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

Clause 22

Mr. Deputy-Speaker: We will now take up the amendments relating to the Code of Criminal Procedure as passed by the Rajya Sabha. I shall place it clause by clause to the vote of the House.

Shri U. M. Trivedi (Chittor): On a point of order. The discussion is not over. Yesterday we were in the beginning—the question of this thing being postponed, the motion for reference to a Committee whose report should be made before a particular date, the Law Commission being appointed—all these things were dealt with. That was only the consideration stage. We had hardly taken five minutes.

Mr. Deputy-Speaker: All hon. Members who were in their seats spoke. Hon. Member was not here; he missed the bus.

Shri S. N. Das (Darbhanga Central): On a point of order. What was the point of order raised by the hon. Member?

Mr. Deputy-Speaker: There is no point of order on either side. If the hon. Members have got anything more than what was submitted yesterday and do not repeat what had already been stated, I have no objection to allow them to speak briefly on any of these amendments. The amendment to clause 22 was discussed in *extenso* by the hon. Members.

Shri U. M. Trivedi: Yesterday, when the hon. Deputy Minister gave his exposition of this provision relating to clause 22, one felt completely lost as to the position of the Evidence Act and of the provisions of the Criminal Procedure Code. The change that has been suggested is that the words 'by the accused' be deleted. The provisions of section 162 are well known to all lawyers and we have yet to conceive of a position where an accused person can have a right of re-examination of a prosecution witness. Is the provision of re-examination going to be changed entirely so that there would be a further cross-examination by the prosecution? Is the Evidence Act going to be moulded in that manner or is any change in the Evidence Act being contemplated? As lawyers know, a witness can be declared hostile at a particular stage only. It is not that he can be declared a hostile witness after he has made certain statements and after his cross-examination is conducted by the accused when he is confronted and contradicted by the statement which has been previously recorded under section 162. In other words there would be a further cross-examination of a witness which is not contemplated by the law as it stands today. Therefore, my suggestion is this. Any part of such a statement may be used in a particular way. If we delete these words 'by the accused', it gives the power to the prosecution also so that any part thereof may also be used in the re-examination. The wordings are: ".....when any part of such statement is so used by the accused, any part thereof may also be used in the re-examination of such witness but for the purpose only of explaining any matter referred to in his cross-examination." The language as it is used may appear to be innocuous but it is full of very pregnant meaning and, as the hon. the Deputy Minister tried to explain, it means only this that the witness will be declared hostile and a further cross-examination of the witness is contemplated under this provision. I respectfully submit that such a position under the Indian Evidence Act is not contemplated at all. It is not possible to allow any re-examination except what can be said for the purpose of explaining away. Anything more than that cannot be done and there cannot be any further cross-examination by getting him declared hostile. So, I say that this provision as it stood was quite all right. But, if these words are deleted then it is a mischievous provision and is going to.....

Shri Raghunath Singh (Banaras Distt.—Central): Kindly explain it.

Shri U. M. Trivedi: I will tell you. In clause 22 hon. Members will find that the suggestion is like this:

> "That at page 5, line 41, the words "by the accused" be deleted."

If you delete these words "by the accused" then what will happen is this that the statement which can be used even by the prosecution, if that statement is not used by the accused.....

Mr. Deputy-Speaker: Is it not that under the Bill as passed by this House that the opportunity for cross-examining was only given to the prosecution. If a statement recorded was used by the accused it is open to the prosecution to utilise it. Now, if you delete the words "by the accused" then it is open to the accused also to utilise that portion of the statement where with the special permission of the court the prosecution uses any portion against the accused. There are two portions earlier.

Shri U. M. Trivedi: May I submit to you one little thing? If you will see this portion of the clause from line 39, there it is said:

> "Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution....."

Mr. Deputy-Speaker: So, both can use. One has restricted right and the other absolute right to contradict such witness.

Shri U. M. Trivedi: It is said:

> "....to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (I of 1872), and when any part of such statement is so used by the accused,....."

Mr. Deputy-Speaker: The prosecution alone has got the right.

Shri U. M. Trivedi: This is to be deleted by this amendment. That is what I say.

Mr. Deputy-Speaker: Is it not in favour of the accused?

Shri U. M. Trivedi: It is not, Sir, if this portion is deleted.

Mr. Deputy-Speaker: Under the existing clause as passed by this House, if any part of the statement is used by the accused any part thereof may be used for re-examination by the prosecution.

Shri S. S. More (Sholapur): The difficulty is that the accused will never get a chance to re-examine the witness. That is, therefore, a contradiction.

Mr. Deputy-Speaker: Anyhow it is not going to be worse off?

Shri S. S. More: It is going to be. I do not want to interrupt my friend, but I may just explain the matter. The witness is a prosecution witness and the right to examine and re-examine is for the prosecution. The accused had never the right of re-examination. When for some reasons the witness is treated as hostile and the prosecution itself is permitted to cross-examine by utilising this statement, it will be cross-examined by the prosecution on their own witness. But that does not confer any right on the accused to re-examine the witness because all the same he continues to be a prosecution witness and the accused cannot say: "Well, now he becomes my witness and I may be permitted to re-examine and use that part of the statement for my examination."

Shri U. M. Trivedi: So far as the accused is concerned he has no right of re-examination.

Pandit Thakur Das Bhargava (Gurgaon): Why? That is being conferred here.

Mr. Deputy-Speaker: But, how is it worse off? How does this amendment make the position worse?

Shri U. M. Trivedi: That is what I am submitting. What will happen is this. If these words are deleted as the accused is not going to get an opportunity, it is only the prosecution which will get the opportunity. And, what opportunity is there? As the hon. the Deputy Minister explained, the opportunity will be of a similar type as we generally get on getting our witness declared hostile. If the prosecution then finds out by the cross-examination of the accused and when he is confronted and contradicted by the statement which is recorded under section 162, then the position will arise that the prosecution will jump upon him and say: "We want to cross-examine him". That is the position which I want to make clear. That is a mischievous provision. Unless and until you change the Evidence Act you have no power of re-examination except for a patent or latent ambiguity that may arise. But, if the words "by the accused" are taken away, then the prosecution at this stage will come and any part of the statement may also be used in the re-examination of the witness, but for the purpose of only explaining any matter referred to in his cross-examination. That is to say, this power is now being given only in the hands of the prosecution. Therefore, my submission is that, as it remains, it would have been all right. Re-examination is another thing, but for the purposes of cross-examination, if it is allowed, then it becomes a dangerous thing. In other words, the original position should remain that no such use can be made by the prosecution. That ought to be the clear law. If these words are deleted the accused is not going to benefit in any manner whatsoever. The accused cannot re-examine and there is no question of his statement being recorded. So, the position is that the prosecution will get an opportunity of further cross-examination by getting the witness declared hostile which is against the provisions of the Evidence Act. This will create unnecessary confusion and trouble all over the country.

Shri S. S. More: I am trying to visualise a contingency under which this is likely to be used by the prosecution to the disadvantage of the accused. Now, let us take a witness in the witness box. A prosecutor has started asking him questions. He said something to the advantage of the prosecution but somehow it changes to the disadvantage of the prosecution. Then the prosecution is advised to pray that he be treated a hostile witness and he be permitted to cross-examine his own witness. The court is pleased to grant that. The prosecution carries on cross-examination for some time and concludes it. Then he being a prosecution witness *ab initio* naturally the accused will start his cross-examination. Then as a result of that cross-examination, possibly some of the replies given to the prosecutor in cross-examination may be watered down or diluted against. The defence lawyer sits with a gleam of victory in his eyes. Then what happens? The prosecutor will say that this witness does not cease to be his witness. He will say: "I have cross-examined him with the permission of the court. He is still my witness and under the Evidence Act I have got a right to re-examine". He will thus utilise the right to re-examine the witness. There he will use this statement and if this amendment is carried he will utilise it for the purpose of still further getting away the effect of the cross-examination by the defence counsel so that eventually the whole witness, by the use of this particular statement, will be cumulatively to the vantage point of the prosecution. That is, Sir, the portion where it is likely to be used. Some of my eminent friends here are likely to argue and they are still maintaining that if the words "by the accused" are deleted, from this particular clause, then even the accused will get advantage of this position.

Shri Raghunath Singh: Both will get the right.

Shri S. S. More: No. This provision has to be read with the Evidence Act. We are not going to modify or amend the provisions of the Evidence Act. According to the Evidence Act a party calling a witness examines, then the other side cross-examines and then the party calling that witness re-examines.

That portion is there unaffected by this amendment. If that portion is there and that is the concluding effect of the Evidence Act and that provision is not likely to be changed, then the technical power of re-examination rests with the prosecution in spite of the fact that the court was pleased to permit the cross-examination of the witnesses. If these words are deleted, what will happen? The portion of this sentence will read thus:

> "and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness," etc.

The position will be that the prosecution will have two advantages, two chances of using this particular statement for the purpose of the prosecution itself, at the time of the cross-examination with the permission of the court and at the time of the re-examination of its own witnesses. That is my humble submission, and to that extent it is unfair to the accused.

You are an eminent lawyer. You know that section 162 of the Criminal Procedure Code was designed by the British bureaucracy exclusively for the advantage of the accused.

Mr. Deputy-Speaker: All that is over. That is the original amendment.

Shri S. S. More: That is the original conception of section 162. Now, we have effected certain gains into that portion and that is, by the amendment of the Lok Sabha we gave to the prosecution some advantage by permitting the prosecution to use that statement for the purpose of cross-examination when permitted to do so. He was not permitted to do this under the old Act. By virtue of this fresh amendment, the prosecution will get another chance.

Mr. Deputy-Speaker: Does the hon. Member mean to say that under this clause, the prosecution can cross-examine their own witnesses, and that even though the accused does not refer to any statement there, once again he is re-examined for his own cross-examination?

Shri S. S. More: That is not so. You have asked me a perfectly proper question. The witness is examined in chief to some extent. Then the prosecutor makes a request that he be permitted to cross-examine the witness.

Shri Raghunath Singh: Hostile witness.

Shri S. S. More: The word 'hostile' is not used in the Evidence Act. He is permitted to cross-examine. He carries on the cross-examination for some time and resumes his seat. Then the accused is called upon to cross-examine the witness. The accused's counsel does his job and sits down. Now, in between the conclusion of the cross-examination by the prosecutor and the next stage, what happens?

Mr. Deputy-Speaker: The clause says:

> "any part of such statement is so used by the accused,"

Shri S. S. More: The defence counsel can very well and legitimately use a part of the statement for the purpose of his own cross-examination. It is his job. When that use has been made by the defence counsel for the purpose of cross-examination, then, according to this amendment here, the prosecutor will again get a chance to re-examine his witness and then he will be perfectly entitled, perfectly competent, perfectly within

[Shri S. S. More]

his own right, if he again uses this opportunity, to re-examine the person by using the statement to get down or get out of his way some inconvenient conclusion which the defence counsel may have drawn.

Mr. Deputy-Speaker: It is so with or without this provision.

Shri S. S. More: It will not be so. The clause says:

> "in the manner provided by section 145 of the Indian Evidence Act, 1872 and when any part of such statement is so used by the accused".

Mr. Deputy-Speaker: But it is for the purpose of being referred to in his cross-examination by the accused. That is what it means.

Shri S. S. More: I beg to differ. My submission is that we tried to save the accused whose interest requires some tender consideration, because he is pitted against the mighty machine of the State and in such an unequal contest it is for us to see that our strength and force are applied on the side of the poor accused than on the side of the mighty machine. That is the point. This is a sovereign Parliament. We are here to secure some rights to the accused. I beg to differ from the Chair. I respect also the opinion of Pandit Thakur Das Bhargava and if he is inclined to interpret this as something different, it will no doubt set me thinking regarding the correctness of my position. I am not so dogmatic as to assert that what I say is correct and particularly I am prepared to surrender my judgement to the legal eminence that Pandit Thakur Das Bhargava possesses. But all the same, it is a point which will have to be dispassionately considered from a non-party point of view so that no unfair advantage is likely to be reaped by the prosecutor. It is quite possible that this particular clause may carry the interpretation that we are suggesting because whatever we say is not binding on the court.

Mr. Deputy-Speaker: Shri Datar will now speak.

Pandit Thakur Das Bhargava: Is he intervening or replying to the debate?

Mr. Deputy-Speaker: He will explain at this stage the necessary evils. I will call upon him once again to reply.

The Deputy Minister of Home Affairs (Shri Datar): The question has been raised as to whether the deletion of the words 'by the accused' would cause any handicap or prejudice to the accused. That is the point under consideration.

Mr. Deputy-Speaker: What is the object of the removal of these words and for whose benefit were these words 'by the accused' removed?

Shri Datar: It may be found that these words were not in the original Act at all. In the original section 162, you will find that it dealt with the cross-examination of witnesses for the prosecution for the purpose of contradiction by the accused or by the defence. It did not deal with the contingency that has now arisen in the course of the debate in this House. The words 'by the accused' were inadvertently put in. Those words were not necessary at all and I would point out to this House how the existence of these words would cause great hardship to the accused, because in that case, it would be very difficult for him to get the advantage of this re-examination.

Mr. Deputy-Speaker: How is he entitled to re-examination?

Shri Datar: So far as the question of re-examination is concerned, under the Indian Evidence Act, re-examination has a reference to the party who calls the witness. Re-examination also has a reference to the substance

of certain admissions made in the course of the cross-examination.

Shri S. S. More: Which is the Evidence Act that he refers to? Under section 137 of the Evidence Act, the examination of a witness by the party who calls him shall be called examination-in-chief, and the examination of witnesses subsequent to the cross-examination by the party who called him shall be called his re-examination.

Mr. Deputy-Speaker: It does not say why the party should call him. The difficulty is this: the re-examination is examination after the cross-examination, by whomsoever it might be made. That is what Shri Datar wants to say.

Shri Datar: I want to point out to this House that so far as the re-examination is concerned, it has a reference to the party; it has a reference to cross-examination also.

Mr. Deputy-Speaker: It is a novel suggestion anyhow.

Shri Datar: So far as the cross-examination is concerned, the cross-examination may be by the party who has not called the witness. In an ordinary case where the cross-examination is by the opposite party, it is so. But so far as this cross-examination is concerned, the party that calls a witness has a right of re-examination. Technically what Shri S. S. More says is true only to a very small extent, but here, the purpose of re-examination has been extended to the accused because the prosecution is cross-examining him. So, you would find that between the two circumstances, the more important circumstance is the question of explanation.

Mr. Deputy-Speaker: Therefore, the hon. Minister evidently wants to lead to this conclusion that this is a case where under the peculiar circumstances, whether that man does not speak or you expect him to speak, he is cross-examined once by the prosecution and the next time by the accused, though initially he has been a prosecution witness. Both have got the right to re-examine. That is what he wants to say.

Shri Datar: When, for example, he has been cross-examined by the accused, then naturally a re-examination is done only by the party concerned.

Mr. Deputy-Speaker: After cross-examining, you re-examine him also.

Shri Datar: No.

Shri S. S. More: Here is the definition in the Evidence Act:

> "*Re-examination*: The examination of the witness subsequent to the cross-examination by the party who called him shall be called his re-examination".

That is the examination subsequent to the cross-examination.

Shri Datar: That is technically correct. I am pointing out the object that we have in view. It is this: the accused should have a right of explaining and getting certain explanations from the witness for the prosecution when he has been cross-examined by the prosecution.

So, the moment a witness becomes an adverse witness for the prosecution, in effect he ceases to be a witness for the prosecution; he becomes a witness for the defence.

Mr. Deputy-Speaker: The hon. Member wants to give an explanation; the hon. Minister may listen to him.

Shri S. S. More: He knows much better!

Shri Datar: We need not go into the niceties of this question; it is for the courts to consider. We do not want to place any handicaps in the way of the accused. Otherwise, the re-examination will not be possible for the accused at all. If the words are retained as they are, then it will mean that invariably in all cases only the prosecution shall have a right of re-examination and my friend, Pandit

[Shri Datar]

Bhargava, is perfectly right in saying that if these words are removed, it would give an advantage to the accused for getting certain explanations so far as the cross-examination by the prosecution witness is concerned. In the original provision these words were not at all there. My submission is that these words ought to go; and if at all it will give an advantage, it will be only to the accused and not to the prosecution.

Shri S. V. Ramaswamy (Salem): When a witness turns hostile, what happens is that both the parties cross-examine him—the prosecution as well as the accused. My submission is that, because there is a similar provision in the Evidence Act, an extra provision in this section is not necessary.

Mr. Deputy-Speaker: We are now discussing about the deletion of the words "by the accused"; we are not going into the whole matter now.

Shri Tek Chand (Ambala-Simla): Mr. Deputy-Speaker, the provision as it stands at present requires a very careful analysis. When a witness whose statement has been recorded enters the witness-box as a prosecution witness, it may be that that prosecution witness has omitted something and that omission happens to be to the detriment of the prosecution case. If that be so, this amended provision gives an opportunity to the prosecution to seek permission of the court and then subject him to a cross-examination. It is something like this: because the witness is hostile, therefore he is subject to cross-examination. After the prosecution has exhausted its cross-examination treating him as a hostile witness, the question of re-examination or further examination of that very witness by the prosecution for the third time does not arise. It is not logical. What happens is, after the witness has been declared hostile and after he has been thoroughly cross-examined by the prosecution, the witness is handed over to the accused for cross-examination by him and then the question of re-examination arises only by the party who has called him as their principal witness for purposes of re-examination. My submission is that otherwise the position becomes absolutely illogical and incomprehensible. On the other hand, the provision as it stands is correct and more amenable to reason.

Usually what happens is this. A prosecution witness has overstated something which, according to the counsel of the accused, has been done with a view to strengthen the prosecution case. The accused turns round and subjects the witness to cross-examination by inviting his attention to what he said in writing and what he said in the oral statement. He is being subjected to cross-examination by drawing his attention to certain omissions of certain statements made in the written record. If there be any ambiguity, then the prosecution has the right to re-examine him, because it is the prosecution whose witness he happened to be at first. Therefore, the provisions as they now stand, apart from conferring a right or no right on the accused, are amenable to reason. They are in consonance with reason; otherwise it will be a case of *reductio ad absurdum*. When the prosecution wants to declare the witness as hostile, where is the question of re-examination by the prosecution? The accused wants to cross-examine the witness by drawing his attention to something he stated in writing contradictory to what he has stated in the oral statement, after the accused person has cross-examined him thoroughly, an opportunity is given to the prosecution. If there is any ambiguity, have that cleared by a process of re-examination. Otherwise the whole thing becomes meaningless the moment you delete the words "by the accused".

Shri Sadhan Gupta (Calcutta South—East): rose—

Mr. Deputy-Speaker: The hon. Member has already spoken about this yesterday.

Shri Sadhan Gupta: This is a new aspect. I have spoken yesterday on the general matter; now I wish to give certain arguments.

Mr. Deputy-Speaker, certain questions have been raised in connection with this amendment which deserve very important consideration. I would particularly request the Home Minister not to take a partisan view of things and to pay some respect to the views of the Opposition, because we are dealing with it not from a party angle, but from the angle of the lawyer. I wonder what has happened to the legal talent in the Government. The question is of re-examination and we know what re-examination means. I shall not dwell on it at length. Re-examination has been defined as examination subsequent to the cross-exanmination, and the very important qualification is "by the party" who called him. Now, it cannot be said that the accused will have the right of re-examination by virtue of the deletion of the words "by the accused", because accused is not the party who called him. Mr. Datar's explanation that when the witness turns hostile, he is no longer a prosecution witness, but becomes a witness for the defence is not at all acceptable; I would go further and say that it will make every authority on the law of evidence turn in his grave if he was dead, or at least throw up his hands in horror. What we are conferring is the right of re-examination; and who can have that right? It is not the accused, it is only the prosecution. In the light of this patent fact, what is the result of the proposed amendment? The words "by the accused" are to be deleted; so the words would run "after the statement has been so used, it can be used in re-examination to explain matters."

What is the import of the word 'so used'?

Shri S. S. More: Used by any one.

Shri Sadhan Gupta: 'So used' means.....

Mr. Deputy-Speaker: Either by the accused or by the prosecution.

Shri Sadhan Gupta: Whether by the prosecution or by the accused. If the prosecution succeeds in getting a witness declared hostile and cross-examines him. Then, the accused cross-examines him and the prosecution thinks that in the cross-examination by the prosecution some ambiguity has taken place. By virtue of the deletion of the words 'by the accused', the prosecution can take the advantage of re-examining him and explaining away some matters which it left unexplained in its own cross-examination. That would be the position. By the dropping of the words 'by the accused', the accused would not have any advantage. The simple reason is, the accused has no right to re-examine. Pandit Thakur Das Bhargava raised the argument in reply to my contention yesterday that we wanted the accused to be deprived of all rights. We do not want to do that. No one can accuse me at least of wanting to deprive the accused of any right of defence. I submit that the accused already has the right of defence, through the right of cross-examination. When a witness is declared hostile, the prosecution cross-examines him. Immediately afterwards, the accused has the right to cross-examine him. In pursuance of this right, he can bring out any statement not only for explaining ambiguities, but all kinds of facts, all kinds of materials which are advantageous to the accused. Therefore, the accused does not need any right of re-examination. He has the fullest right through the right of cross-examination. The only result of the deletion is that the prosecution will have a triple right of examining in chief, cross-examining and re-exa-

[Shri Sadhan Gupta]

mining him. This is not what should be given to the prosecution. Shri Datar has said that the addition of the words 'by the accused' was through inadvertance. This is a very great injustice he is doing to the draftsmen. I should think that the draftsmen were much wiser than him and did it for a purpose, and for very good reasons. Of course, in the section as it stands today, the words 'by the accused' are not there for very good reasons, because, under the present section, it cannot be used for the purpose of cross-examination by any one except the accused. The words 'by the accused' were redundant then. When we are giving two rights of cross-examination one by the accused and another by the prosecution, it must be made very clear that the right of re-examination only arises when the statement is used by the accused for contradicting the prosecution witness and not when the statement is used by the prosecution to contradict a prosecution witness. If we delete the words 'by the accused' we shall not only be giving no rights to the accused, but we shall be prejudicing the rights of the accused by giving the prosecution the right of triple examination. Therefore, I would ask the Deputy Home Minister to consider this matter very carefully and not agree to delete these words and refuse to accept this amendment. Dr. Katju, who piloted this Bill is an eminent lawyer. I would ask him to consider whether it is I who is right or it is the Deputy Home Minister who is right, and advise the Deputy Home Minister accordingly. I would therefore ask the Deputy Home Minister to consider this aspect irrespective of any partisan considerations, irrespective of any party considerations, from the point of view of the proper administration of law. Does he want to introduce the absurdity of the right of triple examination by the prosecution or does he want to give the right to the accused. If he wants to give the right to the accused, then, the pesent provision is the proper provision and the amendment should not be accepted.

Shri Raghavachari (Penukonda): I rise to submit that the whole difficulty has arisen because the old procedure which permitted 162 statement which is ordinarily not admissible at all for any purpose, to be available for a particular purpose and in the revision of this Code, Government wanted this right of using some part of that statement, which was not usable except by the accused, by the prosecution also. I examined the language of the old Code as it stood. The language is exactly similar except that the phrase 'by the accused' was inserted. As the principle has been decided by this House and the other House that the prosecution also should be given the right to use some portion of that statement, the question now will be not to try to re-open the whole matter, but to see how by the proposed omission of the words 'by the accused' some additional complications are created. I for one feel consistently with the principle which has been decided upon by both the Houses that that part of that statement can be used both by the accused and by the prosecution. If you retain the phrase 'by the accused' it certainly leads to some inconsistencies.

The real difficulty is this. The question arises, what is the purport of the words used here,—"re-examination" and "cross-examination." That is the unfortunate trouble. To my mind it looks that it is not that this section gives the right of cross-examination and re-examination. All that this section deals with is, what portions of that statement can be used in cross-examination and re-examination. The right of cross-examination and re-examination is a matter to be decided under the Evidence Act primarily and in particular circumstances and exigencies, by the court itself—to permit when a par-

ticular witness should be re-examined or cross-examined by one party or the other party. As Shri Datar said, this right of examination, re-examination and cross-examination are matters not only to be determined by the person who calls him and examines him, but also by the court with reference to the way in which that witness' evidence is given in the course of the examination. Nevertheless, seeing that the language is entirely as in the original Act, to my mind it appears that the words 'by the accused' should be omitted rather than retained. As you, Sir, pointed out earlier, if you retain the words 'by the accused', it means for all time the right of re-examination is only with the prosecution and never with the accused. If these words are omitted, it is possible that even when the prosecution cross-examines its own witness, the accused might thereafter ask for an opportunity to refer to some other portion of that statement which is favourable to him and use it.

Shri S. S. More: That is cross-examination; that is not re-examination.

Shri Raghavachari: Therefore, it appears to me that trying to make capital of the use of words 'examination', 'cross-examination' and 're-examination' as contemplating peculiar rights, would be going out of the way and creating trouble.

Mr. Deputy-Speaker: Enough has been said. I shall now put the.....

Pandit Thakur Das Bhargava: *rose*—

Mr. Deputy-Speaker: All that the hon. Member wanted to say has already been said by Shri Raghavachari.

Pandit Thakur Das Bhargava: Some arguments have been advanced which are not tenable

Mr. Deputy-Speaker: We have devoted already 45 minutes on this. I have got only 1 minute more.

Pandit Thakur Das Bhargava: I shall finish in two minutes.

Mr. Deputy-Speaker: When am I to put these clauses to the vote of the House?

Pandit Thakur Das Bhargava: It is not such a stiff rule, that even two minutes cannot be allowed on a question of law.

Mr. Deputy-Speaker: All right.

Pandit Thakur Das Bhargava: The first point that has not been fully considered by those who are not in favour of this amendment is this. Section 154 of the Evidence Act runs thus:

> "The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."

The time is not given. The sequence is not given. It is not only at a particular time that this cross-examination is allowed. It may be even after the whole examination is over. My friends are assuming that first of all the party shall seek permission from the court and there will be cross-examination and then the accused shall have the right to cross-examine and then there will be re-examination. Section 154 is not specific. Cross-examination can be sought even at the last moment. Even in re-examination, if a person makes a statement which is derogatory to the prosecution, the prosecution has the right to say, I should be given an opportunity to put questions at the end.

1 P.M

In that case, my submission is that all these arguments which have been put forward will fall down. Moreover, I will refer to section 138 where the words are:

> "The re-examination shall be directed to the explanation of

[Pandit Thakur Das Bhargava]

matters referred to in cross-examination;"

This is the main purpose of re-examination. I know that the words examination. I know that the words "if the party calling him so desires" are there. If you do not consider these words, this re-examination is elucidating matters referred to in cross-examination by the prosecution. Section 138 does not take away the application of section 154. But some times there is something in a statement under section 162 for demolishing everything in cross-examination. If you do not allow re-examination.....

Shri S. S. More: How?.

Pandit Thakur Das Bhargava: The difficulty with my friend is that he cannot dissociate from his mind that re-examination can only be made by a person by the party calling the witness if it so desires. If we look to the substance and purpose of re-examination, we find it is to elucidate matters referred to in cross examination. Though we are going against these words "if the party calling the witness so desires", we are getting at the right principle and substance. Re-examination is only directed for that purpose, and if the accused case is under a cloud as a result of cross-examination by the prosecution, he should be given the right to make everything clear by the very document which was prepared by the prosecution. I think it is very just that you allow it. If you do not allow it, the accused will be prejudiced a great deal.

Mr. Deputy-Speaker: The question is:

> That at page 3, line 41, the words "by the accused" be deleted.

The motion was adopted.

Clause 25,

Mr. Deputy-Speaker: Amendment to clause 25.

Shri S. S. More: I want to make a small submission.

Mr. Deputy-Speaker: That was at length referred to yesterday.

Shri S. S. More: I will take only two minutes.

These powers of punishing the so-called opponent, because the Government servant will be virtually the complainant, though the State may be launching the prosecution—this clause as we have enacted here is in the nature of section 250 of the Criminal Procedure Code. I cannot understand why these two particular clauses 9A and 9B should be there. I can concede that as far as 9A is concerned that the man should have the power to appeal, but I cannot understand the significance of 9B. If the man goes in appeal he can make a representation to the court for a stay order, and, as you know, in many cases when the compensation is deposited in the court, it may be paid to the other side even on furnishing security. The court has only to see that the payment once made will be difficult to recover. If security is demanded and the other party is prepared to give that security, then the interests of the man making the deposit by way of compensation would be perfectly safeguarded. Why should there be a specific clause saying that the compensation need not be paid till the appeal is disposed of. This is another example of partisan treatment of the Government servant who happens to be one of the privileged classes of this country. I think he should be on a par with any other complainant who comes under the guillotine of section 250, and he should not be in a more favourable position as far as this particular aspect is concerned.

Shri Datar: Only one word. This section corresponds to section 250 of the Criminal Procedure Code, and 9A corresponds to section 250(3) and 9B corresponds to 250(4). There is no question of partisanship here.

Shri Raghavachari: I wish to submit only one thing. The language used in 9B is "the appeal has been decided". I for one think that the word "decided" will create some confusion and trouble and the word should have been "dispose off". The word "decided" might necessarily mean a judicial decision after hearing the matter, while it may be that the appeal is not admitted and is rejected. So, the word "decided" to my mind appears to create some additional trouble by way of interpretation. It may be "disposed off".

Mr. Deputy-Speaker: Even a decision of *res judicata* under section 11 is a decision. Even if it is finally disposed off, it is a decision. Even an *ex parte* decision is a decision. It is not as if both of them are there. Therefore, "decided" can cover also a decision under section 403.

The question is:

That at page 8, *after* line 4, the following be *inserted*, namely:—

"(9A) The person who has been ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session.

(9B) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (9A), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

That at page 8, *for* lines 8 to 9, the following be *substituted*, namely:—

"(11) The provisions of this section shall be in addition to, and not in derogation of, those of section 198."

The motion was adopted.

Clause 1

Mr. Deputy-Speaker: The question is:

That at page 1, line 4, *for* the figure "1954" the figure "1955" be *substituted*.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

That at page 1, line 6, *after* the words "Government may" the words "by notification in the Official Gazette," be *inserted*.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

That at page 1, line 1, *for* the words "Fifth Year" the words "Sixth Year" be *substituted*.

The motion was adopted.

Clause 29

Mr. Deputy-Speaker: The question is:

That at page 9, line 24, *after* the words "the accused", where they occur for the first time, the following be *inserted*, namely:—

"for the purpose of enabling him to explain any circumstances appearing in the evidence against him".

The motion was adopted.

Clause 31

Mr. Deputy-Speaker: The question is:

That at page 11, the existing clause 31 be deleted.

The motion was adopted.

Clause 52

Mr. Deputy-Speaker: The question is:

That at page 15 line 33, *after* the word "thereof" the words **"signed by the Judge"** be *inserted.*

The motion was adopted.

Clause 63

Mr. Deputy-Speaker: The question is:

That at page 17, lines 44-45, the words "or the recording of their statements" be *deleted.*

The motion was adopted.

Mr. Deputy-Speaker: The question is:

That at page 17, lines 47-48, the words "or, as the case may be their statements have been recorded" be *deleted.*

The motion was adopted.

Mr. Deputy-Speaker: The question is:

That at page 18 line 7, the words "or recording their statement" be *deleted.*

The motion was adopted.

Clause 111

Mr. Deputy-Speaker: The question is:

That at page 30, line 11, *for* the word "substituted" the word "Inserted" be *substituted.*

The motion was adopted.

Clause 112

Mr. Deputy-Speaker: The question is

That at page 30, line 25, *for* the words "with the previous sanction of the State Government" the words "with the previous approval of the State Government" be *substituted.*

The motion was adopted.

INDIAN TARIFF (AMENDMENT) BILL

The Minister of Commerce (Shri Karmarkar): I beg to move:

"That the Bill further to amend the Indian Tariff Act, 1934, be taken into consideration."

The Bill seeks to amend the Indian Tariff Act, 1934, by making certain changes in the First Schedule to that Act in order to give effect to Government's decisions on the recommendations of the Tariff Commission regarding protection of certain industries. As the House will have noticed from the Statement of Objects and Reasons attached to the Bill, the Commission's recommendations involve the grant of protection for the first time to the industries engaged in the manufacture of causctic soda and bleaching powder, dyestuff, automobile sparking plugs and automobile hand tyre inflators; the continuance of protection to the stearic and oleic acids, oil pressure lamps and cotton textile machinery industries, and the exclusion of tin rollers from the protected categories of cotton textile machinery.

Copies of the Tariff Commission's Reports on all these industries and of Government's Resolutions thereon have already been laid on the Table of the House. The hon. Members must have studied those documents and I need not, therefore, go into details and shall make only a passing reference to some of the important aspects of these industries.

I shall first deal with those industries which are being protected for the first time. Of the four industries coming under this category, caustic soda and dyestuff industries are basic industries of considerable importance to the economy of the country. To take the case of the dyestuff industry first, the Commission have expressed the view that this industry should, in the national interest, be established in the country and developed on sound lines and the protection or