anxious that there should be no breach of the peace and if the law is anxious that public tranquillity should not be disturbed, it has to adopt all possible means to see that it is really not disturbed. The grouse of my hon. friend Mr. More is that when a person is going to have *satyagraha* somewhere and persons can come to that place from all parts of the country and they should be allowed to go there and have their patriotism vindicated as he has put it. All those persons should be allowed to go and then only they can be arrested if they enter the place where the *satyagraha* is to take place. I would respectfully ask Mr. More, whether the breach of the peace and the disturbance of public tranquility are not matters which are of higher importance than the exercise of some other rights. Supposing I am going to a particular place in

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Delhi where *satyagraha* is going on can I be arrested beforehand?

Shri Nambiar: Why should he be arrested?

Pandit Thakur Das Bhargava: If I cannot be arrested and the *satyagraha* is going on, I cannot be arrested either in the other place or in this place. But, at the same time, if there is an apprehension that there will be a breach of the peace and that public tranquillity will be disturbed, then he can be arrested here and I do not see any reason why he should not be arrested in a place where the evil could be nipped in the bud. I do not see any difference whatsoever. Only the powers of the Magistrates are widened.

Shri S. S. More: All the Magistrates will be All India Magistrates, having jurisdiction everywhere.

Pandit Thakur Das Bhargava: If the District Magistrate is an All India Magistrate and will be an All India District Magistrate, this Magistrate can also become an All India Magistrate. The District Magistrate and the Presidency Magistrate have already got this power. It has only to be done like this. Instead of the Magistrate saying that, it is the District Magistrate that issues orders. I submit that if you are really anxious that there should be no breach of the peace and that public tranquillity should not be disturbed, there is no harm in entrusting the Magistrate with this power. They will do just the thing which the District Magistrate will do (*Interruptions*).

Shri S. S. More: It is an argument for the party in power.

Pandit Thakur Das Bhargava: I beg to differ. It is entirely wrong to suggest motives. All persons have got their own views and so far as I am concerned, I do stand for the proposition that there should be no breach of the peace in this country and there should be no disturbance of public tranquillity (*Interruptions*). If there is to be breach of the peace and if the Magistrates are doing their work properly, there is no harm in giving this power. There is a somewhat different kind of approach to the problem under section 107. I may be arrested even in Delhi if I am going to some place to commit a breach of the peace. The substantive provision is the same; unless it can be proved against a person that he has committed a particular act, or likely to do a wrongful act or break the peace he cannot be arrested. Therefore, so far as clause 16 is concerned, I have got no objection.

In regard to clause 17, I have given notice of an amendment. Ultimately, as you have been pleased to postpone the consideration of the section relating to warrant cases and summons cases, I do not, at this stage, want to submit for your consideration the difference between the procedure about warrant cases and summons cases. At the same time, if there is any difference and the law does make a difference, in the warrant cases the accused has got more facilities to prove his innocence. Sinee it is directed against those persons under sections 108 and 109, that is, where a person can be arrested because he has got no ostensible means of existence etc., I should think the accused should have more facilities than what are provided by the summons cases. Some time back, our hon. Home Minister was pleased to say that he went round the jails and saw that the jails were full of people and he was very angry why so many people should be in jails. I quite agree with him. The police people observe a week, called the 109 celebration week, for arresting persons under section 109, so that the numbers may swell and ultimately the police may be able to show that they have done hard work and get promotion. This week is observed to show that they have done good work and it is with a view to get promotion that they arrest as many people as possible. In India you can have

lakhs of persons if you want to arrest them who will answer the description of 'no ostensible means of existence.'

Mr. Deputy-Speaker: Are there any persons willing to assist the police to celebrate this week?

Pandit Thakur Das Bhargava: I know the hon. Home Minister, if he were allowed to have his own way, will not allow this sort of celebration by the police. Therefore, I am submitting that in sections 108, 109 and 110, summons procedure should not apply but warrant case procedure should apply. On the contrary, I do want that even for section 107 dealing with preventive detention, the procedure should be warrant case procedure and not summons case procedure. I do not want to go into the matter as to the differences in the warrant case and summons case procedures because you were pleased to defer that question.

Now, I come to clauses 18, 19 and 20. I must submit that so far the old sections 145, 146 and 147 are concerned, in my opinion, they do not require any change whatsoever, but I find from the notes on clauses that there were protracted proceedings and that the Magistrates did not decide the cases early and that, therefore, in the interest of speed, this section is now being modified. There are certain difficulties with me so far as this section is concerned. I can understand that so far as the police are concerned they should see that there is no breach of peace and for that purpose there is section 107 and for other purposes and deciding about the right to properties, we have got the Civil Courts. The Criminal Courts should not decide the rights because the Civil Courts are much more expert at it. Therefore the first proposal of the Home Minister that the property may be attached and the property may be referred to the Civil Court does not appeal to me except to a certain extent. When a Court takes charge of the property and comes in between the two parties, the Court should assist the rightful party. They should assist the person who has been forcibly dispossessed of his rights, and that was only a tentative thing, not a final thing. The difference between section 145 and the provisions in the Bill is that under section 145, possession could be restored by the Criminal Court also if the Criminal Court comes to the conclusion clearly that such and such person was in possession within two months of the date of dispute. If it had no clear mind, then it had to ask the parties to go to the Civil Court. Ultimately, the Civil Court had to decide the matter. Now, the hon. Home Minister says in the Bill that the property may be attached, and possession may not be restored. So far it is good though as a matter of fact part of the power was taken away which really was meant to help the aggrieved party. To that also I have no special objection. Now the present procedure is a bit more complicated and made more complicated because of the several legal objections raised.

Firstly, when the Criminal Court cannot clearly decide who was in possession, that Court sends on the case to the Civil Court. There is a conflict of laws. Suppose there is a dispute about land between a landlord and a tenant. According to the revenue laws, no Civil Court can take cognisance of such dispute and it is a Revenue Court alone that can decide such disputes. The Civil Court has got no jurisdiction, and so there will be conflict. We have got our Revenue Act which says that no Civil Court will go into a dispute as between a landlord and a tenant.

Dr. Katju: I suppose there is no landlord left!

Pandit Thakur Das Bhargava: Usually, in regard to disputes between landlord and tenant, it is the Revenue Court in the Punjab that can decide the question.

Shri Raghubir Sahai (Etah Distt.—North East *cum* Budaun Distt.—East): For your information, I may say that in the U.P. such matters are referred by the Revenue Courts to Civil Courts.

Pandit Thakur Das Bhargava: Only such matters are referred dealing with title to property, but so far as the question of possession is concerned, they have got a different section in the Land Revenue Act of the Punjab. As has been pointed out by Mr. Venkataraman.....

Mr. Deputy-Speaker: May I know whether the hon. Member is referring to a particular practice in the Punjab? A similar practice prevails in Madras. But in a case where the jurisdiction of the Magistrate is invoked under section 145, does the hon. Member mean to say that a regular suit has to be filed in a Revenue Court? The party who is dislodged has to file it within one year to set aside that order. Does he not have to go to the Civil Court? Is he to go to the Revenue Court in the Punjab? I am talking of this particular case where the dispute relates to a landlord and a tenant. In this particular case, summary proceedings are started under 145 and the Magistrate comes to the conclusion and puts one party in possession of the property, will not the other party go to the Civil Court for possession even in the Punjab?

Pandit Thakur Das Bhargava: So far as this provision is concerned, if it is doubtful which party was in possession and the Court cannot come to the conclusion, then the issue can go to the Civil Court.

Mr. Deputy-Speaker: The hon. Members was saying that all disputes between landlord and tenant, including disputes regarding possession, must be decided by the Revenue Courts in the Punjab. I want to know which Court exercises jurisdiction in a suit for declaration to set aside the order of a Magistrate taking jurisdiction under 145 and deciding that one party or other was in possession on the date of disturbance. Is it the Revenue Court or the Civil Court?

Pandit Thakur Das Bhargava: Under section 146, the words used are 'competent jurisdiction'. How it is interpreted in the Punjab I cannot be certain. My humble submission is that if there is a case of this nature, the dispute shall be settled in the Revenue Court alone.

Mr. Deputy-Speaker: I am not asking for the interpretation of the hon. Member.

Pandit Thakur Das Bhargava: There is a section in the Punjab Land Tenancy Act that all disputes between landlord and tenant must be decided by the Revenue Courts and the Civil Courts have no jurisdiction.

Mr. Deputy-Speaker: I am talking of the exceptional case. If there is no ruling to the contrary, according to the practice that prevails in the rest of India a declaration of the Civil Court is needed to set aside such an order. What is the harm if it is referred to the Civil Court instead of the Revenue Court?

Pandit Thakur Das Bhargava: The question of harm is a different thing. So far as an ordinary suit is concerned, when a tenant has been dispossessed by a landlord, such suits go to a Revenue Court and if the suit relates to urban properties, it goes to a Civil Court under section 9 of the Specific Relief Act, but here the question of limitation, complicates the question. There is no limitation as regards the period which a court takes in deciding a case. Here also one year's limitation is there. Whereas, now, according to the present provision, the possession within two months is to be taken. Even in this provision, in clause 19 also, there is a provision that clause 18 will apply. So, this safeguard also will be governed by the rule of possession within two

months. Suppose a person takes possession four months before. If he brought a suit under section 9 within six months, he can be given back his possession. If the period is two months, in this new remedy by the Civil Court under the amendment the aggrieved party will not get the possession back.

Mr. Deputy-Speaker: It is so under the Criminal Procedure Code today.

Pandit Thakur Das Bhargava: We are concerned with suits for possession. I am giving another example. Supposing even after the case is brought under this provision,—

Mr. Deputy-Speaker: It is not to be understood as a special agency to decide, a Civil Court being more competent to decide the matter of possession. The Civil Court is to assist the Magistrate to come to a conclusion as in cases where assessors or Commissions are appointed to make special investigation. Chartered Accountants look into the accounts, and likewise the Civil Court is ancillary, so far as these common things are concerned.

Shri S. S. More: The Civil Court acts as the agent of the Criminal Court.

Pandit Thakur Das Bhargava: Acts as agent or otherwise, I have no objection. I am submitting absolutely a different point. Supposing, proceedings go on under section 145, am I debarred from going to a Civil Court? If I can go to a Civil Court within a particular period, why do you curtail this period?

Mr. Deputy-Speaker: Who prevents them?.

Pandit Thakur Das Bhargava: There is no further suit admissible. The words are specific: "to establish his title to the property to the subject of dispute and to recover possession thereof." So, only a certain kind of suit is admissible, based on a title and recovery of possession is ancillary to the decree got in that suit.

Shri S. S. More: Can there be an exclusion of any particular remedy by implication under the canons of interpretation?

Pandit Thakur Das Bhargava: The language is absolutely clear. The words are: "Shall debar any person from suing to estabish his title to the property and to recover possession thereof." So, to recover possession whatever is a consequence of this sub-section.

Shri Gadgil: That is possession in the context of title, and possession under the Specific Relief Act is possession irrespective of title.

Pandit Thakur Das Bhargava: I am very glad that Shri Gadgil has really supported me. If he spoke only on possession, then I can understand that section 9 was saved. When it concerns title and recovery of possession I may submit that my interpretation is that suit on the basis of title is competent whereas suit on the basis of possession alone is not competent.

Shri Gadgil: That is not so.

Pandit Thakur Das Bhargava: I think Mr. More's point is that if the implication is there, this would amount to exclusion. First of all, if the Criminal Court is not satisfied, then the Civil Court is referred to if this change as Mr. Venkataraman says, is for the suit for possession also. How many suits will there be? First of all, under section 145, if Civil Court is referred to and then under section 9 in the Civil Court, then, if any person fails, then there is the suit on the basis of title and recovery of possession. My submission is that the previous law—sections 145 and 146 was less cumbersome and more speedy, because the difficulty would remain as before. I do not think any Court will be able to decide the question in so short a time. So far as the period of two months is concerned, the definite words are there: "so far as practicable." So, it will not be decided in two months.

Mr. Deputy-Speaker: If the hon. Member will kindly refer to section 147 (4) of the Code, he will find that it is not taken away.

Shri Venkataraman: That is only in section 147, not 146. In section 146, it is taken away.

Mr. Deputy-Speaker: Section 147 concerns the subsequent decision of the Civil Court of competent jurisdiction. That is not taken away by an amendment to section 20.

Pandit Thakur Das Bhargava: There are two kinds of cases. Section 145 relates to certain cases. Section 147 is absolutely different. It relates to easement, etc., There, the right may not be taken away. I am only speaking about section 146. You were pleased to point out another section regarding easement, etc. It may be so, as you have been pleased to point out, in relation to section 147. But in regard to section 146, which deals with the attachment, etc., the position is as I have submitted for your consideration. My difficulty is, even if you want to amend it, as Mr. Venkataraman suggested, it must be amended so as to preserve the right under section 9. Even if you do so, my difficulty is, there will be a multiplicity of suits and I do not know whether there will be a conflict of jurisdiction also. If the present provision remains like this, no suit possession under section 9 will be permissible, or, the other suit will not be allowed to proceed. If it is allowed to be proceeded with, there will be a multiplicity of suits and the people will be put to more trouble.

Shri Gadgil: When there are two suits or two sets of proceedings simultaneously going on, on any common subject matter, is it not our common experience that one of them is stayed?

Pandit Thakur Das Bhargava: No, Sir, because these relate to different causes of action, different limitation, different powers. Therefore, I do not know whether any Court will be justified in staying it. Suppose I am a person who was dispossessed three or four months before this dispute arose. In that case, my claim will be entirely on a different basis. It will not be on the basis on which the Civil Court is proceeding under the two months' rule. Therefore, in particular cases, if the suit is stayed under section 7 it will result in nothing but injustice.

Shri S. S. More: The proceedings under section 145 will have predominantly a breach of the peace aspect. Therefore, a Civil Court will not be competent to tackle this.

Pandit Thakur Das Bhargava: This provision is a specific one section 19. It hits back to section 18 which is only meant for a specific purpose, whereas, so far as the adjudication of civil rights are concerned, we have only to look to the jurisdiction & capacity for civil relief of the Civil Court. My submission is, if you go back to the original section 145, you will find it is very simple. If the man cannot decide, he will refer the party to the competent court. If it is revenue matter, they will go to the revenue court, if it is civil, they will go to the Civil Court, and their rights will be decided accordingly. That would be better.

Shri Raghavachari (Penukonda): There are three points that arise. First, as regards security proceedings, under clause 6. They want to extend the powers of the Sub Divisional Magistrate when both the conditions need not be satisfied. One of the conditions, we can understand, namely, it is either the place where he resides or the place where he is likely to disturb the peace. In other words, they are trying to extend the scope of the present law.

The next clause deals with the procedure that is applicable and it proposes to abolish the different procedures—the summons and the warrants—that is applicable to the two categories on security proceedings

—sections 107 and 109. On both these proposed amendments, I wish to make one or two submissions. First and foremost, we must visualise that under ordinary circumstances, these security sections are exercised fairly reasonably, but when any situation of tension or a conflict between two groups the Government and the Governed begins, then, these sections are mercilessly applied. We all have our experiences during the previous Congress agitations. I know many a friend who was quite an honest man, quite an honest citizen, was proceeded against under these sections as a person who has no ostensible means of livelihood. They were put into jail and the question of compelling them to get security arose, if they wanted freedom.

We must not forget that when these provisions are kept in a Procedure Code which is applicable for all time to come, situations and occasions may arise when their use may be rather dangerous to groups of people. Therefore, when you wish to take away the difference between one procedure and the other, I feel there is some risk involved in that. But as you, Sir, seem to have directed already that the question of this changed procedure will be decided along with the warrant procedure etc., I do not wish to pursue that further.

Clause 16 proposes that Sub-Divisional Magistrates also will be empowered to act in all cases where the District Magistrate and the Presidency Magistrate could act under the existing law.

Coming to clauses 18 and 19 I am inclined to support the amendments proposed generally. And one feature which appeals to me to be salutary is this. Our experience at present is that these proceedings in regard to possession matters under section 145 and others drag on. I think generally it drags on beyond the year and not within ten or twelve months. That is the present experience.

Shri A. M. Thomas: For years together.

Shri Raghavachari: That side of the year, it is going to years that is what I say. So it is a welcome thing that a time-limit has been fixed; they have now set two plus three, that is five months. I welcome that portion of it. But if the purpose of the amendment was that the proceedings should be expedited, this little amendment would have served the purpose namely that the thing should be done within two months, plus three months, or even within six months; that would have been a salutary thing.

Instead of that, they have started on, trying to put a kind of procedure which is analogous to the procedure with which we are familiar in Civil Courts, claim petition, or a claim proceeding and a declaratory suit which subsequently can alter that decision. That is the analogous provision. It looks unnecessary to have introduced that system of reference to a Civil Court at all. The purpose and the aim of the administration in a democratic set-up, I expect, would be to separate the executive and the judiciary completely. And when you are expecting to do that, you will have Magistrates who are competent and who know law. Therefore you can add that the decision under section 145 by the Magistrate will be after the production of documents, witnesses or affidavits. It is after all a summary procedure. He could take a view and decide the matter. It was always subject to the decision of the Civil Court. Therefore that would have been the best thing.

The purpose why they introduce this clause 19 is this; that clause 18 simply said that the Magistrate may summon some of the witnesses, if he thinks necessary, whose affidavits have been filed. And therefore when they send in on to the Civil Court, they wanted to give some latitude, and some justification also, that the Civil Court may be in a position to call for

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more evidence or examine and consider more evidence. That is why, I think, they have provided that "the Civil Court shall peruse the evidence on record and take such further evidence as may be produced by the parties respectively."

Then the other point is, I have given an amendment along with my friend that in page 5, line 8, the words "conclude the inquiry and" be omitted. The wording of the clause is that the Civil Court shall as far as may be practicable within a period of three months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding to the Magistrate. I for one think that the phrase "conclude the inquiry" may well be omitted. Because, it is liable to be interpreted that only the inquiry should be concluded within three months and the transmission of the findings may take longer. It is possible. Therefore, if you omit the phrase "conclude the inquiry and" it will mean that both the inquiry and the submission of the finding is to be within 3 months and it will not give any room for any other kind of interpretation. Therefore the words "conclude the inquiry and" may be omitted very usefully.

Then as regards the proviso to sub-section (1D) I think the language that is used is capable of different interpretations. Therefore language may be—I only make a suggestion, I have not given an amendment—it may be similar to the language that you were pleased to read from section 147. Such a phrase, if put there, I think that would be appropriate and it would avoid all these various interpretations that are likely to be put upon it.

Mr. Deputy-Speaker: Evidently the object is that another suit for possession need not be allowed.

Shri A. M. Thomas: Now, it is in addition to the relief granted under the Specific Relief Act that this proviso is added.

Shri Raghavachari: The rights under the Specific Relief Act are not at all to be interfered with or affected by this. The only difficulty will be this. When you provide in a statute of this kind "Provided that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof", it certainly is capable of being interpreted that the possession that is determined by the Magistrate after reference to the Civil Court cannot be altered until and unless there has been a suit for title, and as a consequence of the suit for title the question of possession can be determined afresh. And the question of interpreting all these words as Mr. Tek Chand was pointing out, would arise. We know in the Civil Procedure Code there are provisions like "subject to the result of the suit" etc. It therefore looks to me that the language similar to that provided in section 147 would be more appropriate here and it would avoid all these troubles.

So far as the question of costs is concerned, certainly it is a happy thing that these proceedings will not be, vexatiously or irresponsibly opposed, as provision has been made for payment of costs.

Shri Sadhan Gupta: Clauses 16 and 17 touch very important sections of the Criminal Procedure Code and a very important part of the Criminal Procedure Code with which the people of the country are most concerned, or are very much concerned. These provisions ranging from section 107 to section 110 have been the bane of every people's movement in every age, including this Congress age. We have heard some hon. Members who have tried to assure us that now things are different, formerly there was a government which was not national and today there is a govern-

ment which is national, so whatever our experience might have been before, we need not today fear any abuse of these sections. I can say on behalf of myself, I can say on behalf of my party, and I believe I can say on behalf of every Member of the Opposition and, most of all, I can say on behalf of the people of India that we cannot be convinced by this argument. For one thing it is too tall a claim to say that this Government is entirely a national government and that there is nothing anti-national about it. We know that it is pledged to protect foreign interests here.

3 P.M.

Mr. Deputy-Speaker: Are we going into a general discussion of the nature of the Government? I would request the hon. Member to confine his remarks to the clause under discussion.

Shri Sadhan Gupta: There are certain provisions in the new Bill which are very oppressive and I am only saying that those provisions should not be there.

Mr. Deputy-Speaker: We are here dealing with groups of sections and the hon. Member should confine himself to those sections.

Shri Sadhan Gupta: It is the other side that argued.

Mr. Deputy-Speaker: I have no objection. I will stop him after some time.

Shri Sadhan Gupta: What I submit is that they are here to protect foreign interests; they are here to support exploitation in this country by greedy capitalists as well as by greedy landlords and therefore it is useless their saying that there need be no fear. Most of my practice has been during the Congress regime and I have seen this section freely used against trade unionists, when they were trying to form trade unions, which the Congress people did not like. I say this section has been freely used against peasant movements and I have seen this section freely used against every description of agitation by the people. Therefore, we are not convinced by this argument.

Now, Sir, this section is oppressive and what is sought to be done is to make it even more oppressive. It is bad enough: that persons should on mere police reports be called upon to show cause, and harassing proceedings should be instituted lasting perhaps for six months, or eight months. Now what is proposed is that any Magistrate, however petty he may be, if he is empowered to proceed under section 107, can call any man from any part of India to his Court in order to harass him.

Dr. Katju: This is really not correct: he cannot call any man from any part of India. He must be living in the Magistrate's jurisdiction. He cannot call any man from any part of India.

Mr. Deputy-Speaker: Even today a District Magistrate can do so.

Dr. Katju: Now it is being extended to any Magistrate to whom power is given. The power given will be to First Class Magistrates, or specially empowered Magistrates.

Shri Sadhan Gupta: The hon. Home Minister says that he cannot be called to any part of India. For example, if a false charge is levelled against me that I am intending to commit a breach of the peace in Travancore-Cochin, the Magistrate in Travancore-Cochin may summon me there and I have to go there.

Dr. Katju: Not at all.

If my hon. friend is living in Calcutta, the Calcutta Presidency Magistrate can call him and say: "I have reliable information that you intend to go to Trivandrum and commit breach of the peace; please give security for breach of the law."

Shri S. S. More: Even the Trivandrum Magistrate is competent to serve a notice.

Mr. Deputy-Speaker: Is it not the position now?

Some Hon. Members: But only a District Magistrate.

Mr. Deputy-Speaker: If either the one or the other is within his jurisdiction. The Trivandrum District Magistrate if he apprehends a breach of the peace from somebody who is not within his jurisdiction, but is satisfied that breach of the peace is likely to be committed within his jurisdiction, notwithstanding that that gentleman is in Delhi, can ask him to show cause.

Sub-section (2) of section 107 reads:

> "Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction."

So, it is enough if one of the conditions is satisfied. If the District Magistrate of Trivandrum apprehends breach of the peace in his jurisdiction by a resident of Delhi, he can summon that man and he is bound to appear before him. To this extent the Bill has not made any change, except that it gives power to any other Magistrate. Formerly the Chief Presidency Magistrate and the District Magistrate had the power: now any Magistrate can be empowered. I understand the hon. Member referring to it as a novel provision. Today the District Magistrate of Trivandrum can summon any person from the top of the Himalayas even, so long as he is in the Indian Union, to appear before him, in case he apprehends a breach of the peace to be committed by that man. The only difference is that previously only the District Magistrate or the Presidency Magistrate could do so; under this provision any other Magistrate can be empowered. Because Government apprehends many such cases, a District Magistrate alone may not be enough; they want to clothe others also with power. So this does not appear to be a new section, but is already in the Code.

Shri Sadhan Gupta: Your misunderstanding has been due to the impatience of the Home Minister. I think I said that today I can be called by any Magistrate with a decisive emphasis on "any". Any Magistrate in Travancore-Cochin empowered to proceed under section 107, can call me, although I am not a resident of Travancore-Cochin, although I may not be intending to do anything likely to create a breach of the peace in Travancore-Cochin. only if a corrupt police officer reports against me.

Mr. Deputy-Speaker: Is it not so in respect of any proceedings taken on the report of police officers?

Shri Achuthan (Crangannur: This is far-fetched.

Shri Sadhan Gupta: What I want to submit is this. I can be called there only by a District Magistrate. Formerly, I can be called to some other place by a Chief Presidency Magistrate wherever there may happen to be one. I was coming to the argument....

Mr. Deputy-Speaker: That can be done on a corrupt police officer's information.

Shri Sadhan Gupta: Formerly only two persons could have done it. There are only three Chief Presidency Magistrates and a number of District

Magistrates. Today that jeopardy is increased manifold. I would say that even the former position was unsatisfactory. There should have been some further protection against being harassed in this way. I think the principle to be followed should have been that the case could not be fairly tried without calling that person to that locality. Normally, the case should be tried in a place either where the person resided or where the case could be conveniently decided in accordance with the convenience of the person proceeded against. No such protection was afforded under the former section. Now, the possibility of mischief is immensely multiplied. Therefore, I have given notice of an amendment to this particular clause where I have stated that whenever any necessity arises for proceeding in this way for calling a person to a place where he does not reside, it must be with the prior sanction of the Sessions Judge of that area who can hear appeals from the Magistrate.

Mr. Deputy-Speaker: That is an amendment to the existing provision itself.

Shri Sadhan Gupta: To this particular clause.

Mr. Deputy-Speaker: Only when a Magistrate other than the District Magistrate is empowered?

Shri Sadhan Gupta: To this particular clause.

Mr. Deputy-Speaker: Under the existing Code, a District Magistrate is competent. Does the hon. Member say that it is only in cases where any Magistrate other than District Magistrate is empowered to exercise this power against a non-resident that the prior sanction of the Sessions Judge should be taken?

Shri Sadhan Gupta: That is amendment No. 358 which I have given notice of. Today, we are put in this jeopardy. As I have said, in view of the growing vindictiveness of the ruling class, the growing vindictiveness in particular of the Congress Party against politicial opponents, this is a very dangerous thing. Inhuman oppression might be perpetrated on political opponents by tossing them from one place to another in India. If they cannot find a District Magistrate who is willing to help them, they will seize upon a pettier Magistrate in order to help them. In a place where the judiciary and the executive are rolled into one, where the Magistrates are under the superintendence and control of the executive, and have to depend for their promotion on the pleasure of the Government, this type of power is a dangerous power, particularly in view of the fact that it is consistently used against leaders and other active workers of other mass organisations and mass movements.

As regards amendment of section 117, I say it is another instance of the anti-popular attitude which the Government has taken in the matter of the amendment of the Criminal Procedure Code. Formerly, even the British permitted that in a case where security for good behaviour was demanded, the procedure would be the procedure prescribed for warrant cases. Today, what are they providing? It will be summons case procedure everywhere. In the matter of prosecution for crimes, they provide that the limit of summons cases will be one year. But, in a matter of good behaviour, although in some cases it involves ordering security up to three years and in case a person fails to give the security, it involves sending him to jail for three years, what the Home Minister wants is that the person should proceed without due notice of the complaint against him, and should not be able to postpone his cross-examination until all the witnesses against him have been examined. This is a very unsatisfactory position. People may be proceeded against on account of

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dissemination of seditious matter or of not having ostensible means of livelihood, and what is still worse, for being habitual criminals, and they will be subjected to the jeopardy of either furnishing security or going to the jail for three years. Yet, they will not have a proper right of defence. That is an intolerable situation. Therefore, we have given an amendment to this particular clause 17 which provides that the warrant case procedure would be followed. We have even suggested by way of that amendment an improvement on that procedure. Even under the old procedure which provided for warrant case procedure in cases of security for good behaviour, it was held by some Courts, and among them the Calcutta High Court, that as it was provided by section 117 that no charge need be framed, there was no right to postpone the cross-examination of the witnesses after all the witnesses against the party proceeded against were examined. That might work great hardship and that has worked great hardship in Calcutta. Therefore, we have provided in the amendment that this warrant case procedure should also include the right to postpone cross-examination, or further cross-examination of the witnesses until all the witnesses against the person had been examined in chief. I submit that that is a very just provision. There can be absolutely no objection against accepting that amendment. I commend that amendment for acceptance.

As regards clauses 18, 19 and 20, I can say that we are in agreement with the spirit of the clauses. What should happen in a matter of dispute about possession which may lead to breach of the peace? If the matter is very clear, if there is no doubt that one person has been wrongfully dispossessed, the Magistrate should be able to put that person in possession because that would be the best way of preventing a breach of the peace. But, where there is doubt, it should be left to the most competent authority, the Civil Court or whatever court it may, to decide the question of possession. That should be the principle, and that is the principle in these three clauses. But there are, of course, a few drafting defects which may create difficulties and that should be modified.

I do not agree with the view which Pandit Thakur Das Bhargava has just expressed that the provision in the Minister's Bill as it was introduced was a better one. I cannot agree with that view because in that Bill clause 17 which was an amendment of section 145 laid down a very strange provision that whenever there was a dispute regarding possession, the Magistrate could just refer it to a Civil Court. The result would be that any one interested to drive the other party into litigation would just create a dispute on possession and of course a threat of the breach of the peace, and then the party who was in possession and who was perhaps the rightful owner and the rightful possessor of the property would have to undertake the burdens, the harassment and the expense of litigation. Now, that is a very unfortunate position and this modification made by the Joint Select Committee is undoubtedly a better thing, but it should be made very clear, I concede, that the person against whom the Civil Court decides on reference by a Magistrate should have the right not only to sue respecting his title, but should be able to sue also with respect to his possession. And that word "and" may be changed into "or" in the proviso to clause 19 where it says that nothing shall debar a person from suing for title and to recover possession. Now, that may mean that the question of possession may be linked up with title in the narrow sense, in the sense of some kind of interest, leasehold ownership or something of that kind. There may be arguments on both sides on

the point. So the position must be made perfectly clear that all kinds of rights, all rights of suits, whether it is in respect of title or whether it is in respect of possession merely must be open.

This is a criminal proceeding in which the judgment of the Civil Court is pronounced. It should not be allowed to replace the civil remedies specified by the Civil Procedure Code or the Specific Relief Act or by any other enactment relating to civil procedure. By way of an amendment of the Criminal Procedure Code I do not think we should interfere with the civil remedies provided under the law relating to civil procedure. And therefore, I would request the Home Minister to introduce a suitable amendment to clear up the point. Of course, on a casual glance I think if that word "and" were changed into "or", it would meet many of the difficulties.

Mr. Deputy-Speaker: Pandit Munishwar Datt Upadhyay.

Shri Nambiar *rose*—

Mr. Deputy-Speaker: One from each side.

Pandit Munishwar Datt Upadhyay: I do not agree with Mr. More....

Shri Nambiar: Unfortunately, only lawyers have spoken and lawyers are going to decide the fate of non-lawyers, 36 crores of people. Non-lawyers may also be allowed to speak.

Mr. Deputy-Speaker: In terms of consumers, non-lawyers are consumers of the Criminal Procedure Code.

Shri V. P. Nayar: In terms of suppliers.

Pandit Munishwar Datt Upadhyay: Mr. More called this amendment under clause 16 as retrograde. I do not agree with him in this respect, although he has said many more things which are quite reasonable. He says that this is retrograde because he thinks that the party in power might oppress the party in opposition under this section. If the opposition party leads a *satyagraha* in a certain area, a non-violent *satyagraha* as prescribed by Mahatma Gandhi, even then, he says, under the section it is likely that the party in power might take undue advantage of that position and might repress the party in opposition. My submission is that if he had known what *satyagraha* means—I think he was a Congressman formerly—and what was Mahatma Gandhi's *satyagraha*, then probably he would have never argued in that way. If he had worked in a Court of law he must have seen that in a case under section 107 it is absolutely necessary that there must be some kind of an overt act on the part of the accused, the person who is considered likely to commit a breach of the peace. Unless that factor is there, no action can be taken against him. So, overt act implies violence, some kind of violence, some tendency towards violence, and if there is any tendency towards violence, to say that it is Mahatma Gandhi's *satyagraha*, I think, would be highly unjustified.

Shri V. G. Deshpande: Lecturing is also an overt act as recorded in many judgments.

Pandit Munishwar Datt Upadhyay: That means you have not practised in a court of law.

Shri V. G. Deshpande: We have been convicted. No question of practice.

Pandit Munishwar Datt Upadhyay: If you see the rulings of the Court, you will surely know that it is not an overt act.

Very well. My submission is that this apprehension of Mr. More is highly unjustified.

Mr. Gupta has called it an oppressive measure. I do not know what

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change he refers to. This again is a mistaken impression through and through. It is meant for maintaining order. (*Interruption*). And therefore the Magistrates are given some power to maintain law and order. If there is a breach of the peace likely, then they should have certain powers to be able to take action so as to prevent that breach of the peace. If they do not have these small powers even where the object is to prevent a breach of the peace, I do not know how they can prevent a breach of the peace. So, this apprehension of the hon. Members on the other side generally is highly unjustified. And I would submit that under section 107 the change that is being made, if I can say anything against it, it might be that it was a little confusing. We were just talking about and discussing and really trying to come to a definite conclusion about it. There was a good deal of confusion about it. Otherwise, so far as the powers go, up till now, according to Mr. More, if a breach of the peace was apprehended in a certain area, then the Magistrate of that area had the power to take action. Now, the power is given to the Magistrate in whose jurisdiction certain persons likely to commit a breach of the peace were living. The Magistrate in whose area such preparations are being made are given power. I think provision is necessary for it. Otherwise, just on the spur of the moment to stop a breach of the peace would be very difficult. Where preparations are being made, where such steps are being taken by a certain group of men or certain individuals by which it is clear that they are likely to break the peace in certain area, I think provision is necessary that they should be checked at that stage. Otherwise, the prevention of the breach of the peace might be difficult if they create some trouble in another area. Therefore, I think this provision is very much justified, and to say that this is oppressive or that this can be used against political parties is an apprehension which is very much misplaced.

Shri V. P. Nayar: You are asked to think so.

Pandit Munishwar Datt Upadhyay: Some hon. Members said that this party alone will not remain in power for long, and that other parties might also come to power, and then this might be used against this party. Of course, this is meant for everybody. My hon. friend Shri Sadhan Gupta went very far to say that the Congress Party was becoming vindictive.

Shri Nambiar: This is just to prevent other parties from coming into power.

Pandit Munishwar Datt Upadhyay: From whatever facts he can give us in support of his argument, it appears that this undue apprehension in the mind of the hon. Members opposite is what is responsible for this attitude. Otherwise, there is no justification for it.

Next, I come to trials under sections 108, 109 and 110. At present, the provision is that the trial will be as in warrant cases. But an attempt is being made to turn them into summons cases. I am opposed to it. Under section 109, which is a very notorious section, people have been chalaanned very often without any reason or rhyme, and if the police has to take any action against a particular person, they have a resort to this section. All that they have got to say is that that person has no obtensible means of livelihood. One or two witnesses come, and the man is hauled up. So, in this case, if you do not allow that opportunity to the defence,—which even now has been considered almost insufficient protection for the defence of the accused,—and reduce it to summons trial, the position of the accused may be further jeopardised.

Then, we have section 110, which is the most notorious section—of course, it is meant for very notorious people also. Under this section, the prosecution is not required to prove any facts or produce any affidavits. It has merely to say that a person has been habitually doing such and such things, and that he has been a habitual offender. That alone is enough. If twenty persons come forward and say, this man has been a habitual offender, that is enough for the man to be sent to jail. No offence has to be proved in such cases. To reduce trial under such cases to summons trial would mean taking away the protection that the accused might have if the trial were to be a warrant trial, where he has more opportunities for eliciting truth from the witnesses who come there to be cross-examined, and who may disclose things that might be in favour of the accused. If the proposed amendment is made, and the trial takes place under the summons procedure, then I submit that that might prejudice the cause of the accused very much.

Similar is the case with section 108 also. Of course, that is a political section. Therefore, it will not be proper that there should be summons trial for cases under that section. Warrant trial is the proper course that should be followed in such cases and that should be allowed to stand as it is.

Then, we have sections 145 and 146, which raise very controversial matters. The object of the amendment that has been made in this Bill is to expedite trial. Under section 145, where there is apprehension of breach of peace, the Magistrate has to take immediate action, so that the breach of peace might be prevented. But our experience is that such cases really go on for months, and sometimes they extend to about a year or even more than a year.

An Hon. Member: Even three years

Pandit Munishwar Datt Upadhyay: An hon. Member here says that it may go on even for three years. It may be that it may go on even for three years. But the general experience is that it goes beyond one year. Where the action has to be taken within a month or two months or even three months in order to prevent a breach of peace, we find that even that period appears to be a long period. If the case extends for months and for years, what shall be the fate of such litigation? What shall be the fate of those parties? And what shall be the fate of that property? The object or motive in bringing forward an amendment of this section is that trial should be expedited. From the provisions that this section is that the trial should be you can reduce the period of trial considerably. You might reduce it by a week or so, or by a week's time, but then you cannot reduce it considerably. My apprehension is that you cannot reduce it at all, because you take affidavits, you take also the evidence of persons whom the Magistrate considers necessary to hear, and after that, the Magistrate has to arrive at a particlar decision; if he arrives at a decision, then it is all right. No time limit is there.

Shri Raghubir Sahai: There is time limit for both the cases, three months for the Civil Court, and two months for the Criminal Court.

Pandit Thakur Das Bhargava: As far as practicable.

Pandit Munishwar Datt Upadhyay: If the Magistrate can come to a conclusion that a particular party is in possession, then, of course, it might be a little expedited, and there might be some decision. But if the Magistrate comes to the conclusion that he cannot definitely say whether this party or that party is in possession, or had been in possession within two months of the preliminary order passed by him, then in that case, the procedure that has been provided here is a very lengthy procedure. The

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Magistrate has to send the file to the Civil Court. The Civil Court also takes evidence, and there is a full-dress trial there. Though a time limit of three months is fixed, it might take even more than that if there are circumstances which probably the Munsif can explain. The transmission of the file to the Civil Court may take one month; and wnen it is sent back to the Magistrate's Court also, it may take another three weeks or one month. Then the parties are asked to appear before the Magistrate, and then the Magistrate has to give his judgment, after that, an order is passed, which becomes final. After having gone to the Civil Court also, and after having taken the help of the Civil Court also in this matter, what is the result? We decide in respect of possession only, and the more important aspect of the title still remains. So, if the Magistrate himself had taken evidence and affidavits also, and within a particular period of time decided the question of possession, the matter might have been expedited. But what is the result now? Even after deciding the question of possession, the thing is not final, because the party that is aggrieved might go to the Civil Court and file a civil suit. This civil suit might go on for any long period. So, there is no end to it.

Shri B. N. Misra (Bilaspur—Drug—Raipur): Is that not the position even today? Under section 145, you merely prove possession; then again you have access to the Civil Court.

Pandit Munishwar Datt Upadhyay: Again, we have to go to the Civil Court, where the question is finally decided. The final decision with regard to title may take a long time there. If the Civil Court and the Criminal Court join together and the question of possession only takes seven or eight months, and after that, when you take up the question to the Civil Court, the Civil Court also takes so much time, as a matter of fact, we are not at all expediting disposal, which is the object of the provision in this connection. A long time should not be taken. My idea is that the procedure that is now being prescribed is not likely to reduce the time at all but it is likely to prolong even, in certain cases. So, this provision is not enough. I think, if the object is to expedite, then the Magistrate should finally decide the question of possession, and it is only for the purpose of title that the case might go to the civil court.

I have another suggestion to make, which might look very drastic. But, I would make that suggestion. Why allow this opportunity. Whether the Magistrate comes to this conclusion or that conclusion. Let him come to a particular conclusion. Let him decide, which party, according to the evidence before him, is in possession. Otherwise, if that choice is left, then even if a munsif is not able to decide this way or that, let him take a third course. That, I think, is not justified. This provision was made under section 146. It was made because the major question of title to property was to be decided by the civil court. Therefore, this provision was made and the property was attached. It used to remain attached. Therefore, this provision was made. But, I would suggest that this section 146 should be omitted altogether. It should not remain.

Dr. Krishnaswami: Then the old section will be there.

Pandit Munishwar Datt Upadhyay: If you allow the question to be decided by the civil court.. (*interruptions*) Section 146—the old section—should be dropped out. That is my suggestion. It may look drastic. What I say is this. Do not say that if the Magistrate is not in a position to decide finally the question of possession, then this step might be taken.

Shri Raghubir Sahai: That position can arise.

Mr. Deputy-Speaker: What happens if he comes to the conclusion that nobody is in possession or is unable to decide which party was in possession? (*Interruption*).

Pandit Munishwar Datt Upadhyay: My submission is that after balancing the evidence he should decide that question either way.

Shri Tek Chand: If the evidence is non-existent?

Dr. Krishnaswami (Kancheepuram): Under the new section the Civil Court is also left in a like position because if either of the party is not in possession it cannot do anything. That is a lacuna.

Pandit Munishwar Datt Upadhyay: If in a murder trial the Sessions Judge does not come to a particular conclusion can he send it to the higher court or refer it to this body or that body. Any court which exists, which works must decide the question finally according to the evidence that is before the court.

Mr. Deputy-Speaker: The hon. Member forgets that it is a criminal court. It is not a civil court.

Pandit Munishwar Datt Upadhyay: It is not a civil court but the question is not being finally decided. It can go to the civil court for final decision. (*Interruption.*)

The question of title has also got to be decided by the civil court. The Magistrate cannot decide the question of title.

Then again the question of the proviso which was referred to by my hon. friend Mr. Venkataraman. I think it is necessary. This is necessary because the question of possession which is decided by the civil court is, in fact, incorporated in the decision of the Magistrate in the criminal court. Therefore, it cannot work as *res judicata*. It cannot come in the way of barring any other suit. That decision is not a decision of the civil court; that is finally incorporated in the decision of the criminal court. That simply becomes a sort of report or finding submitted to the Magistrate and the Magistrate incorporates that finding in his own judgment. That becomes the final judgment. Therefore, that may not operate as *res judicata*. In these circumstances, I would suggest that the proviso is necessary for clarification.

One point more. I wanted to make this suggestion that the order which is passed in section 145 cases....

Mr. Deputy-Speaker: There are several other hon. Members who also want to speak:

Shri Nambiar: Yes, Sir.

Mr. Deputy-Speaker: The hon. Member may try to expedite.

Pandit Munishwar Datt Upadhyay: I will finish. The provision is that within two months from the date of the preliminary order, the possession of the party in possession should be restored. Sometimes, the Magistrates refer this complaint under section 145 to the police. The report of the police is taken and then, after that, sometimes other reports are also taken. Sometimes, the order is passed after two months after the date of dispossession. In that case, the position becomes rather difficult. Therefore, I submit that if the provision is made that within two months from the date of the filing of the complaint, whichever party had been in possession should be restored to position, then the position is secure. Otherwise, sometime the order may be very much delayed and the position may become awkward. That is all I have to say.

Shri Gadgil: Mr. Deputy-Speaker, I think what is proposed in clause 16 is absolutely necessary even in the best interests of democracy itself. In the first place, the machinery of law must be adequate to deal with the situation as it exists and as can be reasonably visualised. The experience, after independence, during the

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past 7 years goes to show that *satyagraha* which was really a spiritua weapon has now come to be a very handy weapon in the hands of all sorts of agitators, good, well-intentioned and even otherwise.

Shri Nambiar: It goes against Congress.

Shri Gadgil: Therefore, it is necessary to invest the Government with adequate powers to deal with a situation of this character (*Interruption*). We know, for example, the agitation against cowslaughter. Now, volunteers are gathering at several places; they are brought here and a whole organisation is working as if it is a military organisation with supply, transport, high command, this, that and the other.

Shri S. S. More: They are copying your procedure.

Shri Gadgil: So far as the propagation of any particular idea is concerned, there is nothing wrong fundamentally about it. Every citizen of a democratic country has a right to think whatever he likes, and has a right to express within certain limits, and if his expression goes against the law of the land to take the consequences and then he has a further right to make a declaration of his faith but not in mass formation. As Professor Laski has very nicely put it in one of his books, that an individual has a right to declare his faith quietly and in a dignified manner, meeting the punishment that the law may provide. But, he has not the right to enter on an agitation in which hundreds and thousands of persons will participate with a view to coerce the Government of the day in following a particular plan for which that Government has had no electoral sanction. The Government of the day has been elected on a particular programme (*Interruption*). If the generality of the people are dissatisfied, it is perfectly open to organise public opinion in the most constitutional manner and punish the Government for its faults of omission or commission at the proper time, namely, at the time of the general elections or, if the Constitution so provides, the dissolution can be earlier than at the time of the elections.

Shri Nambiar: Once in five years.

Shri Gadgil: The way in which social thought is built up is not the way in which *satyagraha* is committed. Some people want land for the landless; it is a perfectly good idea. But the best way is to proceed in a democratic way where the Government is responsible to the people, and every citizen has a right and along with the right, he has some social responsibility. I am, therefore, of the view that where *satyagraha* is used not so much for spiritual satisfaction or for the declaration of one's faith honestly held, but for bringing about a particular state of affairs in the political sphere on a mass scale, that is a crime, which must be adequately and effectively met.

Shri S. S. More: Noble crime!

Shri Gadgil: What clause 16 really seaks to meet a situation when there is a breach of peace, I am against st even non-violent *satyagraha* on a mass scale and let me make my position abundantly clear that even if it is non-violent on a mass scale, in 99 cases out of 100, past experience tells us that it ultimately results in violence of the worst character. Therefore, it is much better to take effective steps in time and save a great loss to the population. If the meaning of democracy is that the will of the majority ought to prevail for the time being, then the majority view of the people is reflected in the Government they have elected and that Government and , that Government functions till that hypothesis is absolutely eliminated. Therefore, if the breach of peace is expected at a place, the District Magistrate can take effective action not only against the person who may be there but also against the person who may be in Sholapur, Barsi or any other place. That provision is therefore necessary

to deal with this new kind of threat to democracy, and I think Government is perfectly right here.

So far as the other provisions about breach of peace and with regard to possession of property are concerned, I think what are now incorporated in the Bill, as reported, constitute a distinct improvement. After all, it is not the possession or ownership of the particular property that is to be given greater emphasis, but the maintenance of peace in the community and the maintenance of peace in the particular area. Therefore, as promptly as possible, something ought to be done, and if it is necessary, to prevent breach of peace, the property should be attached. I cannot agree with my friend, Shri Upadhyay, that the whole of section 146, which deals with attachment of propertry, ought to go. It is the bone of contention and therefore it must be taken out from the fighting dogs and kept by the Government as a trustee for the rightful owner when he has established his ownership in a competent Civil Court. What is provided here is a new scheme. In the old scheme there is no reference to a Civil Court, and the Magistrate used to make some sort of enquiries and pass orders. What is contemplated here is a little better. The Magistrate himself takes evidence, examines witnesses and then comes to certain conclusions and then decides the fact of possession *prima facie*. It is not a final decision because that decision is not based on merits. Similarly, where a Magistrate—we have often complained—has not got that judicial temperament and judicial ability of weighing evidence especially in the case of civil rights, this provision enables him, when he is unable to find whether A, B or C was in actual possession, to refer it to the nearest Civil Court which has got jurisdiction. Therefore, the Civil Court reference will have nothing to do with title and that Civil Court will merely go into the question of possession on the relevant date on which the breach of peace actually happened or was apprehended. If after going through such evidence as may be laid by both parties, the Civil Court comes to the conclusion that X was in possession, then it gives the finding, that finding goes back to the Magistrate and the Magistrate's order will be in accordance with that finding. When all this is done, let us presume that the main thing for which the whole scheme has been evolved, namely, maintenance of peace, is secured.

Mr. Deputy-Speaker: Our quorum is short only by eleven Members. I am only referring to the interest hon. Members are taking in the Criminal Procedure Code!

Shri Nambiar: We are feeling a sort of steam roller....

Shri Gadgil: My argument will be valid in spite of want of quorum.

Mr. Deputy-Speaker: Please ring the bell. I am wondering when a group of sections of such an important nature are discussed how many are actually representing the millions of India here!

Shri S. S. More: Mr. Gadgil may resume his seat.

Shri Gadgil: Even that is not in order because there is no quorum!

Shri Nambiar: If we do not get any concessions from the hon. Home Minister, what is the use of wasting time by sitting here? If he gives us some concessions, we will see that there are people here in large numbers. If you give us something, we will have quorum. Otherwise, what is the use of sitting and quarrelling?

Mr. Deputy-Speaker: Now sufficient Members have arrived to make up quorum.

Shri Gadgil: When the Civil Court has given its finding, it goes to the inquiring Magistrate and the Magistrate will pass orders, in accordance with that finding. But if there is any party which still feels aggrieved because there was not enough opportunity or there was not enough evidence available then, the provision made in clause

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19 is quite adequate, because the proviso says :

> "Provided that nothing in this sub-section shall debar any person from suing to establish his title to the property, the subject of dispute, and to recover possession thereof."

The question was raised whether by providing something in this proviso, the rights which are available under the general law of the land, namely, section 9 of the Indian Specific Relief Act, are barred or not barred. I agree with Mr. More's interpretation that when anything is not specifically barred, it is allowed. It is unlike the doctrine of *res judicata*, where constructive implication is valid. Here by implication it may have been excluded, but implication is not enough. I think that in order to put it beyond doubt, the amendment moved by Shri Venkataraman should be accepted by the House. Whatever order is passed under this clause or section will be subject to any order that may be subsequently passed by a Civil Court of competent jurisdiction. If there is any doubt, that doubt will be eliminated.

Shri S. S. More: Why not delete the provision altogether?

4 P.M.

Shri Altekar (North Satara): I do not agree with my hon. friend Pandit Munishwar Datt Upadhayay when he says that the provisions—sections 145 and 146—as they are sent here by the Select Committee will not in any way expedite the matter. The thing is that according to a scheme that is now contemplated under sections 145 and 146 the matter will require at the most six months—two months in the Mamlatdar's Court, three months in the Civil Court and possibly one month more in the District Magistrate's Court occasionally. There may be transmission but it is in order to expedite the whole matter. We know of cases where proceedings under section 145 have gone on for over two years. I know of many matters of that type. The thing is that the Magistrates postpone the matter day after saying that he is not in a position to decide that matter properly. Now, what is provided here is that if he is in a position to come to a conclusion as regards possession on account of the documents that are filed or the affidavits that are filed, he will easily do it within two months. If he is not in a position to come to a definite conclusion and finds that the matter is rather of a complicated nature, the evidence that is led before him requires a careful consideration and a judicious mind, then, he will send it to the Civil Court. The matter would then be decided within two or three months, because the whole of the evidence is there, and if some further evidence is necessary and witnesses are to be examined, then the Civil Court will do the work and the matter will be decided. What I am rather afraid of is that in the majority of cases the Magistrates will find that it is a heavy responsibility on them to decide the matter then and there and possibly in a large number of cases the matter be sent to the Civil Court. Even in that case, I would like to point out that the Civil Court will be in a position to decide the matter on the question of possession within two or three months. The matter in a majority of cases, will be decided in not less than three months. Therefore, I think that the provision that has now been made will certainly expedite the matter in a more effective way than what we find now. From that point of view, I think that so far as the expeditious decision of the matter is concerned, this would be a helpful provision.

An Hon. Member: Is six months not a long time?

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

Shri Altekar: In many cases under section 145, one year or a year and a half or two years are required. There has hardly been a case which is decided in less than six months That is our

usual experience so far as sections 145 and 146 are concerned. Therefore, I would like to say that the provision that we are making is more helpful for expeditious decision of the matter.

The only question that rather disturbs our mind and which was brought to our notice is whether a decision by the Magistrate can only be proceeded further in any Civil Court on the question of title only. There are so many provisions so far as the question of possession is concerned. For instance, there is section 9 of the Specific Relief Act. There are also other provisions in some State—provisions like the Mamlatdar Court Act which give six months' time for getting the question of possession decided. Here, only two months is the period that is taken into consideration. From that point of view, the relief that can be had under section 9 of the Specific Relief Act, or some such provision as in the Mamlatdar Court, Act will be practically negatived if what is proposed by the Joint Committee is retained as it is. In order to remove any doubt in that connection, the amendment that is proposed by Shri Venkataraman will be necessary. It will remove all doubts and all the reliefs will be available. Therefore, I would like to support that amendment. It is a desirable one. Sections 145 and 146, as have been amended by Shri Venkataraman's amendment, will be a great improvement upon the present position. They should be accepted. What was originally intended was that if the Magistrate thinks that there is a dispute in connection with certain matters, he should immediately attach the property and send the case to the Civil Court. But that would be a premium upon aggression. If a certain person enters into possession of a property which does not belong to him, or of which he is not in possession, and the person who was originally in possession had gone somewhere else, the latter on returning back will find himself dispossessed. He will say, my possession is being disturbed—the rightful, original owner will say that; and the aggressor will complain that he is now disturbing my possession. That should not be the case. It should not be this sort of premium upon aggression. Therefore, the present provision as is provided under section 146 should be accepted. That is my humble submission.

Now, as regards clause 16, I would like to point out that whenever any situation which creates disturbance of peace and tranquillity occurs, that is being handled, for the benefit of society, by any such measure which is enacted to curb the activities of such offenders there is a certain section which always rises to oppose such measure. I would like to point out that whatever Government there may be in power it must maintain peace and tranquillity in the whole country. So it is not the question of any party, it is not the question of only a certain party desiring to be in power; no party will be maintained in power if it could be shown that they are acting improperly. The public will be aware of it. It is only intended for the purpose of maintaining peace where there is disturbance created by certain persons who are acting in a violent manner. Under these circumstances, what is being suggested is not a new crime that is being defined but a definition which was there in the old Act is kept as it is but effectively tackled. It is only when the District Magistrate or a Presidency Magistrate is not available near the place, that the I Class Magistrate who is specially empowered, or a Sub Divisional Magistrate who may be easily available will be acting in that connection, in the same manner as the District Magistrate would act. So, there is no further enlargement of any power or new measure but only a provision for effectively handling the situation according to law, that was already there.

Shri Tek Chand: At the source?

Shri Altekar: At the source. Therefore, I would like to point out that whenever such a sort of activity is carried on in certain parts of the country where people create disturbance

[Shri Altekar]

—this measure would be effective in preventing such violent and unlawful activities. There should be a measure to curb all these unlawful activities. From that point of view, I would like to say that the change that is contemplated in section 16 is quite proper and deserves the support of the House.

Shri Amjad Ali: I have given in an amendment to clause 19 (1B), wherein I want to omit the words "conclude the enquiry and". My intention is to make it more speedy than it is provided at present. As it appears, the whole scheme is for speed. It gives two months to the Magistrate, for deciding the case. Then, it is shunted to the Civil Magistrate for another three months. That makes five months altogether. If, as it appears, the Civil Court shall, as far as practicable, within a period of two months from the date of the appearance of the parties before it, conclude the inquiry and transmit its finding, then, the trial will take some time, and after it, the transmission of the finding will again take some time. That means no end of it and we do not know when it is going to conclude. That is one aspect of the matter for which I have given this amendment. I commend this to the acceptance of the hon. Home Minister. I request him to see that this amendment is accepted, because it is in the interest of speedier trial.

The other thing which I want to say is that the existing section 146 of the Criminal Procedure Code was much better in some respects than the proposed section, because that gave possession to the claimant before reference is made to the Civil Court.

The third thing I want to say is this. Under clause 17 section 117(2) is proposed to be amended thus:

> "Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

I have heard the hon. the Home Minister's speech and also the objects and reasons. I do not know why these cases, that is sections 108, 109 and 110 have been made into a summons procedure instead of warrant procedure. I want a reply to that point.

With these words I commend my amendment for the acceptance of the House.

Mr. Chairman: Shri Raghubir Sahai.

Shri Raghubir Sahai: Mr. Chairman, I will confine my remarks....

Mr. Chairman: I am sorry; there is some confusion; I want to call the gentleman who has given so many amendments, Shri Raghubar Dayal Misra.

Shri S. S. More: May I point out that even if a person, by a mistaken identity, is called upon to speak and he begins his speech, no one can stop him?

Mr. Chairman: Unfortunately—I also know that—but the Member has not even begun.

Shri S. S. More: He said "Mr. Chairman". That is a good beginning.

Mr. Chairman: Shri Raghubar Dayal Misra may speak.

श्री आर० डी० मिश्र : अध्यक्ष महोदय ....

श्री वी० पी० नायर : अंग्रेजी में बताइये ।

श्री आर० डी० मिश्र : मैं आपको हिन्दी में ही समझाये देता हूं ।

पहली बात दफा १०७ के मुताल्लिक है । उसके मुताल्लिक मैं यह कहना चाहता हूं कि यह अमेंडमेंट जो इस बिल में रखा गया है निहायत मुनासिब है और इसकी जरूरत थी । श्री मोर ने यह बात कही कि हम पीछे हटते जा रहे हैं । सन् १८८२ में पहले यह चीज मौजूद थी, पर सन् ८८ में इसको हटा दिया गया । मेरा कहना यही है कि अंग्रेज ने अपने जमाने में जो सन् १८८८ में खराबी की थी उसको आज हम दूर कर रहे हैं ।

पहले सन् १८४७ के बाद अंग्रेज ने अमन रखने के लिये अपना कानून बनाया और उस वक्त सन् ८२ में कानून में यह बात रखी कि कहीं अमन में खराबी न पड़ने पावे। लेकिन बाद में कुछ ऐसी गड़बड़ी हुई कि जो पुराने जमींदार थे, कलकत्ता वगैरह में, वे उत्तर प्रदेश के गांवों में फिसाद करवाते थे। खुद तो कलकत्ते में रहते पर, उत्तर प्रदेश में फिसाद करवाते थे और काश्तकारों पर मुकदमे चलवाते थे। उस मौके पर मजिस्ट्रेटों ने देखा कि जो आदमी जुल्म करवा रहा है वह तो कलकत्ते में एक बड़ा जमींदार बैठा है और यहां के आदमियों को लड़ा रहा है। उन मजिस्ट्रेटों ने उन लोगों को अपने यहां बुलाना शुरू किया और उन पर मुकदमे चलाने शुरू किये। उस वक्त चूंकि जमींदारों का जोर था इसलिये उन्होंने गवर्नमेंट पर दबाव डाला और सन् ८८ में यह तरमीम हुई कि जब तक जमीन या आदमी उस इलाके में न हो उस वक्त तक मुकदमा न चलाया जाय। अंग्रेजों ने अपने उन जमींदारों की बात मान कर सन् ८८ में उस कानून में तरमीम कर दी और कानून यह हो गया कि अगर आदमी फिसाद की जगह पर उस मजिस्ट्रेट के जुरिस्डिक्शन में हो तभी उस पर मुकदमा चलाया जाय, और इस तरह से जो बाहर के आदमी थे वे इस कानून की जद से बाहर चले गये। अब जब कि हिन्दुस्तान आजाद हो गया है तो इस बात की जरूरत है कि किसी इलाके के आदमी किसी दूसरी जगह फिसाद करने के लिये न जाने पायें। हमारा यह तजुर्बा रहा है कि खाकसार मूवमेंट में और जगहों से लखनऊ में आदमी आते थे और गड़बड़ करते थे। वे सत्याग्रह करने नहीं आते थे, बल्कि फिसाद करने के लिए आते थे। हम देखते हैं कि कभी लोग लखनऊ आ रहे हैं, कभी दिल्ली आ रहे हैं। इस लिये ऐसी हालत में जहां पर ब्रीच आफ दी पीस का अन्देशा हो उसको सब जगह पर रोक देना चाहिये। तो अगर हिन्दुस्तान के किसी हिस्से में आदमी जगा हो कर दिल्ली आ कर बलवा करना चाहते हैं तो गवर्नमेंट का यह फर्ज हो जाता है कि उनको रोके और उन इलाकों के अफसरों को इत्तला कर दे कि तुम अपने आदमियों को रोको और कोई यहां फिसाद करने के लिये न आने पाये। अगर यह देखा जाय कि कुछ आदमी ट्रावनकोर कोचीन में माला पहिने जलूस निकालते हैं और कहते हैं कि हम दिल्ली जा कर मूवमेंट करेंगे तो उनको वहां रोका जाना चाहिये। ऐसा होने पर वहां के मजिस्ट्रेटों को उन लोगों के खिलाफ कार्यवाई करनी चाहिये ताकि वे दिल्ली में आ कर फिसाद न कर पायें, या किसी दूसरे इलाके में जा कर फिसाद न कर पायें। आज जब कि आल इंडिया बेसिस पर पार्टियां आर्गेनाइज हो रही हैं तो गवर्नमेंट को भी एलर्ट रहना चाहिये कि इस तरह के मूवमेंट न चलने पायें। यह कहना कि सत्याग्रह के लिये सजा ही जाती है तो यह बात गलत है। इस तरह का फिसाद सत्याग्रह नहीं है। सत्याग्रह में आज तक इस कांग्रेस गवर्नमेंट के जमाने में किसी को सजा नहीं की गयी। अगर कहीं ऐसी दिक्कत पेश आती है कि प्राइम मिनिस्टर जा रहे हैं और कोई उनके आगे जा कर लेट जाता है तो वहां पर दफा १०७ इस्तेमाल नहीं की जाती है। वहां पर ब्रीच आफ पीस नहीं है। वहां पर इस किस्म का हुक्म जारी कर दिया जाता है कि लेटो मत, वहां पर जाओ मत। और अगर कोई उस कानून की खिलाफवर्जी करता है तो उसको उस कानून तोड़ने के लिये सजा दी जाती है। सत्याग्रह के नाम पर किसी को सजा नहीं दी जाती। तो यह तरमीम जो की गयी है वह निहायत मुनासिब है और ठीक की गयी है।

इसके बाद मुझे दफा १४५ और १४६ के बारे में कहना है। जहां तक १४५ का ताल्लुक है लोग बाद कानूनी बातों में गड़बड़ किया करते हैं। असली चीज यह है कि चाहे किसी का टाइटिल हो या न हो, चाहे कोई

[Shri R. D. Misra]

ट्रंसपासर ही क्यों न हो, अगर वह जमीन पर काबिज हैं तो उसको उस जमीन पर से हटाने के लिए हर एक को अदालत में जाना होगा और वहां से कबजा लेना होगा। उस जमीन पर कबजा हासिल करने के लिए दूसरी पार्टी को सिविल कोर्ट में जाना चाहिये और वहां से वह अपनी जमीन ले सकता है। लेकिन कोई शख्स किसी को लाठी या डंडे के जोर से जबरदस्ती बेदखल नहीं कर सकता। इसीलिये दफा १४५ रखी गयी है। अगर कोई आदमी अपनी ताकत का इस्तेमाल करके उस जमीन पर कबजा करना चाहता है तो उसके लिये यह दफा है। यह ठीक है। मजिस्ट्रेट शहादत और एफीडेविट ले कर यह तै कर देगा कि इस आदमी का कबजा है और तुम इसकी जमीन पर नहीं जाओगे, तुम्हारे लिये दीवानी का दरवाजा खुला है। अगर कोई मुझ को मेरे मकान से बेदखल कर देता है और पैसे की कमी की वजह से मुझे अदालत में जाने में दस पन्द्रह रोज लग जाते हैं तो मजिस्ट्रेट का यह फर्ज होगा कि वह देखे कि दखल किसका था और उसको दखल दिलवा दे। यह बात इस दफा १४५ में साफ कर दी गयी है। इससे कोई वास्ता नहीं कि वह आदमी ट्रंसपासर है या उसका टाइटिल है या नहीं, उसको जबरदस्ती नहीं हटाया जा सकता। उसको हटाने के लिये दीवानी में मुकदमा दायर करना होगा।

उसके बाद दफा १४६ के बारे में यह कहना है कि इस दफा के मातहत अंग्रेजों के जमाने में दो दो बरस मुकदमे चलते रहते थे और उसके बाद कोई इश्यू बना कर दीवानी में भेज दिया जाता था। साल डेढ़ साल वहां मुकदमा चलता था। मकान या जमीन एटच करके किसी साहब को दे दिया था। अब वह उस मकान या जमीन का जैसे चाहे इस्तेमाल करें जमीन को जोते या न जोते। इसमें बड़ा झगड़ा पड़ता था और झगड़े तय नहीं होते थे। गवर्नमेंट के पास यह शिकायत आयी कि जायदाद के मुकदमे बहुत लम्बे चौड़े चलते हैं उनमें जल्दी होनी चाहिये। यहां यह बड़ी मुनासिब तरमीम रखी गयी है कि दो महीने में मजिस्ट्रेट यह तै कर दे कि कौन आदमी कबजे में था, चाहे वह ट्रंसपासर था, उसका टाइटिल था या नहीं इससे कोई गरज नहीं। वह कुछ भी हो। इसमें साफ लिखा है :

The Magistrate shall then, without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute shall decide one way or the other.

इसको तय नहीं करना है कि कौन किस का लायसेंसी है, मोर्टगेजर है, रंटी है या लैंडलार्ड है उसको तो सिर्फ यह देखना है कि उस पर पजेशन किस का था। और इस बात को देखने में उसको तय कर देना है कि यह किस के पजेशन में था और दूसरी पार्टी को कहना है कि तुमने जबरदस्ती की है, तुम उस जमीन पर मत जाना, नहीं तो सजा पाओगे। इसमें दिक्कत यह पड़ गयी कि आपने इसके तरमीम करने में यह बात लिख दी कि अगर मजिस्ट्रेट यह तय नहीं कर सकेगा कि कौन कब्जे में था तो दीवानी फैसला होने के लिये भेज दिया जायगा। ऐसा हो सकता है कि किसी मजिस्ट्रेट की समझ में न आये तो उस केस को दीवानी भेज दे। मैंने अपनी तरमीम दफा १४६ के बारे में रखी है। मजिस्ट्रेट के यहां दरख्वास्त दी, मजिस्ट्रेट साहब को छुट्टी नहीं मिली इसमें दो महीने की आपने मियाद रख दी कि वह उसको डिसाइड कर, नहीं अगर दो महीने में मजिस्ट्रेट किसी वजह से उसको तै न कर सके तो उसको ख्याल होगा कि अगर तै नहीं किया तो जवाब तलब हो जायगा। इसमें दो महीने की बात लिखी है।

The Magistrate will say: "I am unable to decide the case; I refer it to the Civil Court."

अब बतलाइये मैं मालिक हूं कोई आदमी मेरी जमीन पर जबरदस्ती कब्जा करने लगा

और मुझ से लड़ने लगा। मैंने मजिस्ट्रेट के वहां दरख्वास्त दी कि फलां आदमी मेरे मकान पर जबरदस्ती झगड़ा करता है, कब्जा मेरा है लेकिन झगड़ा करता है, उसको इस हरकत से रोका जाय। या पुलिस ने रिपोर्ट कर दी कि फलां फलां आदमियों का मकान के बाबत झगड़ा है। मजिस्ट्रेट के यहां दो महीने मुकदमा चला, मजिस्ट्रेट को फुरसत नहीं मिली। यह जो नया कानून बना है इसके मुताबिक मजिस्ट्रेट को उस डिस्प्यूट को दो महीने में तय करना है, नहीं तो जवाब तलब हो जाना है, इसलिये मजिस्ट्रेट के लिए यह सीधा रास्ता निकल आता है कि वह फरमा देते हैं

I am unable to decide who was in possession. The matter is referred to the Civil Court.

ऐसी हालत में क्या होगा, मेरा मकान बिला वजह अटैच हो जायगा। अब आप ही बतलाइये कि मैं मकान में काबिज हूं, मेरे मकान का अटैचमेंट बिला वजह क्यों हो जाय। दफा १४६ में यह रखना कि मजिस्ट्रेट की यह राय हो कि जमीन पर किसी फरीक का कबजा नहीं है या वह तै नहीं कर सकता कि किसका कबजा है तो झगड़े की जमीन को अटैच करके मुकदमा सिविल कोर्ट को भेज दें ठीक नहीं है उसको तै करना चाहिये कि उसकी राय में जमीन पर कबजा किसका है उसके सामने एफिडैविट हैं he must decide it वह फैसला करे कि मेरी अकल के मुताबिक यह फरीक पजेशन में है और दूसरे फरीक को हिदायत करे कि तुम उसके पजेशन में डिस्टरबेंस नहीं करोगे और चूंकि केस डाउटफुल है। इसलिए पूरे रैकार्ड्स सिविल कोर्ट को भेज दें कि वह फैसला दे और सिविल कोर्ट से जब तय हो कर आ जाय तब दूसरा आर्डर दें। सिविल कोर्ट जिस पार्टी के फेवर में डिसाइड करे कि उसका पजेशन होना चाहिये उसको पजेशन दिलाये। इस दफा के सम्बन्ध में श्री बेंकटरामन का जो अमेंडमेंट है मैं उसको पसन्द करता हूं और जैसा कि बहुत से वकील मेम्बर साहबान ने बहस करके दिखलाया कि दफा १४६ के प्रोविजों के रहने से लोगों के हकूक को नुकसान पहुंचने का अंदेशा है वह श्री बेंकटरामन की तरमीम के मंजूर करने से दूर हो जायगा। यह मामला चूंकि सिर्फ पजेशन का है सरसरी तौर का है इसलिये इसका असर रैगुलर मुकदमात पर दीवानी में पड़ने वाला नहीं है फिर भी इसको साफ कर देना चाहिए। जो मैंने अपनी तरमीम रखी है उस तरमीम को अगर हाउस मान ले तो कुछ मामलात ठीक तौर पर तय हो सकते हैं। यह मजिस्ट्रेटों पर छोड़ देना कि अगर वे यह तय नहीं कर सकें कि जमीन पर किसका कबजा है तो वे जमीन को अटैच कर लें मजिस्ट्रेट तय नहीं कर सकें यह ठीक नहीं लगता। उनको कागजात देख कर अपना फैसला देना चाहिये अगर मेरी तबीज २८७ जो मैंने रखी है, १४६ के बजाय उसे आप रख लें तो वह ज्यादा मुनासिब होगी। यह देखना मजिस्ट्रेट का काम है कि कोई आदमी किसी के पजेशन में डिस्टरबेंस न करे, ट्रेसपास न करे। मजिस्ट्रेट का काम है ला एंड आर्डर को मेंटेन करना। सिर्फ इतनी बात है। मैं चाहता हूं कि ला एंड आर्डर मेंटेन रहे। जमीन पर किस को कब्जे का हक हो, इसका फैसला करना सिविल कोर्ट का काम है मजिस्ट्रेट को यह देखना ही जरूरी है कि कहीं किसी सूरत में डिस्टरबेंस न हो और ला एंड आर्डर मेंटेन रहे।

दूसरी बात मैं यह चाहता हूं कि यह जो दफा ९९७ में आप तरमीम कर रहे हैं कि वारंट केस का प्रोसीज्यार न रहे और समन केस हो तो मेरी समझ में यह बात गलत है। दफा ११० में तीन वर्ष की सजा होती है। १०९ में एक वर्ष की सजा होती है। १०८ में एक वर्ष की सजा होती है। अब्वल में तो इन १०८, १०९ और ११० दफाओं के क्रिमिनल प्रोसीज्यार कोड में कायम रहने के ही खिलाफ था लेकिन इस वक्त तो हम उन दफाओं पर गौर नहीं कर रहे हैं, और अगर इन दफाओं को

[Shri R. D. Misra]

रहना ही हैं तो वह भले ही रहें लेकिन मैं यह चाहूंगा कि जैसी कि तरमीम की जा रही हैं वह न की जाय इनका वारंट केस के प्रोसीज्यार के मुताबिक ट्रायल होना चाहिये। वारंट केस का जो प्रोसीज्यार हैं कुछ तरमीम के साथ जो इस वक्त किया जा रहा हैं वह निहायत अच्छा हैं। सब जानते हैं समनस केसेज में क्या होता हैं। वारंट केस के प्रोसीज्यार के मुताबिक किसी अदालत से न्याय हासिल किया जा सकता हैं आप इन प्रोसीडिंग्स में से वारंट प्रोसीज्यार को न निकालिये, उसको रखिये।

तीसरी चीज मुझे यह अर्ज करनी हैं कि मैंने यह अक्सर देखा हैं कि आज कल दफा ११७ के अन्दर अगर थानेदार साहब किसी से नाराज हो गये तो उस बेचारे बेगुनाह आदमी पर दफा ११० का मुकदमा चला देते हैं, हालांकि कोई उसके खिलाफ पिछला कनविक्शन नहीं हैं लेकिन शहादत में काफी लोग पेश कर दिये जाते हैं और कह दिया जाता हैं कि यह आदमी बदमाश हैं। कोई चोरी उसने नहीं की, किसी का माल नहीं चुराया और न कोई चोरी का माल ही खरीदा लेकिन जनरल तौर पर २५ आदमियों की शहादत गुजार दी जाती हैं कि यह आदमी चोरों की संगत करता हैं और नतीजा यह होता हैं कि एक शरीफ आदमी को बदमाश बना दिया जाता हैं। इस तरह की एक चीज इसमें रखी हुई हैं। मेरा कहना यह हैं कि किसी कानून में इस तरह का आफेंस नहीं करार दिया जाता हैं। हाईकोर्टस की रूलिंग्स मौजूद हैं कि जब तक स्पेसिफिक इंसटान्सेज मौजूद न हों तब तक ऐसी बात नहीं करनी चाहिये लेकिन होता यह हैं कि थानेदार साहब अगर किसी से नाराज हो गये तो उस बेचारे के खिलाफ ११० में पचास गांवों में से दो दो मुखिया लोगों को बुलवा कर उसके खिलाफ शहादत गुजरवा देते हैं, और उस बेचारे बेगुनाह आदमी को अपने बचाव में गवाह जुटाने में बड़ी मुश्किल पड़ती हैं वह कहां से पच्चीस गवाह लाये जो थानेदार साहब के खिलाफ गवाही दें कि नहीं यह आदमी बदमाश नहीं हैं थानेदार साहब को बा आसानी गवाहियां मिल जाती हैं और नतीजा यह होता हैं कि वह शरीफ आदमी बदमाश हो जाता हैं। मेरी तरमीम इस पर जो हैं वह २८५ हैं। उसमें मैंने मांग की हैं कि १८९८ के एक्ट में से दफा ११७ के सबसेक्शन ४ को जाब्ता फौजदारी में से निकाल देना चाहिये।

जनरल रंप्यूट की शहादत कानून में किसी जगह पर लागू नहीं हैं, सिर्फ ११० के मुताबिक लागू हैं लिहाजा उसको जाब्ता फौजदारी में से निकाल देना चाहिये, बस यही मेरा आशय हैं।

Mr. Chairman: Amendment No. 285 has not been moved.

Shri R. D. Misra: I have moved; it is there.

Mr. Chairman: No. 286 is quite different. He is speaking of general reports.

Dr. Katju: That was probably out of order.

Mr. Chairman: This was ruled out of order, I am afraid.

Shri R. D. Misra: Amendment No. 285 is to clause 17; No. 286 is to clause 19. I gave two chits.

Mr. Chairman: Which clause?

Shri R. D. Misra: Amendment No. 285 to clause 17.

Mr. Chairman: Yes.

Shri Raghubir Sahai: I will confine my remarks to clauses 16, 18, and 19. Objection has been taken in regard to clause 16 that the power up to now vested in District Magistrates and Chief Presidency Magistrates to bind a person under security proceedings, who was likely to commit a breach of peace in an area beyond his jurisdiction should not be extended to other Magistrates also.

I am not going to import any political considerations into this matter, but I will just say that up to this time these powers under section 107 vested in the Chief Presidency Magistrate and the District Magistrate. So far as I understand from the amendments notice of which has been given, no amendment is to the effect that from original section 107 this portion or these words, "other than a Chief Presidency or District Magistrate", should be taken away or delected. It goes to show that the present provision is acceptable to everybody and up to this time this power vested in the Chief Presidency Magistrate and the District Magistrate has not been abused. Now, what has been done by the Joint Select Committee is that the power which up till now vested in the Chief Presidency Magistrate and the District Magistrate has been extended to other Magistrates also.

We find in our own State of Uttar Pradesh where judicial Magistrates have been appointed and where other Stipendiary Magistrates are working that almost in all districts the District Magistrates have almost been divested of their judicial duties. They get no time. They spend all their time in other functions, presiding over so many committees, doing so many other things such as development work, anti-corruption committee and so on and so forth, and all the case work is being done by the judicial Magistrates and by other Stipendiary Magistrates. So, these security proceedings are also under the jurisdiction of those Magistrates. So, those powers which up till now vested in the Chief Presidency Magistrate and the District Magistrate have now been extended to these Magistrates. I think no harm will be done, and no political considerations should be imported into this matter.

Many arguments have been advanced here that the amended clauses of the Bill will not save time in the proceedings under sections 145 and 146, and the filing of affidavits will do no good, that the Civil Court should have no jurisdiction, that the Magistrate should decide the question of possession once and for all. Now Sir, in considering this question, the whole background of sections 145 and 146 should be taken into consideration. These sections laydown summary proceedings to decide disputes with regard to possession of land or property attached to it. In the original Bill it was proposed that as soon as a matter comes before a Court in which there is an apprehension of a breach of the peace, the Magistrate should at once attach the property and refer the parties to a Civil Court for a proper decision. That was really a very revolutionary proposal, although the matter so far as it rested with the Magistrate should have taken very little time. Now, in considering that point before the Joint Select Committee, all possible opinions that had been supplied to the Members of the Committee were taken into consideration, and the concensus of opinion on this point was that if this revolutionary proposal had been accepted, then many unscrupulous persons would make very bad use of this section and rightful owners would be deprived of their property. So, having regard to these objections, this *via media* was decided upon, *viz.*, that the enquiry should be made by the Magistrate, it should be made in a summary fashion, he should not take much time, and if there was any doubt in his mind or he could not decide the question of possession one way or the other, then the matter should be referred to the Civil Court. Even up to this time, in the working of sections 145 and 146, from our experience we know that in deciding a particular matter with regard to possession, Magistrate refers the parties to a competent Civil Court. He says: "For the time being when the question of a breach of the peace is involved, the possession is taken, the attachment is made, but if the parties are dissatisfied with the decision, they can go to a Civil Court." So, the powers of the Civil Court are there

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intact. Now, so that the matters may be decided in an expeditious way, the amended section has provided that the time taken up by a Magistrate will not exceed two months and the time taken up by the Civil Court, in case a proper decision is not made by the Magistrate, will not exceed three months. So, when hon. Members say that the trial will be protracted to the same extent as it used to be before, I think they are mistaken. Under the present provisions, the trial would be held speedily, within five months. It may be less. This is the utmost limit laid down in the section and which can be utilised both by the Magistrate and the Civil Court, but nothing exceeding that. So, I submit the present provisions are a great improvement upon the previous provisions and the trial under these sections will be held in a non expeditious manner.

With regard to the amendment that has been proposed by my hon. friend Mr. Venkataraman, with all respect I beg to submit that I do not quite see the relevance of this amendment. He says that all these matters would be decided under the present sections in which the dispute with regard to the possession is not beyond two months, and those matters which are between two months and six months old would not be decided, and therefore in those cases the parties would be put to a great handicap. I say the right of the Civil Court is there, and in any matter of title he can go to the Civil Court at any time he pleases. He says that the question of possession will not be adjudicated under the proposed proviso in the amended Bill. Well, it is a well-known maxim of law that possession is nine-tenths of title.

Shri Tek Chand: Possession is nine-tenths of law.

Shri Raghubir Sahai: Very well, law. In other words, it would mean **title.**

An Hon. Member: It does mean title.

Shri Raghubir Sahai: So, on the question of possession also, if he had been in rightful possession for a very long time, that would also mean that he has got a certain title to it, and that question, then, in my humble opinion, can be decided by the Civil Court. So, under the circumstances, I think that the amended section as it has been brought forward in the Bill should not be any further amended.

I give my whole-hearted support to these clauses as they stand in the Bill.

Shri N. C. Chatterjee (Hooghly): I am really deeply shocked to hear the speech of Mr. Gadgil. If he goes to the treasury benches and becomes the next Home Minister....

Shri Gadgil: I have already worked for some time.

Shri N. C. Chatterjee: ..or if a man of his mentality adorns the portfolio now occupied by Dr. Katju, that will be a bad day for India.

Look at the section which he is applauding, this clause 16. Does he not realise that it is a preventive section, not a penal section? Does he not realise that it is being used, and has been used, against people on political grounds, on the ground of executive zulum, and just to teach a man a lesson? Is it not a bad day for India that the law which we had in the year 1882 is now being solemnly promulgated in the year 1954? You know that under the Code of 1882, there was a section, under which there was no limitation on the powers of Subdivisional Magistrates and Magistrates of First Class. They could exercise the same jurisdiction which a District Magistrate or a Chief Presidency Magistrate could exercise. But the powers of such Magistrates, i.e. Subdivisional Magistrates and

Magistrates of First Class, were restricted by a deliberate alteration of the law made in the year 1888. In view of the fact that section 107 conferred very wide powers, and unusual powers, on the officers concerned, it was desirable that the jurisdiction should be exercised by a Magistrate only when both the person and the place were within the local limits of their jurisdiction. This is what was done in 1888. Now, we are abrogating that. We want to take our law back to the year 1882.

Shri S. S. More: They will take you to 1793 now.

Shri N. C. Chatterjee: Possibly even earlier.

Shri Gadgil: Why not much earlier than that?

Shri N. C. Chatterjee: What we are pointing out is this, that Shri Gadgil has trotted out the object behind this. He says there is satyagraha or the possibility of satyagraha, and that is why this kind of a legislation should be there. Satyagraha is not the monopoly of the party to which he belongs. Satyagraha is not patented by any particular political organisation. In a chafing spirit, in a bantering spirit, he talked of the anti-cow-slaughter campaign or satyagraha movement.

Shri Gadgil: No. Very seriously.

Shri N. C. Chatterjee: I am saying that if there is any movement in India which is having the largest support, it is this movement. If you have got the courage to face a referendum on this, you will find that ninety-nine per cent. of the people of this country are supporting that; not only Hindus, but even non-Hindus support it. My hon. friend Shri Gadgil solemnly suggests that because that kind of a movement is on, we should invest such powers on Magistrates,—not merely District Magistrates or Presidency Magistrates, but all kinds of Magistrates—and extend their ambit of authority even territorially, so that a man sitting in Lucknow, for instance, can order a man from Travancore-Cochin coming up here. You know how section 107 has been abused and perverted for political purposes in the State of Madhya Bharat. Over twenty members of a particular political party were being troubled by this section.

Shri S. S. More: Even in Maharashtra.

Shri V. G. Deshpande: In Gwalior also.

Shri N. C. Chatterjee: I am saying, in the State of Madhya Bharat.

In view of all this, it is particularly desirable that this should not be done. Does not Shri Gadgil know that there was a movement sponsored by Dr. Ram Manohar Lohia in the State of Uttar Pradesh, which was condemned by the Congress as satyagraha, but the High Court held that it was perfectly legal, and he was released from jail, with hundreds of people who also came out? Satyagraha has got to be resorted to, if you believe in democracy, in certain cases, under certain conditions.

Is there any method of recall of Members of Parliament or Members of a Legislature? They get into office, and stick to that for five years. But assume that a party which has got the support of a big majority becomes erratic and it suffers from intoxication of power, and there is organised oppression, have not the people or the other political parties got the right to say that they are not going to tolerate this kind of a thing. I might just give one instance, in the State of Andhra. You are talking of democracy, but you are making parliamentary democracy a mockery by having this kind of a legislation. In the State of Andhra, the Legislature passed a Resolution by a big majority, that there must be prohibition. Government pooh-poohed it. Therefore, a satyagraha agitation was started. Was it not democratic to do so? Was it not proper? Are you going to have this kind of section 107, and this kind of provision for penalising people, for preventing that kind of a satyagraha? It is not right. Thoreau has said—that parliamentary

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democracy means a chance only after five years or six years to bring to book some people. What about the interval? There must be some agencies by which you have got to do it. There is no use saying that people did it in Jammu. I know, and I have got information, that this was done in order to check Dr. Syama Prasad Mookerjee and all those who stood by him, when the Jammu and Kashmir movement started. There was nothing improper in that movement. There was nothing illegal in that. We wanted to focus the attention of the people on the legitimate grievances, both economic and political, of the people in that unfortunate State. That was not being listened to, and since there was no other alternative, they started the satyagraha movement. Those who believed that their cause was just had to resort to this movement simply to focus public opinion on those matters, because the powers that ruled were intoxicated with power and would not listen. If this movement were not there, the act of political betrayal had started and broken the organic relationship between Kashmir and India.

I have got cases under this section in the Calcutta High Court as well as the Patna High Court. You, Mr. Chairman, have got a bigger experience than mine in this type of cases. In one State, solemnly a case was started under section 107 proceeding on the ground that a person had cast a slur on in a written Statement in connection with his wife's petition for maintenance. Section 107 was resorted to because a citizen was alleged to carry on a campaign of vilification against an executive officer. Under this section, prosecution can be started because there is some campaign of vilification or libel against some high officers, or against some prominent politicians in a district. In 1947, in Calcutta you know what happened. The same thing happened also in the Patna High Court.

I submit that this kind of thing ought to be stopped. I am appealing to Parliament, and to the Home Minister not to take the law back to the year 1882. This change in the law was deliberately effected in the year 1888, and it was kept up by later legislation. It will be a retrograde measure in the year 1954 to make a change in the law, so as to bring the law back to the year 1882. I hope Parliament will not sanction this kind of thing.

Dr. Katju: A hot sentiment has been introduced by the last speaker into this very simple discussion. Under section 107, we have nothing to do with *satyagraha* or otherwise. The words which are material here are :

> "Whenever a Presidency Magistrate....is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity..."

Under the section to which my hon. friend Shri N. C. Chatterjee has no objection, orders can be issued and action can be taken by a District Magistrate or a Chief Presidency Magistrate. In Uttar Pradesh, the District Magistrate and the Subdivisional Officers reside in the headquarters of the district, and the District Magistrate can take any action today, in the sense in which we want that action should be taken under Section 107. But take the case of Bengal, for instance, where the conditions prevailing are different, as is well-known to my hon. friend Shri N. C. Chatterjee. The districts are very wide. The District Magistrate lives at the headquarters. The districts are divided into various subdivisions, and each Subdivisional Officer resides in the subdivision itself. Now, is it contended that for any action that is to be taken, you must go to the District Magistrate of Nadia, or Murshidabad or elsewhere, and that the local Subdivisional Officer, who is the senior officer, and a senior Magistrate, cannot be depended upon to

take proper action? Sometimes in this kind of a general discussion, people lose sight of what actually is provided. The language of the section is that proceedings under this section may be taken before any Magistrate empowered'. The idea is that the Magistrate will be empowered to proceed under this section, and he will be a senior Magistrate with ten years', twelve years' or fifteen years' service. He will only be concerned with the question of the maintenance of peace or the prevention of the breach of the peace. He will have nothing to do with the theoretical or doctrinaire right of anyone to perform *satyagraha*. Everybody is entitled to do what he likes. If he says, 'I am not going to pay taxes', let him not pay taxes. But, what happened two years ago in Delhi? You and I all remember. I saw with my own eyes people in Jodhpur, Jaipur and other places going to the railway stations in hundreds and were being given farewell so that they might come to Delhi and knock about in Connaught Circus and commit breaches of the peace and acts of violence. They were coming in hundreds and they were being garlanded and all that.

Shri V. G. Deshpande: In what connection?

Dr. Katju: There were large groups at the railway stations. It is only if the Magistrate thinks fit and if he knows that certain persons are going to Delhi day in and day out from Jodhpur, Jaipur and other places that he can ask them why are they going to Delhi and also to take action (*Interruption.*) He may ask them, 'Don't you proceed to Delhi in order to commit a breach of the peace', and if he is satisfied, take action. So far as I am concerned, I am not concerned with the letter of the law here. I do not apprehend that a Magistrate in Calcutta will issue a notice to me in Delhi, or Jaipur or Allahabad and say, 'you are coming to Calcutta to commit a breach of the peace; so, come at once, I am going to bind you down'. The question was that the local Magistrate (*interruption*), the local District Magistrate,—the District Magistrate of the place where the man is actually residing should be empowered to take appropriate action. There is no danger whatsoever of a junior Magistrate of the second class or of the third class taking action. My hon. friend is prepared to accept a District Magistrate having this power; he is prepared to accept the Presidency Magistrate having this power; but, he is not prepared to concede a Sub-Divisional Magistrate or a First Class Magistrate having this power. I tell you I have never come across such squeamishness.

Shri V. P. Nayar: But if they misuse their power?

Dr. Katju: Let the House be not afraid that we are being taken back to 1882 and 1888 and that this is retrograde, because of the eloquent language used now. There is no retrograde step. We have got to deal with the circumstances which exist in 1954 and we saw with our own eyes what happened in Delhi in the headquarters (*Interruption*). We had very difficult times for months. Therefore, this thing was introduced. I ask the House not to be frightened by the eloquent language of my hon. friend. (*Interruption*).

Shri Amjad Ali: May I seek a little clarification? I want an answer why in clause 17, the original section 117 is made a summons case and not keep the procedure of a warrant case.

Dr. Katju: I am coming to that. I think, so far as the warrant cases and summons cases were concerned, the discussion was postponed.

Mr. Chairman: So far as the question of procedure was concerned it was postponed. It will come up subsequently.

Dr. Katju: Will you take up clause 16 today and will you take votes upon it?

Mr. Chairman: As the House decides. If it is the opinion of the House that it should be adjourned, I will not put the question today.

Dr. Katju: I am speaking of 145 now and I will come to 107 before I sit down.

I am indebted to Mr. Gadgil and to Mr. Raghubir Sahai who have put the position better. Everybody agrees that in many cases the Magistrates, being unfamiliar with difficult questions of a civil nature that may arise, may not give proper justice. They will not create satisfaction. Therefore, everybody agreed that it was desirable, as was proposed in the original Bill, that the Magistrate may, in order to prevent a likelihood of the breach of the peace, attach the property and then there was the proposal to remit the parties to a civil court. The objection that was taken was that it may create hardship in the matter of payment of court-fee. It is a matter of common knowledge that court-fee has gone up abnormally in every State and if you want to bring a suit for a property, say of Rs. 2,000, you will have to pay Rs. 500. If you want to bring in a suit for specific performance, then you have to pay half court-fee. Even if you bring such a suit there is the long drawn out process. The plaint has to be filed, the notice of plaint has to go, and it takes six months and so on and so forth. Everybody suggested that the best course may be to have very early decisions from a civil court which will give satisfaction to all the parties and they can say that they have gone to the Civil Judge and that he has heard oral evidence and examined the evidence and given a speedy decision. It will not cause the parties any expense. There will be no court-fee.

Secondly, the Magistrate will say, 'Well, I am sending this case to the Civil Judge; will you kindly come and report to me on the 15th December.' No summons or notices are issued to the parties and they have to attend on the 15th December. That was done.

Mr. Raghubar Dayal says, the man originally in possession may be dispossessed by the receiver appointed by the Court. Therefore, it is rather very complicated. He says, let the Magistrate send the case to the Civil Judge. But, he should also come to some sort of *ad interim* conclusion of his own. He seems to think that the Magistrate shall always decide in favour of the rightful owner. Therefore, he says, he should put the rightful man in possession. If the Civil court takes a wrong view, in favour of the wrongful man, then the Magistrate shall restore him to possession. I shall take the other way round. Supposing the Civil Judge puts the wrong man in possession and supposing the Magistrate by his order puts the wrongful man in possession, your difficulty remains.

Shri R. D. Misra: I take your Magistrate to be right.

Dr. Katju: My submission is that Shri Raghubir Sahai has put the whole case thoroughly.

So far as the amendment moved by Mr. Venkataraman is concerned, I personally think it makes no difference. He says only about the word 'court'. It was pointed out that in Bombay there are revenue courts, or it may be court of competent jurisdiction, in different States, may differ. I have no objection to accept his amendment.

Mr. Chairman: He wants to take away the word 'civil'.

Dr. Katju: I am coming to the distinction between summons procedure and warrant procedure. If I were to be tried anywhere at any time, I would prefer summons procedure. What is wrong with it?

Shri S. S. More: Summary procedure.

Dr. Katju: It is all a pattern of 60 or 70 years ago; double right and treble right of cross-examination in warrant cases and so on and so forth. I never agree with that. That is all I have to say. I submit the House may be pleased to carry through all these clauses.

Let me suggest to you when you are putting the clauses to vote you may put 19 and 20 together because they are linked up with each other. We may begin from clause 21 tomorrow, a new chapter.

Mr. Chairman: Clause 20 has not been discussed at all. I cannot put it to the vote.

Shri V. P. Nayar: Does he want that it should be put to vote without discussing any amendments?

Mr. Chairman: It really forms part of the other group; it is a mistake. He does not want to put it without discussion.

Mr. Chairman: I shall now put the amendments to the vote of the House.

The question is:

In page 3, *after* line 40, *add*:

"Provided that if the place, where the breach of peace or disturbance or wrongful act is apprehended is outside the local limits of such Magistrate, proceedings under this section shall not be taken before him unless the permission of the Sessions Judge empowered to hear appeals from the order of such Magistrate has been obtained by an application made in this behalf before such Sessions Judge."

The motion was negatived.

Mr. Chairman: The question is:

In page 3, *after* line 40, *add*:

"Provided however that no proceedings under this section shall be taken by any Magistrate during the fifteen days immediately before any election taking place in that district unless the case is reported to the Sessions Judge of the district and his sanction to such proceedings has been obtained in writing beforehand."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Mr. Chairman: The question is:

In page 3, *for* clause 17, *substitute*:

'17. *Amendment of section 117, Act V of 1898.*—Sub-section (4) of section 117 of the principal Act shall be omitted.'

The motion was negatived.

Mr. Chairman: The question is:

In page 3, line 46, *for* "summons cases" *substitute* "warrant cases".

The motion was negatived.

Mr. Chairman: The question is:

In page 3,—

(i) line 46, *for* "summons cases" *substitute* "warrants cases" except that no charge need be framed;

(ii) *after* line 46, *add*:

"Provided that nothing contained in this section shall prejudice the right of the party proceeded against to postpone the cross-examination or further cross-examination of the witnesses produced against him until the examination-in-chief of all such witnesses has been concluded."

The motion was negatived.

Mr. Chairman: The question is:

In page 3,—

(i) in line 41, *before* "For sub-section" *insert* "(a)"; and

(ii) *after* line 46, *insert*:

"(b) to section 117 of the principal Act, the following Proviso shall be added, namely:—

'Provided that no person shall be directed to furnish security

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for good behaviour or breach of peace on facts on which there has been a prior proceeding of a similar nature.'"

The motion was negatived.

Mr. Chairman: The question is :

"That clause 17 stand part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Mr. Chairman: The question is :

In page 4, *after* line 28, *insert*:

"Provided also that any order of the Magistrate restoring possession to any party to the proceeding shall not extinguish the right of any of the parties under any of the provision of the Indian Limitation Act, 1908 (IX of 1908)."

The motion was negatived.

Mr. Chairman: The question is :

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

5 P.M.

Mr. Chairman: Now I will put Mr. Venkataraman's amendment No. 424 to vote—minus the word 'Civil' that occurs before the word 'Court'.

The question is :

In page 5, *for* lines 19 to 21, *substitute*:

"(1E) An order under this section shall be subject to any subsequent decision of a Court of competent jurisdiction."

The motion was adopted.

Mr. Chairman: The question is :

In page 4, *for* lines 34 to 48 *substitute*:

"(1) If the Magistrate is of opinion that he is unable to decide as to which party is entitled to possession of the subject of dispute, he shall decide as to which party was, or shall under the first proviso to sub-section (4) of section 145 be treated as being, in such possession of the said subject and he shall issue an order declaring it to remain in possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction and when he proceeds under the first proviso to sub-section (4) of section 145, he may restore to possession the party forcibly and wrongfully dispossessed and if he finds that it is necessary for keeping the peace that the other party should execute a bond for keeping the peace, with or without sureties he shall make an order accordingly, and further he shall draw up a statement of the facts of the case and forward the record of the proceeding to a Civil Court of competent jurisdiction to decide the question whether any or which of the parties was entitled to possession and was in actual possession of the subject in dispute at the date of order passed under sub-section (1) of section 145 and if any party was forcibly and wrongfully dispossessed within two months next before the date of such order, and shall direct the parties to appear before the Civil Court on a date fixed by him."

The motion was negatived.

Mr. Chairman: The question is :

In page 4, lines 39 to 42, *for*. "to decide the question whether any and which of the parties was in possession of the subject of dispute at the date of the order as explained in sub section (4) of section 145;" *substitute*:

"to determine the rights of the parties therein or the person entitled to possession thereof;"

The motion was negatived.

Mr. Chairman: The question is :

In page 5, line 5, *omit* "of possession".

The motion was negatived.

Mr. Chairman: The question is :

In page 5, line 7, *for* "three months" *substitute* "six months".

The motion was negatived.

Mr. Chairman: The question is :

In page 5, line 8, *omit* "conclude the inquiry and".

The motion was negatived.

Mr. Chairman: The question is :

In page 5,—

(i) line 8, *for* "and transmit its;" and

(ii) *for* lines 9 to 12, *substitute*:

"and pronounce its judgement regarding possession to be given to any of the parties and such order shall be final subject to any appeal which may lie to any appellate court to which such Civil Court is subordinate."

The motion was negatived.

Mr. Chairman: The question is :

In page 5, *omit* lines 16 to 21.

The motion was negatived.

Mr. Chairman: The question is :

In page 5, *for* lines 16 to 21, *substitute*:

"(ID) An appeal shall lie against the order of the Magistrate passed under sub-section (IB) to the court to which appeals ordinarily lie against the order of the Civil Court deciding the reference."

The motion was negatived.

Mr. Chairman: The question is :

"That clause 19, as amended, stand part of the Bill."

The motion was adopted.

Clause 19, as amended, was added to the Bill.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, the 26th November, 1954.