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GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

Paper No. I.

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OPINIONS

ON

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(Amendment of Sections 30, 34, 34A and 35.)

(Introduced by Sardar Sant Singh M.L.A.)

Opinions Nos. 1--16.

BALUCHISTAN.

PAGES.

No. 1.—From the Agent to the Governor General and Chief Commissioner, No. 296-D, dated the 8th April, 1936

1

BOMBAY.

No. 2.—From the Secretary to the Government of Bombay, Home Department No. 7621/3-B, dated the 27th April, 1936

1

COORG.

No. 3.—From the Chief Commissioner of Coorg, No. 1217 Rs 363/33, dated the 9th May, 1936

1

AJMER-MERWARA.

No. 4.—From the Chief Commissioner, Ajmer-Merwara, No. 591/62-G/36, dated the 20th May, 1936

2—3

PUNJAB.

No. 5.—From the Secretary to the Government of the Punjab, No. 1564-D/36, dated the 26th May, 1936

3—4

DELHI.

No. 6.—From the Chief Commissioner, Delhi, No. B.13/36 Legislative, dated the 1st June, 1936

4—5

SIND.

No. 7.—From the Chief Secretary to the Government of Sind, Home Department, No. 165-H., dated the 17th May, 1936

6

CENTRAL PROVINCES.

No. 8.—From the Secretary to the Government of the Central Provinces, No. 505/294, dated the 17th May, 1936

6—9

L83LAD



BENGAL.

	PAGES.
No. 9.—From the Secretary to the Government of Bengal, Judicial Department, No. 150-J.B., dated the 1st June, 1936	9—14

UNITED PROVINCES.

No. 10.—From the Secretary to the Government of the United Provinces, No. 827, dated the 5th June, 1936	14—15
--	-------

NORTH-WEST FRONTIER PROVINCE.

No. 11.—From the Chief Secretary to the Government of the North-West Frontier Province, No 1780, dated the 4th June, 1936	15—20
---	-------

BENGAL.

No. 12.—From the Honorary General Secretary, Anglo-Indian and Domiciled Euro- pean Association, Calcutta, letter dated the 8th June, 1936 ..	20
---	----

BIHAR.

No. 13.—From the Secretary to the Government of Bihar, No. 761-J.A., dated the 6th June, 1936	20—23
--	-------

MADRAS.

No. 14.—From the Secretary to the Government of Madras, Home Department, No. 880-M.S., dated the 6th June, 1936.. .. .	23—27
---	-------

ASSAM.

No. 15.—From the Secretary to the Government of Assam General and Judicial Department, No. J.-622/3355-G.J., dated the 8th June, 1936 ..	27—28
---	-------

BENGAL.

No. 16.—From the General Secretary, European Association, Central Administration, Calcutta, letter dated the 15th June, 1936	28
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No. 1.—BALUCHISTAN.

Agent to the Governor General and Chief,
Commissioner in Baluchistan.

As no use of section 30 of the Code of Criminal Procedure is, at present, made in Baluchistan, no useful opinion on the provisions of the Bill can well be given.

No. 2.—BOMBAY.

Government of Bombay.

I AM directed to forward herewith a copy of a letter from the Registrar, High Court, Appellate Side, Bombay, No. 1166, dated the 8th April, 1936, and to state that as sections 30 and 34 of the Criminal Procedure Code do not apply to this Presidency, the Governor in Council feels that he cannot usefully comment on the Bill as now constituted.

2. The Bill with the Statements of Objects and Reasons was published in the Bombay Government Gazette, dated the 2nd April, 1936.

Copy of letter No. 1166, dated 8th April, 1936, from the Registrar, High Court, Appellate Side, Bombay.

I AM directed by the Honourable the Chief Justice and Judges to say that as sections 30 and 34 of the Code of Criminal Procedure do not apply to any parts of the Presidency, Their Lordships do not wish to offer any opinion in the matter.

No. 3.—COORG.

Chief Commissioner of Coorg.

I AM directed to forward copies of the opinions of certain selected officers who were consulted on the subject.

2. In the circumstances explained by the Commissioner of Coorg, the Chief Commissioner would have no objection to the proposed repeal of sections 30 and 34 and the proposed amendments to sections 34A and 35 of the Criminal Procedure Code, so far as Coorg is concerned. On the general question, however, he is inclined to think that public opinion is the test by which the proposed change should be judged. In the absence of any wide-spread demand for the change, the great increase in expenditure which its introduction would involve hardly appears to be justified when the existing system works well in practice and is far more economical.

3. The Bill, with the Statement of Objects and Reasons, was published in English in the Coorg Gazette, dated the 1st April, 1936.

District and Sessions Judge, Civil and
Military Station, Bangalore.

I AM of opinion that it is desirable to do away with the discretion of investing certain magis-

L83LAD

trates in the provinces referred to in section 30 of the Code of Criminal Procedure with extraordinary powers under that section in view of the fact that most of those provinces will have added importance attached to them by reason of their becoming Governors' provinces under the new constitution.

Additional Judicial Commissioner of
Coorg.

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

But Sessions Judges inspire more public confidence. This I would attribute to the difference in point of view between Magistrates and Sessions Judges. A Magistrate feels that he is responsible for the general tone of administration; he cannot but be impressed by the possible effects of acquitting really guilty persons because the evidence is open to suspicion or weak. A Sessions Judge on the other hand is not responsible for administration of a District and will not hesitate to acquit a man if the evidence is too weak, whether he believes him to be guilty or not.

The choice is between administrative efficiency and judicial caution. Magistrates tend to lay emphasis on sheer executive efficiency and are in a sense custodians of law and order. Judges on the other hand are apt to be more jealous of the rights of under trial citizens, to give "procedure" pride of place and to insist on a higher standard of proof.

Commissioner of Coorg.

THE Chief Commissioner of Coorg in his Notification No. 56, dated 13th June, 1921, withdrew the powers conferred under Notification No. 61, dated 12th December, 1891, on the District Magistrate of Coorg to try as a Magistrate all offences not punishable with death under section 30 of the Criminal Procedure Code. The powers were withdrawn when the post of Assistant Commissioner and District Magistrate was open to the Provincial Service and it is unlikely that the District Magistrate will be empowered again under section 30. Cases other than murder cases rarely come up for trial before the Sessions Court and, as far as I am aware, no hardship was felt during these last 14 years when the District Magistrate was not invested with these powers. I would, therefore, submit that the proposed repeal of sections 30 and 34 and the proposed amendments to sections 34A and 35 of the Criminal Procedure Code need not be opposed as far as Coorg is concerned.

No. 4—AJMER-MERWARA.

Chief Commissioner, Ajmer-Merwara.

I HAVE the honour to forward copies of certain opinions on the provisions of the Bill

2 The Commissioner, Ajmer-Merwara, with whose opinion I agree, states that the amendment of the Code of Criminal Procedure as proposed in the Bill is not expedient. The abolition of the powers in question would increase the work of the Sessions Courts, add to public and private expenditure and delay the administration of justice in cases where the powers can well be used without fear of a miscarriage of justice. The vigilance exercised by the High Courts should be sufficient guarantee that these powers are not misused

3. The Judicial Commissioner of Ajmer-Merwara, appears, however, to advocate the Bill. He is of the opinion that though trial by a Magistrate is quicker and less expensive than trial by a Court of Sessions, a Magistrate is usually much less well equipped to deal with a complicated case than a Sessions Judge, and consequently his work cannot be very satisfactory. But if section 30 is to be retained he suggests that—

- (1) magistrates should not be invested with powers under that Section merely in virtue of their office ; and
- (2) difficult and complicated cases should not be tried by Magistrates empowered under section 30. The most suitable cases for disposal by such Magistrates are cases in which punishment in excess of 2 years is required only because the accused has previous convictions

Additional District and Sessions Judge,
Ajmer-Merwara.

I do not consider that a case has been made out for the proposed repeal of section 30 of Criminal Procedure Code and for amendment of the connected Sections. In Ajmer the powers under section 30 have never so far as I know been abused. If a case of misuse has been made out in the Punjab then the Local Government can remedy the evil by, if necessary, taking away the powers from the Magistrates concerned but I do not see why section 30 should be repealed altogether. This section provides a quick remedy which should not be unwelcome to the accused in most cases and it also provides a safe out-let for congestion of work in the Sessions Court. The cases usually tried under section 30 are cases of old offenders and I think that the procedure provided by law is the best one for disposal of such cases. An appeal is also provided against conviction in these cases to the High Court and if there is any abuse of powers on the part of the Magistrate the High Court should be able to rectify it. I further notice that an attempt has been made to base the plea of separation of executive and judiciary on the alleged misuse of powers by District Magistrates but that is all besides the mark. The proposed amendment of the Criminal Procedure Code has practically no bearing on the question of separation of executive and judiciary.

City Magistrate, Ajmer.

In my opinion section 30 of the Code of Criminal Procedure should not be repealed

The object of conferring special powers by section 30 is to accelerate proceedings at the trial by avoiding the delay consequent on commitment to the Sessions Court. The existence of this section is of great use to this District, otherwise it will entail a lot of work in the court of Sessions and the trial will be costly.

Bar Association, Ajmer.

THE objects of S. Santsingh's Bill for the repeal of Sec 30, Cr P C. appear to be twofold —

1 To remove off the Indian Statute Book a piece of exceptional and differential legislation, obtaining in certain provinces.

2 To attain the separation of the judiciary from the Executive, in so far as the Bill goes.

On principle, the Ajmer Bar Association, supports the said Bill for the following reasons —

Object No. 1.—

Under Section 30, Cr P. C., the Local Governments of the Punjab, Burma, Oudh, Central Provinces, Coorg, Assam, Sindh and other Provinces, in which there are Deputy Commissioners and Assistant Commissioners, are empowered to invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate, all offences not punishable with death. This differential and exceptional legislation does not apply to the remaining provinces of British India

If there were any reasons in 1898 (when Cr P. C Act V was passed), for the above said differential legislation, there do not appear to be any now for perpetuating the same. From every point of view, it is desirable, that criminal law and procedure should be uniform over the whole of British India.

Object No. 2—

There is no doubt, that the question of the separation of the judiciary from the Executive has been a burning problem since long, and as a matter of fact, it is mixed up with the larger questions of politics and good government. There is some justification for the general impression in the mind of the public, that, the District Magistrate, being the Chief Executive Officer of the District, is in a position to control the ways of working of the Subordinate Magistracy in the District, as well as those of its increments and promotions. The District Magistrate appoints the Public Prosecutor in all cases, where one is to be appointed. If any instructions are to be given to the Public Prosecutor, it is the District Magistrate, who does it, because he is responsible for the administration of the District, and his advice is generally taken.

This being so, it is desirable, that, so far as possible, the decision of serious cases, which involve punishment up to transportation for

life should rest purely with the Sessions Court, whose environment inspires more confidence in the mind of the public

One cannot be forgetful of the fact, that trial of a case by a Magistrate exercising powers under Section 30, Cr P C, has certain merits of its own, e.g., promptness of disposal, convenience of parties and witnesses as well as economy to the administration. But in the administration of justice, the most important consideration should be the creation and maintenance of confidence in the mind of the public and those who seek justice, that no extraneous considerations will guide or influence directly or indirectly the final decision of the case. The position of an accused is always one of extreme delicacy, and it is eminently desirable not only, that justice should be done, but that it should seem being done at all stages of the trial. The seeming advantages of a trial by a Section 30 Magistrates should not therefore be allowed to prevail over the far greater advantages of a trial in the Sessions Court, etc., at least in more important of the criminal cases, i.e., those punishable with transportation for life. If the trial in the Sessions Court is delayed by the preliminary commitment proceedings, steps should be taken to amend the law suitably in order to do away with the latter.

No. 5.—PUNJAB.

Government, Punjab.

THE opinions of the Judges of the High Court at Lahore and of the Punjab Government on this Bill were sent to the Home Department of the Government of India in my letter No. 3818-S.-Judicial, dated the 17th July, 1935. It was stated that the Governor-in-Council could see no advantages in the replacement of section 30 magistrates by assistant sessions judges, while the practical difficulties involved in the proposal were manifest. In the subsequent debates in the Assembly the Honourable the Home Member pointed out that there appeared to be no popular demand in any of the four provinces affected for a measure such as that brought forward by Sardar Sant Singh. That statement has been corroborated, so far as this province is concerned, by certain proceedings in the recent budget session of the Punjab Legislative Council. A motion was introduced by one of the non-official members of the provincial legislature for a token cut to urge that the section 30 system should be abolished altogether, or alternatively that not more than one magistrate should be allowed to exercise these special powers in each district. The mover found only one other member of the Council to support him, and it quickly became apparent that the non-official members were indifferent, if not positively opposed, to the proposal. The motion was ultimately withdrawn. This debate can fairly be said to have shown that there is general satisfaction with the present system in the Punjab, and the Governor-in-Council adheres to the view which he expressed last year that the measure introduced in the Assembly is an ill-considered one.

2 The Bill with its accompanying Statement of Objects and Reasons was published in the

issues of the Punjab Gazette of the 17th April, the 24th April and the 1st May, 1936.

Copy of letter No. 3818-S. (Judicial), dated the 17th July 1935, from the Government of the Punjab.

I AM to forward a copy of a letter (No. 5321-Genl.]II E-10, dated the 18th June, 1935) by the Registrar of the High Court of Judicature at Lahore, together with copies of its enclosures. These include the required statistics, together with the views of the Hon'ble Judges, on the Bill. The Governor-in-Council is in general agreement with those views. The abandonment of the section 30 procedure would entail preliminary committal proceedings in a large number of cases which are at present decided by the magistrate who first takes cognisance, and so cause not only additional expenditure but also delay. The cadre of District and Sessions Judges would have to be considerably increased, and as the Hon'ble Judges have suggested it is not likely that the Assistant Sessions Judges who would be used for the trial of the cases in question, if the present system were changed, would be in any way more competent or more reliable than the magistrates who at present handle the work. The selection of magistrates to exercise enhanced powers under section 30 is always most carefully made by the local Government, acting in close consultation with the Hon'ble Judges of the High Court. The Governor in Council can see no advantages in a proposal which would result in their replacement by Assistant Sessions Judges, while the practical difficulties involved are manifest.

Copy of letter from the Officiating Registrar, High Court of Judicature at Lahore, No. 5321-Genl.]II E-10, dated the 18th of June, 1935.

I AM directed to forward a statement showing the number of criminal appeals from the orders of the Section 30 Magistrates filed in the High Court and the proportion of successful appeals together with the corresponding figures for appeals from the Sessions Courts for the last five years (1930—1934).

I am also to enclose a copy of the opinion recorded by the Hon'ble Mr Justice Din Muhammad on the Bill and to say that all the Hon'ble Judges concur with this opinion.

Copy of opinion of the Hon'ble Mr. Justice Din Muhammad

In my opinion, the question of the abolition of Section 30 Magistrates should not be treated on an all-India basis. The volume as well as the nature of Crime varies from province to province, and now that the provinces will become autonomous about the end of 1936 or the beginning of 1937 every province affected by the Bill should be left free to tackle this

problem for itself in the light of the circumstances prevailing in each.

Taking this province alone, I find that this class of Magistrates is a necessity from whichever point of view the subject is considered. The number of cases at present disposed of by these magistrates is very large and their nature quite varied. They try most of the cases of culpable homicide not amounting to murder falling under Section 304 (2), cases of abduction falling under Section 366 or 366-A, cases of rape, or falsification of accounts, of aggravated forms of forgery, robbery, house-breaking, etc. Besides, all cases of habitual offenders, where punishment up to the limit of seven years is considered adequate, are also disposed of by them. These cases are not usually of a very complicated nature and are generally such as can be easily entrusted to any experienced magistrate of the first class but for the fact that enhanced punishment is called for. In these cases are not so tried, they shall have to be tried as Sessions cases. This will inevitably entail the cumbersome dilatory procedure provided for in the Criminal Procedure Code. Police investigation will be followed by magisterial inquiry in the shape of commitment and it is then only that the trial stage will be reached. Apart from the fact, that the delay this caused may sometimes lead to miscarriage of justice, the double procedure will in itself prove very costly both to the administration and to the accused.

Moreover, the abolition of Section 30 Magistrates will demand a substantial increase in the number of Sessions Judges. The number of cases triable by them exclusively will be so large in this province, that the present cadre will be found inadequate to cope with them efficiently. This will mean further increase in expenditure, which a newly created autonomous province may not find it convenient to bear. Even if these cases will be made over to Assistant Sessions Judges, it will bring no relief, either to the subject or to the administration. The Assistant Sessions Judges shall also have to be newly appointed, one for each district at least, which will mean an extra burden on the provincial exchequer. Further, the Assistant Sessions Judges will generally be recruited from the same class from which Section 30 Magistrates are now appointed, which will mean that the same persons will exercise enhanced powers under the new arrangement with the additional disadvantage of committal proceedings being a necessary adjunct. The holding of these committal enquiries will prove an extra burden on magistrates first class also which in some districts may necessitate an increase in their number too. This proposal, therefore, is alike useless and impolitic.

Under the present system, no magistrate is invested with enhanced powers until he has proved his worth, and the High Court exercises an effective check on their choice. The statement appended to this note makes it abundantly clear that the work is being efficiently carried out by Sections 30/34 Magistrates with substantial gain to the exchequer and in these circumstances no change is called for in this province at least.

*A successful appeal means an appeal in which the appellant has been acquitted, and not merely his sentence reduced.

Statement showing the number of criminal Appeals from the orders of the Section 50 Magistrates filed in the High Court and the proportion of successful appeals together with the corresponding figures for appeals from the Sessions Courts for the last five years 1930 to 1934.*

Year.	Appeals from the orders of Section 30 Magistrates.	Appeals from the orders of the Sessions Courts.	Total.	Number of unsuccessful Appeals from the orders of the Section 30 Magistrates.	Number of successful Appeals from the orders of Sessions Courts.	Total.
1930	513	659	1,172	99	177	276
1931	568	952	1,520	91	148	239
1932	659	973	1,632	109	188	297
1933	659	976	1,635	72	140	212
1934	792	892	1,684	101	152	253

No. 6.—DELHI.

Chief Commissioner, Delhi.

I HAVE the honour to enclose copies of the views expressed by the Deputy Commissioner, District and Sessions Judge, Additional District Magistrate, Public Prosecutor, and Bar Association, Delhi, on the Bill.

I am in general agreement with the views expressed by the Deputy Commissioner and by the District and Sessions Judge.

Deputy Commissioner, Delhi.

I AM in agreement with the views of the Additional District Magistrate and the Public Prosecutor, and cannot see that there are any advantages likely to accrue by the passing of the Bill. In order to diminish delay in the criminal courts the procedure should, I think, be simplified as much as possible. On the other hand this Bill will make the procedure of the courts more complicated and result not only in greater delay in the administration of justice but in more expense to litigants as has been pointed out by the Public Prosecutor in his note.

During my experience as a Magistrate both in the Delhi Province and in the Central Provinces I have never heard of any complaints in regard to the abuse of powers by section 50 Magistrates. Section 30 Magistrates are carefully selected and powers are only conferred when in the view of the High Court the Magistrate is considered sufficiently experienced to exercise them. Section 30 cases are not in themselves more complicated than other cases with which a First Class Magistrate has to deal. If all cases which are at present dealt with by a section 30 Magistrate under his enhanced powers are to be committed to sessions it will enormously increase the work in the sessions court and cause a lot of extra expenditure to Government for it will undoubtedly be necessary to appoint Additional Sessions Judges to assist the Sessions Judge in

dealing with the increased volume of work which will fall upon the sessions court.

Additional District Magistrate, Delhi.

If a few Section 30 Magistrates have erred, or acted in a manner which has made the public suspect their *bona fides*, I do not think this can be a reason for condemning Section 30 Magistrates as a whole. Whatever may have been the practice before Government and the High Court do expend considerable care in selecting such magistrates who are usually officers of experience, even if on occasions their English is not up to the mark. The saving grace of the present system is expedition for there are no assessors and other lengthy procedure connected with sessions trials. It may be true that some cases would be better tried by Sessions Judges but the majority of them can easily be done by Section 30 Magistrates who incidentally are much the cheaper agency. I know of no general complaint against Section 30 Magistrates.

Public Prosecutor, Delhi.

UNDER Section 30 of the Criminal Procedure Code, it is the local Government, who is authorised to invest the District Magistrate or any other Magistrate of 1st Class with power to try as a Magistrate all offences not punishable with death. Sections 34 and 34-A deal with the question of sentence. The main point raised is that the Magistrates should not be invested with powers mentioned in Section 30. The present practice prevailing is that before a Magistrate is empowered to exercise these powers, the local Government generally consults the High Court about the matter. It is only after very careful consideration, that the local Government invests these powers to really competent Magistrates. The Magistrates invested with these powers are generally very experienced and competent officers. So far as this Province is concerned, a fairly large number of cases are those of previous convicts where under Section 75, I. P. C., an enhanced sentence is to be inflicted. They are cases of theft, etc., and the accused generally has got 2 or 3 previous convictions. But in other cases also the magistrates are in a position to deal with the cases most efficiently on account of their ability and experience. There seems to be no grievance on this score so far as Delhi is concerned. If on the contrary Section 30 is repealed, then the cases will have to be committed to the court of sessions and a great deal of time of the Sessions Judge will be occupied. There will be commitment proceedings in the original court and a regular trial in the Sessions Court. The trial will become very expensive. Perhaps an Additional Sessions Judge and an Additional Public Prosecutor will be required. In fact in many cases the accused person will not be able to engage a counsel for the trial in the Sessions Court and thus they may remain unrepresented. So far as this province is concerned, I am of the opinion, that the repeal of Section 30 will not in any way prove beneficial.

District and Sessions Judge, Delhi.

I. THE proposed amendment is quite unnecessary. The trial of petty Sessions Cases which are not of a very serious nature by Section 30 Magistrates saves time, labour and money and does not in any way prejudice the case of the accused. It is always open to the Section 30 Magistrate to commit the accused to be tried by the Sessions Judge if he thinks that such a course will be conducive to justice but there is no reason why he should not have the power to punish the accused if he thinks that he can do so without having recourse to the prolonged and expensive trial by a Sessions Judge. His decision can be made the subject of an appeal to the Sessions Judge or the High Court.

II. The amendment is the outcome of mistrust in the Magistracy of the Province but there are no valid grounds for the mistrust. When the Section proposed to be amended was enacted, the Extra Assistant Commissioners in the Province were not generally very highly educated men but now-a-days almost all of them are highly educated and it is after they have gained experience of the criminal work that they are invested with Section 30 powers. Their work has been generally satisfactory. I also attach the opinion of the Bar Association, Delhi.

Bar Association, Delhi.

THE Committee have had the advantage of reading and carefully considering the reasons for and against the proposed Bill as appearing in the speeches of the Members of the Legislative Assembly and on the discussions and the cultivative effects of the proposed Bill. Reading Section 30 of the Code of Criminal Procedure there is no room for doubt that Section 30 was intended particularly for territories not for the time being administered by the Governors. This fact alone shows that the enactment of section 30 was not based on general principles relating to the trial of offences but stood as an exception. The only question therefore is whether after such a long time and when certain provinces previously administered by Lieutenant Governor have been changed into Governors provinces, the retention of the exception is justifiable. Upon this question the Association is clearly of the opinion that the exception must go.

Upon the merits we entirely agree with the reasons advanced by those Members of the Legislative Assembly who have given their support to the Bill and without going into details we have to make this observation that having regard to the peculiar circumstances in which a majority of Section 30 Magistrates find themselves qua the executive it will be in the public interests that this practice be discontinued and the trials should take place, as provided in Section 31 of the Code, by Sessions Judges and Assistant Sessions Judges who will be directly responsible to the High Court. In the view of the Committee the repeal of Section 30 and consequently the amendment in Sections 34, 34-A and 35 as proposed in the Bill will go a great deal in creating amongst the public in general, a confidence that the trial will be held by Judicial Officer and not by Executive Officers.

No. 7.—SIND.

Government of Sind.

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

2 I am to add for the information of the Government of India that in Sind only two District Magistrates, namely, those of Thar Parkar and Upper Sind Frontier have been invested with powers under Section 30, Criminal Procedure Code, on account of the special conditions prevailing in those Districts. Further, on occasions when it has been considered desirable, experienced and efficient Sub-Divisional Magistrates have been specially invested by the local Government with powers under Section 30, Criminal Procedure Code, on the recommendations of the District Magistrate and the Judicial Commissioner of Sind, for the trial of particular cases.

3. The Bill and the Statement of Objects and Reasons were published in English on 2nd April, 1936, and in Sindhi on 9th April, 1936, in the "Sind Government Gazette".

Judicial Commissioner of Sind.

I HAVE the honour to state, after consulting the Judges of this Court, that I think that this power is necessary in a Province like Sind where conditions in some tracts are so savage and primitive; but it is a power which I think should be exercised with the very greatest care and discrimination and that a Magistrate should only be invested with these special powers, in Sind, if the Judicial Commissioner concurs.

No. 8.—CENTRAL PROVINCES.

Government, Central Provinces.

THE overwhelming majority of opinions received is opposed to any change in the present system. So far as this province is concerned, that system has worked satisfactorily and there has not been any real demand for a change. In these circumstances and in view of the fact that the proposed measure if passed into law would impose a financial burden on the province, the Governor in Council is of opinion that the Bill must be opposed.

* 2. Copies of selected opinions are forwarded.

3. The Bill with the Statement of Objects and Reasons was published in the Central Provinces Gazette in English on the 1st March, 1935, and in Hindi and Marathi on the 27th March, 1936.

Hon'ble Justice Mr. Vivian Bose of the High Court of Judicature at Nagpur.

COST must be the deciding factor. Sessions trials are usually more satisfactory because more time is spent over them, there is ordinarily

a more experienced Judge and abler Counsel; also there are really two trials, one before the Committing Magistrate, and the other before the Sessions Judge.

On the whole I think Magistrates with Section 30 powers have worked satisfactorily in these Provinces. Their work has been expeditious, without being hurried, and the standard fair. Whatever advantage there is in a Sessions trial is counterbalanced by the fact that the High Court has wider powers in revision against their judgments than in appeals against the decisions of Sessions Judges and juries. For this reason I think that though a greater number of guilty persons are likely to escape before a Sessions Judge and a jury, innocent persons wrongly condemned will have much fewer chances of redress. So if the administration of justice is the only thing to consider I do not think there is much in it one way or the other.

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

Hon'ble the Chief Justice of the High Court of Judicature at Nagpur.

THE Bill in my opinion speaks the language of the future but, for reasons of expense, the time is not yet.

District and Sessions Judge, Jubbulpore.

I do not approve of the proposed amendments at the present time. The underlying motive—an attempt to decrease the association of the executive and the judiciary—is laudable and has been recognised as such in principle on many occasions. But the proposed change would add so very considerably to the work of the Sessions Judges and Additional Sessions Judges (and Assistant Sessions Judges if they are to be appointed in this province) as to require additions to the cadre and consequently involve considerable expense without compensating saving in any decrease of Magistrates. Further, in the system obtaining in this province I see no reason for holding that the work of Additional Sessions Judges and Assistant Sessions Judges is superior to that of selected and experienced Magistrates First Class. It would also lead to increased duration though I do not consider this a factor of great weight in a matter of this sort.

2. Further I do not consider that at the present moment a change of this sort should be thrust on the provinces by the Central Government. Any province in which there is a strong

public opinion against the present system—and this alleged opinion is the cornerstone of the reasons justifying the Bill—will be able to take the initiative in dealing with the matter for its own area under the new constitution.

Commissioner, Jubbulpore Division.

THE Deputy Commissioners, Hoshangabad and Nimar indignantly deny the allegations made against Magistrates acting with powers under section 30, Criminal Procedure Code and see no necessity for the Amending Bill. The three non-official gentlemen consulted by the Deputy Commissioner, Hoshangabad, are in favour of the Bill.

I agree with the two Deputy Commissioners. In my experience, a good section 30 Magistrate—and there are many such—dispenses better and more prompt justice at any rate in cases which are not specially complicated than is sometimes meted out at trials by Additional Sessions Judges. Often such section 30 Magistrates have law degrees are at least as able as many of the Additional Sessions Judges and are less liable to become entangled in a surfeit of case—law. As to the imputations made in the debate by the Hon'ble mover, to the effect that section 30 Magistrates are under the influence—and impliedly the bad influence of District Magistrates, I can only characterise them as baseless and scandalous.

Deputy Commissioner, Jubbulpore.

I WAS a member of the Assembly when the Bill was introduced and consider that an overwhelming case for the rejection of the Bill was made by Khan Bahadur Shaikh Khurshaid Muhammad, Mr. R. M. MacDougall, Rai Bahadur Shyam Narayan Singh, Mr. F. B. Leach, and the Hon'ble Sir Henry Craik. Every High Court consulted by the Government of India stated that the work done by Assistant and Additional Sessions Judges in cases of the type disposed of by Section 30 Magistrates in the Punjab, Burma, Central Provinces, Chota Nagpur, and parts of other Provinces was inferior to and slower than that of Section 30 Magistrates. Everywhere the percentage of successful appeals from Assistant and Additional Sessions Judges was higher than that of successful appeals from cases tried by Section 30 Magistrates. After all, it seems to stand to reason that officers who throughout their official career have been trying criminal cases should be better versed in the criminal law and procedure than the civil judicial officers who for a long time specialise purely, or almost purely in civil work.

A point that was not touched upon in the debates was the difficulty of securing juries. This is already a real difficulty at times in such districts as Hoshangabad. Service as jurors and assessors is most unpopular with the public. It is a common experience that at the annual revision of the jury list by the Sessions Judge and District Magistrate sitting jointly there are innumerable applications from persons trying by hook or crook to get out of this unpleasant

L83LAD

service. Nor can it be said that very great help is derived in the majority of cases from jurors and assessors. I commend for approval the words of Mr. F. B. Leach, at page 18 of the extract from the Assembly proceedings :—

“ I am not so frightfully struck with the jury system as the Honourable Member on my right seems to think. The jury system is a very interesting relict of English law, but I am not so very much struck by it. I have often thought that I would much prefer to be tried by a judge with experience, honesty, and knowledge of law without a jury than to be tried by 12 comparatively ignorant shop-keepers, etc. (Laughter). I do not set so much store by the jury system as all that.”

This seems to me to hit the nail on the head. Let it be remembered also that jurymen are always towns-folk frequently differing in language from the accused, and, still more, differing entirely from him in ways of thought and life. The fundamental idea of trial by jury was that a man should be tried by his peers. That seldom is achieved by the Indian jury system.

Another point that needs emphasizing is the great delay involved by the system, and the consequent premium put upon miscarriage of justice. The committal proceedings in important cases in India are an anachronism and represent a slavish imitation of a system that may be suitable in Europe with its speedy communications and higher standard of education and intelligence but is generally quite out of place in a country with the great distances and elaborate court proceedings of India. If it is a murder committed in a remote village during the busy harvest season the villagers have first to suffer the unpleasantness of a protracted police investigation in the village, and are probably called in 2 or 3 times to the police station. There is then the longer journey to the magistrate's court, where the same stories have to be told all over again in a more elaborate form, and perhaps to be tested by cross-examination. The magistrate is probably not able to conclude the case in a single hearing, and the witnesses may be kept in the court for 2 or 3 hearings. They then return to their villages ; but a month or so later their whole work is again interrupted by their having to come back and repeat the story in the Sessions Court and be subjected to a keen cross-examination. Often too in the meantime emissaries of the parties interested in the conviction or acquittal pester the witnesses to strengthen or change their statements. The percentage of cases failing through witnesses going back in the Sessions Court on what they stated in the committing court must be very large ; and I have never been able to see what real advantage accrues to a man on trial, whether for his life or for a minor offence, from this compulsory procrastination of his case. Any one who has served in the remoter distances must know of cases in which villagers themselves combine to suppress information even of murders whenever they occur during the busiest agricultural seasons.

No consideration has been paid by the mover and his supporter to the prohibitive cost of the change. All talk glibly as though section 30 Magistrates could be merely replaced by Assistant Sessions Judges. Someone however must be found, while the law stays what it is, to commit the cases for trial so that at least 2 in every 3 of the magistrates now exercising section 30 powers will have to remain magistrates, while the number of new Assistant Sessions Judges will have to be at least 2 in heavier districts and one in other districts. In the Hoshangabad Sessions division even with the present staff of Sessions Judge and Additional Sessions Judges there is great inconvenience when there is a spate of sessions cases such as occurred between October 1935 and January 1936, as a result of which many civil cases had to be adjourned almost indefinitely. Mr. R. M. MacDougall in his speech in the Assembly debate gave some indication of the cost in Burma of abolition of section 30 magistrates. He pointed out that in Burma for the 4,000 section 30 cases disposed of every year 30 Assistant Sessions Judges at least would be required, that new court rooms would be required for them, with additional clerks and chaprasis, that there would be a great increase in the cost of producing and dieting witnesses, that additional prosecuting staff (probably Assistant Public Prosecutors in every district) would be needed, that additional police would be needed because of extra detention of the accused and the additional expenditure on Police escort, and that additional cost would be involved in feeding undertrial prisoners, who would have to be detained much longer in jail. The proposal thus would involve heavy public works expenditure, and heavy additional recurring expenditure on the maintenance of buildings, and in the judicial and police departments.

I have not been able to get figures for the number of Section 30 cases per annum in the Central Provinces. I presume it cannot be less than 1,500 cases, but even if it is only a thousand, there will obviously be involved expenditure for new courts in every district and possibly in some of the sub-divisions also, and the recurring expenditure can hardly be less than Rs. 1,50,000 ; actually I should imagine that it would be considerably more. The province is desperately poor and we have no money available for nation-building activities. Yet our friends in the Assembly from other provinces would compel us against our will to indulge in the unnecessary luxury of the trial by jury of all the cases now dealt with by Section 30 Magistrates. Although the central legislature may have the constitutional right of imposing such a change upon the province, this is a typical example of the way in which many members of the central legislature do not realize that the primary responsibility for law and order in the provinces must rest with the provincial Government and legislature. If the people of the Province really desire this change, then I have no doubt that the provincial legislatures will in due course of time make their will prevail. But meanwhile it is, I think overwhelmingly obvious that in the C. P. at least the Bill would amount to unnecessary interference with pro-

vincial autonomy and deal a severe blow to the provincial finances.

The proposals therefore (a) will not improve justice, (b) will delay justice, (c) will involve prohibitive expense, and (d) will amount to undue interference with provincial autonomy. The only benefits held out in return for these grave disadvantages appear to be (1) that the criminal procedure of the whole of India will be uniform, (2) that Assistant Sessions Judges will be free from the alleged interference of District Magistrates with the judicial independence of their subordinate magistrates. Uniformity in itself is not necessarily a blessing ; on the contrary the craze for uniformity has often led to the imposition in one province of the institutions or of another, which are quite out of place in their new milieu, the *malguzari* system for example. As to (2), I have been an assistant magistrate for 5 years and a District Magistrate for 11 years, and have yet to experience such interference. No doubt after judgment is given District Magistrates may find fault with procedure or decisions, but the High Court's rules impose on them the duty of such scrutiny and the public would very rapidly complain if District Magistrates relaxed their effective control of the courts subordinate to them. My own practice in important cases has been not to influence magistrates at all as to the sentences to be imposed, but, if for executive reasons I thought a particular line of action desirable, to have that line urged in argument by the pleader or inspector conducting the case for the Crown. If an assistant has consulted me in difficulties I have naturally advised him. Whether cases are tried by assistant magistrates or assistant judges, it is inevitable that their official superiors will continue to scrutinise their work, and to give advice when necessary ; but the object of such advice will remain the securing of impartial justice, not the insistence on the conviction of the innocent.

The Bill should be firmly opposed.

High Court Bar Association, Nagpur.

THE association is in favour of repeal of Section 30 of the Criminal Procedure Code.

Section 30 of the Criminal Procedure Code is an anachronism at the present day. The cases which are triable by Court of Session must be tried by Courts of Session and time has come when trial by jury must be extended to every district. The retention of Section 30, in a way, retards the introduction of this much needed reform.

In olden times, a session judge worked for a whole division comprising 4 or 5 Districts. He was not expected to cope with the whole work. To relieve him magistrates were empowered under Section 30 to take up some of his work. At the present day, there is a Session Judge or Additional Sessions Judge in every District and hence the utility of a section 30 magistrate has outlived the necessity.

Bar Association, Jubbulpore.

I HAVE had the benefit of reading the opinion submitted by Mr. D. S. Choudhary. I agree with him when he says that the amendment of the Criminal Procedure Code on the lines suggested by the mover is very desirable. Much was tried to be made in Legislative Assembly of the fact that if Section 30 Magistrates were done away with then costs would go up. Costs should, in my opinion, not be deciding factor against the Bill for we have to remember that Justice—more specially justice in Criminal Cases—should never be a business proposition. I fail to understand why the Bill met such a stiff opposition from the Government unless it was afraid that the Bill was making an inroad on the powers of the executive. If that was the intention then I should say that the sooner the administration of justice in Criminal Cases is placed beyond such considerations the better it would be for all concerned.

No. 9.—BENGAL.

Government of Bengal.

I AM to say that the opinions of Commissioners of Divisions, selected District Judges, some Bar Associations and the Incorporated Law Society of Calcutta were invited on the provisions of the Bill and I am to submit for the information of the Government of India, copies of the replies received. It will be seen that while the opinions of the official bodies are against the Bill, those of the non-official bodies are in its favour.

So far as the province of Bengal is concerned, the only part in which Magistrates have special powers of the kind which it is proposed to abolish is the Chittagong Hill Tracts, but the proposed legislation would not operate there.

In absence however of any demand for the proposed amendment or any special circumstance justifying it, the Governor in Council is opposed to the provisions of the Bill.

I am to add that the Bill with Statement of Objects and Reasons was published in the Calcutta Gazette in English once on the 7th March, 1935 and again on the 2nd April, 1936. It was, however, not published in any other language.

Commissioner, Presidency Division.

In my opinion, there is no justification for the proposed amendment.

District Judge of Bakarganj.

PUT shortly the Bill proposes to repeal certain provisions in the Criminal Procedure Code which empower the District Magistrate or certain magistrates of the first class to try all offences not punishable with death in certain specified areas. The provisions of section 30 of the Criminal Procedure Code whereby these special powers are given to the District Magistrate and to certain first class magistrates are

exceptional and are limited to certain specified areas. The present Bill relates to the Punjab where section 30 of the Criminal Procedure Code is in force. One of the grounds put forward for the abolition of these special provisions is that the local conditions in the Punjab have so altered as to render them unnecessary. Not being acquainted with the conditions prevailing in the Punjab it is not possible for me to express any opinion as to whether this ground is substantial or not. In my view there can be no doubt that the special provisions of section 30 of the Criminal Procedure Code are necessary in certain areas which may for the want of a better term be described as "backward". There are certain areas in India where it would not be possible to get a sufficient number of persons qualified to act as jurors or assessors. In these areas the provisions of section 30 of the Criminal Procedure Code would be both beneficial and necessary. Where these difficulties do not exist I consider that section 30 of the Criminal Procedure Code should be repealed and that consequential amendments should be made in sections 34, 34A and 35 of the same Code. In my opinion the principle of separation of the functions of the Judiciary and the Executive is a sound one and wherever possible attempt should be made to carry out this principle. It will not be very profitable to embark upon a discussion regarding the point whether magistrates make good judges or whether the mal-practices in the courts of Magistrates are greater than those in the courts of Judges. I do not think that there can be much doubt, however, that public opinion is in favour of all judicial work being done by judges rather than by magistrates. The connection of magistrates with the police and the executive is bound to create in the minds of the public a certain amount of distrust regarding their judicial impartiality, especially in those cases which affect executive administration. The wholesome principle that not only should justice be done but that the public should feel confident that justice is being done impartially should not be lost sight of. In my opinion the severance of all connection between the Judiciary and the Executive will tend to increase the confidence of the people in the administration of justice. From this point of view the Bill of Sardar Sant Singh deserves support.

The provisions of section 30 of the Criminal Procedure Code deprives the subject of another coveted privilege, *viz*, that of trial by jury. If there is no difficulty in the Punjab in getting suitable persons to act as jurors, I am of opinion that there is much to be said in support of Sardar Sant Singh's Bill. Even if suitable jurors and assessors are not available I would suggest that the Bill in a modified form should be supported. The modification which I would suggest is that certain judicial officers should be selected and invested with the powers mentioned in section 30 of the Criminal Procedure Code. In Burma, I see from Mr. Dougall's speech, a proportion of the officers specially empowered under section 30, Criminal Procedure Code are drawn from the judicial service. I think that it would be an improvement if all the officers who are to be specially empowered under section 30 of the Criminal Procedure Code are drawn from the judicial service.

District Magistrate of Birbhum.

IN the absence of the District Officer on tour the repeal of the sections as proposed will ensure greater confidence in Courts than before as it will place the judicial administration in case of serious offences in the hand of higher courts than at present

District Magistrate, Howrah.

So far as this District is concerned there had not been very many instances in which the Magistrates were empowered under section 30, Criminal Procedure Code.

So far as the application of sections 30, 34, 34A and 35 are concerned all that I can say is that the quality of work of Magistrates empowered under section 30, Criminal Procedure Code is certainly of a high order.

It obviates the necessity of duplicating the examination of the witnesses first in the Committing Court and then over again in the Sessions Court. It therefore entails less expenditure to the Government and to the accused persons as well.

The trial is more expeditious and less cumbersome. So far as the length of the trial is concerned, it is much less as there is no need for holding the trial twice over.

Experienced Magistrates empowered under section 30, Criminal Procedure Code have been found to be disposing of the cases in question on efficient manner; the comparative value of their work with the work of the Assistant Sessions Judges and Sessions Judges is not unfavourable. The senior and experienced Magistrates are now a days vested with the powers of the Assistant Sessions Judges. The experiment so far as I know has not been found unsuccessful.

That being the position, namely the most important aspect of the thing efficiency can certainly be secured in very many cases in the work of the Magistrates empowered under section 30, Criminal Procedure Code. There is no need of divesting the Magistrates of the higher powers conferred by these sections simply because they are Magistrates.

So that all things considered, I would recommend these sections 30, 34, 34A, and 35, Criminal Procedure Code should not be repealed.

It is not of general application in this District but if these sections are extended to Howrah it cannot be said in any way that the Magistrates empowered under section 30, Criminal Procedure Code do not inspire confidence generally.

District Magistrate, Bankura.

I HAVE the honour to enclose copy of opinion expressed by the Bar Association of Bankura supporting the provisions of the Bill.

2. The Bill does not affect Bengal. The discussion in the Assembly shows that objection to this Bill is based on the ground that the repeal of the sections will make administration of justice much more costly without adding to its efficiency. Concrete figures have been given to

prove that the numbers of successful appeal from decisions of Special Magistrates is smaller than that of such appeals from the decisions of Assistant Sessions Judges. The quality of the work done by the Special Magistrates is therefore as good as if not better than that of the Assistant Sessions Judges; it would thus be hardly fair to base the case for an abolition of Special Magistrates on the ground that the justice administered by them is of inferior quality. If that is proved, as it must be taken to be if the evidence of facts is not to be ignored, it would hardly be desirable or wise to prolong the agony of the accused persons by putting them through an enquiry before a Magistrate and a trial before a Judge and to saddle the people with an inevitable increase in cost of a double enquiry and trial.

For these reasons, I cannot support the provisions of the Bill.

Bar-Association, Bankura.

I HAVE the honour to state that although section 30 being not applicable to the Province of Bengal, the Bill does not affect us, yet, in the opinion of this Association, Special Officers should not be vested with powers to try serious offences involving heavy punishments and the accused should not be thus deprived of the advantage of trial by the Sessions Court with the help of assessors or Jurors and this Association, therefore, supports the provisions of the Bill.

Commissioner of the Rajshahi Division.

THE sections of the Criminal Procedure Code proposed to be amended do not appear to have been applied in this Division. No strong reasons for supporting the amendment appear to have been urged in the Debates. In my opinion the amending Bill should not be supported.

District Judge, 24-Parganas.

THE proposed repeal of section 30 of the Code of Criminal Procedure on the lines suggested in the Bill as introduced is not a practical problem so far as Bengal as a Province is concerned. It is, therefore, not necessary to consider the effect of such a Bill on this Province.

Theoretically speaking, on a consideration of the Bill, the Statement of Objects and Reasons, and the extracts from the Legislative Assembly debates of the 13th and 20th February, 1936, I can only record it as my considered opinion that no case whatsoever was made out for this measure. The debate did not disclose any popular demand for its introduction in any of the Provinces affected thereby, and the Statement of Objects and Reasons only mentions as the reason for its introduction the object of inspiring accused with greater confidence in the Courts. The report of the debates does not establish any case for the introduction of the measure on this ground and the speeches that were made in opposition to the proposal, in my opinion, destroy completely any vague suggestions that were offered in its favour.

In my view, therefore, the Bill serves no purpose whatsoever and should not be brought on the statute book.

District Magistrate of Hooghly.

I CONSIDER the Bill to be altogether unsuitable, and in my opinion the Bill should be entirely rejected. There has not been any change in the actual condition of the state of things in the districts where there are Deputy Commissioners notwithstanding the fact that the Province of Bengal has acquired the status of Governor's Province as will justify the repeal of sections 30 and 34 of the Code of Criminal Procedure and as there is ample provision in the Criminal Procedure Code for the appeals against sentences passed by the Deputy Commissioners under sections 30 and 34 of the Criminal Procedure Code, I find no reason for the repeal of these sections as proposed by Mr. Sant Singh.

The Statement of Objects and Reasons published by him does not make out a case for the repeal of these sections.

District Judge of Dacca.

Prima facie THERE appears no reason why a distinction should be continued between the powers exercised by Magistrates in the different Provinces, but the desirability of giving effect to the proposed amendment would appear to be a matter mainly for decision by those who have had practical experience of the working of these Special Magistrates and the quality of their work as disclosed by inspection and the result of appeals. If the present system is working satisfactorily and economically there does not appear to me to be any need for the proposed amendments.

Incorporated Law Society of Calcutta.

THE Council of the Society support the Bill.

Bar Association, Dacca.

THE Association approves of the Criminal Procedure Amendment Bill introduced by Sardar Sant Singh.

Commissioner, Dacca Division, Dacca.

IN the absence of any experience of the practical working of section 30, Criminal Procedure Code, I do not feel in a position to express a useful opinion.

District and Sessions Judge, Rajshahi and Malda.

THE exact condition in the provinces mentioned in the section 30 of the Criminal Procedure Code being unknown to me, it is not possible to offer any opinion as to whether section 30 should be repealed and should be followed by the consequential repeal of section 34 and the amendments in the texts of sections 34A and 35.

District Judge of Chittagong.

I AM opposed to the proposed provisions of the Bill and recommend that the existing law on the matter be retained.

District Judge of Burdwan,

THIS question does not affect Bengal.

ON broad principles the retention of Special Magistrates is undoubtedly an anomaly, but the practical objections to the Bill, of which I am not qualified to judge, seem to be very strong.

District Judge, Hooghly.

I HAVE the honour to state that as the Bill does not affect this province, I have no opinion to offer.

District Judge of Pabna and Bogra.

THE proposal is to amend section 30 of the Code of Criminal Procedure and certain connected sections. The sections have really no application to the Province of Bengal, and not being in touch with the actual conditions in Provinces like the Punjab, the Central Provinces, etc., I am not in a position to give any definite opinion on the subject. Being accustomed to the methods of administration of justice in this Province however, I would say that other provinces should be brought in line with provinces like Bengal, and the proposed amendment of the Criminal Procedure Code should be supported

District and Sessions Judge of Bankura.

I HAVE the honour to state that in the absence of knowledge of local conditions it is rather difficult to offer a sound opinion on the subject. On fundamental principles however, Sessions Trial in serious cases, under normal conditions, is desirable; but it should also be noted that such a trial can function well and satisfactorily if proper persons, having a keen sense of justice, are available as Jurors or Assessors.

Bar Association, Alipur.

AS most of the territories mentioned therein have acquired the status of Governor's Provinces, it is but natural that the citizens would like to have a more elaborate form of trial by judge and jury. Rather it becomes a necessity with them in cases involving punishment upto transportation for life. Justice administered should be founded on the confidence of the prisoners at the bar as well as that of the public. To meet such an end, questions of expediency and costs do not count for much. So the amendment proposed appears to be quite consistent with the progressive aspiration of the citizens under the Governor's provinces and beneficial to the country at large.

District Judge of Dinajpur.

THE grounds for the proposed amendment as stated in the statement of objects and reasons are threefold. Firstly it is assumed that the exercise of special powers by Magistrates is derogatory to the dignity of a Governor's province. The second reason relates to the dissatisfaction of the accused with the nature of the trial before Magistrates which is supposed to compare unfavourably with Sessions trials. Thirdly it is presumed that the abolition of special powers will raise the standard of judicial administration and inspire greater confidence in the administration of criminal justice.

In my opinion none of these arguments can be sustained.

To begin with I fail to understand what connection there is between the status of a governor's province and the exercise of powers u/s 30 Cr P. C. One is a question of administrative convenience; the other is purely a political accident.

As to the dissatisfaction of the accused my impression is that the accused has no more confidence in a Sessions Judge than in a Magistrate. On the contrary I have often heard uncomplimentary remarks passed by parties and their pleaders regarding the utility of jurors and assessors in the administration of justice.

With regard to the third point I think there is a general feeling, to my mind quite undeserved, that, in the words of an Hon'ble Member, 'justice administered in Sessions Courts is justice administered *coram populo*, while justice administered before Magistrates is justice administered *in camera*' If the jury system prevailed all over India, there would be some sense in urging the trial of every case before a jury, but when the question is one of the introduction of assessors in a trial, the difference is not very great. The contemplated change would not only be an administrative luxury but a financial blunder.

For these reasons I cannot support the proposed amendment.

Commissioner, Chittagong Division.

THE only part of this Division that would be affected by the repeal of Section 30 and consequential amendments is the Chittagong Hill Tracts, where Government by their notification No. 140 I. R. of the 5th January, 1922, have empowered the Deputy Commissioner to try all offences not punishable with death.

In the Hill Tracts the withdrawal of this power would seriously dislocate the administration of justice and in particular would impose considerable hardship on persons accused of serious offences not punishable with death. There is no Sessions Court within the district. Under Section 8 of the Hill Tracts Regulation of 1900 the Commissioner is Sessions Judge, and consequently in many cases now triable on the spot it would be necessary, if section 30

were repealed, to bring the accused himself together with all officers concerned in the investigation of the offence and witnesses to the divisional headquarters for trial. The disadvantages of such an arrangement would be so great that it must be regarded as impracticable. An alternative would be to direct that the Commissioner or the Sessions Judge of a neighbouring district should hold periodical sessions in the Tracts; but this again would involve great delay. It would frequently mean considerable periods of confinement as undertrial prisoners for accused persons whose cases are at present expeditiously disposed of and would hold up the progress of criminal work all round.

Finally, whatever may be the state of public opinion in other provinces, there is no feeling in the Hill Tracts against the present system or demand for change, and there is no doubt that the simpler and quicker procedure in the Deputy Commissioner's Court is in every way better suited to the present state of development in the Tracts.

Commissioner of the Burdwan Division.

I HAVE no views to offer on the proposed Code of Criminal Procedure (Amendment) Bill by Sardar Sant Singh as there are no such specially empowered Magistrates in this Division.

District Judge of Mymensingh.

I CONSULTED all the Additional and Assistant Sessions Judges and they are of opinion that the Bill is undoubtedly a step in advance towards separation of judicial and executive functions which alone is calculated to secure the confidence of the public in the integrity of judicial administration. The backwardness due to which certain provinces were provided with Section 30 Magistrates no longer perhaps exist, and there is no reason why normal state of things should not prevail everywhere within British India. Personally speaking, I agree with their views that the amendment would be a step in the right direction; but in view of the statements made by the Hon'ble Home Member, I have no reason to think that Section 30 Magistrates have been a failure. We in Bengal have no first-hand experience of the working of such Courts, and I feel diffident in expressing a definite opinion on the subject.

District Magistrate, Burdwan.

THERE is no advantage in adopting the proposed amendment, which from the information given in the Assembly debate—will only ensure less good justice at much higher cost. I can see no advantage to the public in adopting this Bill as a means to such an end.

If adopted, the bill would certainly increase lawyers' profits at the expense of the litigant. Possibly this is why the Bill was brought forward. Also it would, in practice, mean that

most of the present special-powered Magistrates would have to be promoted to Sessions rank, and I can see no reason why a man who is considered inefficient or corrupt or subservient as a Magistrate should change his nature and forthwith become efficient, incorruptible, and upright when described as Assistant Sessions Judge.

I have personally never met the application of the sections which it is proposed to remove, but as a District Magistrate, I avoid influencing my officers in any way during their decisions, and I do not think my officers are such fools as to imagine that I will think better of them for convicting blindly, whether an accused is innocent or guilty.

District Judge of Tippera.

1. THERE being no section 30 Magistrates in this province there had been no occasion for comparison of the merits and demerits of the work of such officers with that of Assistant Sessions Judges. My opinion is thus expected to be of academical nature and of not much real value.

2. There are certainly many factors affecting the trial by each of such tribunals. In the case of both the Magistrate and Assistant Sessions Judges much depends upon their fairness and firmness besides knowledge and experience. In sessions trial whether in the court of Assistant Sessions Judges or Sessions Judges the quality depends also to a considerable degree upon the integrity and impartiality besides education, of the jurors or assessors. When any of these qualities are wanting—unfortunately it is so, very often—the trial by jury is really a farce and trial with the aid of assessors means no aid from them.

3. Even in Bengal, in case of minor offences (now triable by sessions court) in which the sentence is not to exceed 4 years' imprisonment, I am in favour of trial by section 30 Magistrates or Assistant Sessions Judges without jury or assessor, of course if the Cr. P. Code is so amended. This will save both time and money for all parties concerned and I dare say, without any impairment in the quality of the work.

4. Much time and money would be saved and perhaps better justice administered if in cases of graver offences also, the trial was by Judges with the aid of assessors instead of trial by jury. I shall not be at all surprised if the Government is in near future approached by the people with a proposal for such changes.

5. I am not of opinion that quality of work done by section 30 Magistrates shall be better than that of Assistant Sessions Judges, as recruited in Bengal, from Subordinate Judges who are expected to have a very good footing on both law and facts by experience and training. The percentage of unsuccessful appeals is not a true criterion for judging the merits of their respective work. Any short-coming in the judgment of a Magistrate can very well be made up by the appellate court (for which, really such judgments are intended) if there are materials in the record. But in

Sessions trial, any misdirection in the charge (which is intended for jurors who are laymen) may be a good ground for successful appeal inspite of sufficient materials in the record in support of the verdict.

District Judge of Murshidabad.

As Section 30 Cr. P. Code is not applicable to Bengal the views of a Judge in this Province on the Provisions of the Bill must necessarily be personal, and may have little value in respect of conditions existing in those Provinces where the section is in force.

2. My personal view is that any provision of law which saves the offender from being twice tried, once in the Court of the Committing Magistrate, and again in the Court of Sessions is a provision to be cherished. So far from wishing the repeal of section 30 I should like to see its provisions extended.

3. To the Executive, according to the Mover, Justice means the conviction of the maximum number of accused persons regardless of their innocence. To the Mover himself it appears to mean the release of the maximum number regardless of their guilt. The ideal of Justice itself is the attainment of a system whereby no innocent person is ever punished, even though an occasional offender is acquitted. On the assumption that the Appellate decision is always correct, the figures given in the debate regarding the respective percentage of convictions by "section 30 Magistrates" and of convictions by Sessions Courts upheld by the High Court prove that the Procedure under section 30 Cr. P. Code more nearly approaches the ideal than procedure under Chapter XXII. The assumption is, however, fallacious; for it is a great deal more difficult to deliver a good charge than to write a good judgment; and it is unlikely that a magistrate, if he had to deliver a charge, would do so with the same measure of success in the eyes of the High Court as was obtained by his judgment. To defend the section on this fallacious assumption is in my opinion unwise, since, once the fallacy is exposed, it is clear, that the opposition to the Bill is based mainly on the desire to retain the system more productive of convictions. The Mover's contention is that this desire leads to executive interference and to a disregard of the principles of abstract justice.

4. Justice, however, demands also that an accused person, if innocent, should be set at liberty and, if guilty, should be convicted with as little delay as possible. The system of jury trial denies this rapidity to the accused. Unless Magistrates in the Provinces to which section 30 applies are of a very much inferior calibre to those obtainable in Bengal I cannot believe that there is the smallest difficulty in finding at least one in each district who is more competent and no less impervious to executive interference than the group of persons ordinarily impanelled for a Jury. Leaving out of consideration the possibly fallacious figures given in the debate, I am of opinion that trial by a "section 30 Magistrate", both because that it is more speedy and because it is no less

likely to end in the correct verdict, more nearly approaches the ideal than Trial by Jury.

5. It is also to be observed that Magistrates who, if they had to try the case to its conclusion must acquit on account of lack of evidence will frequently commit the accused to Sessions simply because there is some evidence, however inadequate, on a charge triable exclusively by the Court of Sessions. The effect is merely to defer the rightful acquittal of the accused, and to prolong the period during which pleaders can earn fees. The Crown's financial objections have been adequately dealt with by Mr. MacDougall.

6. I may add that the Bill is incomplete unless it also provides for the amendment of section 408 (b) Cr. P. Code.

7. My view, therefore, is that the Bill is undesirable since its effect will not be to raise the standard of judicial administration.

No. 10.—UNITED PROVINCES.

Government, United Provinces.

I AM directed to say that the Hon'ble Judges of the High Court and of the Chief Court have been consulted and also divisional Commissioners and selected District Officers.

2. I am to forward for the information of the Government of India a copy of a letter from the Registrar of the High Court of Judicature at Allahabad communicating the opinions of the Hon'ble Judges of the High Court, from which it will be seen that only four of the Hon'ble Judges have expressed their views on the Bill, and only three, of whom two are opposed to the Bill and one in favour of it, have given reasons for their views. The Hon'ble Judges of the Chief Court and the majority of other officers consulted have either expressed no opinion, or have not put forward any arguments in favour of or against the proposed repeal of section 30 of the Criminal Procedure Code. I am to add that there appears to have been no popular demand for repeal of the section.

3. The reason for this apathy is that so far as concerns the United Provinces the question of the retention or repeal of section 30 is not at present a live one. Its application is limited to Oudh and the Kumaun division of the Agra province and formerly all Deputy Commissioners in Oudh and Kumaun were empowered under section 30 by virtue of their office. In 1914 the position was examined in the light of the Home Department's letter No. 601, dated May 15, 1914 and it was found so little use had been made of these powers that for practical purposes the section had become a dead letter. As a consequence these powers were withdrawn from Deputy Commissioners in Oudh in 1915. It was however decided to retain them in the three districts of Kumaun, for although little use had been made of them, it was felt that in the conditions in Kumaun, where communications were and still are difficult, there was justification for their retention, inasmuch as occasions might arise when a peripatetic court

with strong jurisdiction might be an advantage. The position to day is the same ; little use has been made of powers under section 30 but they were found to be useful on some occasions during the civil disobedience movement and a few of the officers consulted, who have had experience of Kumaun, are in favour of their retention.

4. The Governor in Council is inclined to think that, although the provisions of section 30 and connected section are scarcely used in the United Provinces, no strong case has been made out for their repeal. He feels that in the event of widespread disorder they might still prove to be exceedingly useful, especially in Kumaun, and is of opinion that the Bill should be opposed.

5. The Bill with statement of Objects and Reasons was published in English in the United Provinces Gazette of March 28, 1936.

Registrar, High Court of Judicature at Allahabad.

I AM directed to say that the Hon'ble Mr. Justice Thom, the Hon'ble Mr. Justice Iqbal Ahmad, the Hon'ble Mr. Justice Harries, the Hon'ble Mr. Justice Rachhpal Singh and the Hon'ble Mr. Justice Ganga Nath have recorded no opinions as yet, on the proposal to amend the Code of Criminal Procedure (sections 30, 34, 34-A and 35).

2. The Hon'ble Mr. Justice Allsop and the Hon'ble Mr. Justice Bajpai have no opinions to offer, whilst the Hon'ble Mr. Justice Collister says that he considers that there is no necessity for the proposed amendment.

3. The other Hon'ble Judges have recorded the following opinions :—

(1) *The Hon'ble Chief Justice.*—As the question is one of policy, and the proposed amendment does not affect the Agra Province, I would offer no opinion.

(2) *Hon'ble Mr. Justice Niamat Ullah.*—The Bill does not seem to me to be of much practical importance at present. Section 30 which the Bill seeks to repeal merely empowers the Local Governments in certain specified provinces to invest a District Magistrate or a Magistrate of the first class with jurisdiction to try all offences not punishable with death. One of these provinces is Oudh the conditions of which are known to me. To the best of my knowledge no Magistrate in Oudh has, for a considerable length of time, been invested with such extended jurisdiction. I am not in a position to say how the section is applied in the Punjab ; but I take it that only Magistrates of experience and the required competency are invested with the extended jurisdiction. If a proper selection of officers is made for the conferment of such jurisdiction I do not think there can be any valid objection to a Magistrate of considerable experience in the administration of criminal justice trying serious offences. Right of appeal to the High Court is a sufficient safe-guard.

Much will depend upon the manner in which the Local Government selects Magistrates for

the exercise of this extended jurisdiction. Now that the provinces are likely to become autonomous and Law and Order will be in charge of a minister in the near future the section should be allowed to stand. The expression "Local Government" in section 30 will have a somewhat different implication in the reformed constitution from what it has now and there is every reason to believe that legislatures will exercise great influence on the Local Governments in the exercise of powers similar to those contemplated by section 30. If only Magistrates of the required competency continue to be entrusted with powers to try serious offences I see no reason why section 30 should not stay. Speaking from my knowledge of the conditions obtaining in these provinces I am clearly of opinion that to relieve congestion of work which the Sessions Judges are required to do it is of advantage that the Local Government may be able by a judicious exercise of its powers under section 30 occasionally to relieve overworked Sessions Judges. As already stated, the present is not a proper time for deleting section 30 from the Code of Criminal Procedure. If, after sufficient opportunity is given to the reconstituted Local Governments, it is found necessary to take away this power from them legislation may be taken in hand.

(3) *Hon'ble Mr. Justice Bennet.*—1. There are no Magistrates with powers under section 30 Criminal Procedure Code in the province of Agra.

2. The statistics from the Punjab, Burma, Bihar and Orissa, show that the percentage of appeals from such Magistrates which are successful is materially less than of appeals from sessions courts. The High Courts are in favour of the retention of such Magistrates in those provinces. The Magistrates are Magistrates of long experience specially selected from a large body of Magistrates, and are found superior to assistant Sessions Judges. I can easily agree with this as my experience is that the work of those assistant Sessions Judges and Sessions and Subordinate Judges who have never had any training or experience in criminal work before they begin sessions work is usually considerably inferior to the work of experienced Magistrates, and remains inferior for a number of years, and it is only a few officers who can overcome this defect of want of training as a Magistrate.

(4) *Hon'ble Mr. Justice Smith.*—I am inclined to agree with the proposals contained in the Bill, on the ground that the system ought to be uniform. A small amendment in section 408 (b) Criminal Procedure Code will also be involved, if the proposals are adopted.

No. 11.—NORTH-WEST FRONTIER PROVINCE.

Government, North-West Frontier Province.

I AM directed to forward herewith certain opinions. I am to say that the Governor-in-Council is in general agreement with the

views expressed by the Judicial Commissioner.

2. Before further elaborating the views of the Governor-in-Council, it is necessary by way of explanatory preface to state the peculiar conditions obtaining in this Province.

The Province (as stated in the Review on the Police Administration Report for 1933) "has a far higher percentage of murder cases per million than any other Province in India, the figure being 260 murders per million of population compared with 71 per million in Burma, 36 per million in the Punjab and 3 per million in Great Britain". The figures for "other serious offences against the person" show the same peculiarity. The following comparison is based on figures which appear in the "Indian Year Book, 1936" (reproduced it would appear from official statistics for 1932).

	Population.	Murder.	Other serious offences against the person.
North-West Frontier Province.	2,425,000	575	2,878
Madras	47,193,000	1,081	7,322

These figures give the following proportion per ten thousand of population:—

	Murders per 10,000 of population.	Other offences per 10,000 of population.
North-West Frontier Province.	2.37	11.68
Madras .. ..	.22	1.55

3 These figures will suffice to show how heavy is the incidence of violent crime and it is this heavy incidence which is the very special and difficult problem with which the Administration of the North-West Frontier Province has to deal. The difficulty of the problem has been further enhanced by the abolition of the Frontier Crimes Regulation and by the very heavy increase of work that has in consequence been thrown upon the Sessions Courts. The abolition of section 30 of the Code of Criminal Procedure and the consequent increase in and prolongation of procedure that would result from the duplication of process, i.e., preliminary inquiry and commitment by a First Class Magistrate followed by the lengthy procedure of a Sessions Court trial, would in the opinion of the Governor-in-Council render impracticable that sufficiently quick disposal of criminal case work which is essential if the excessively heavy volume of crime in this Province is to be dealt with adequately and kept under effective control. Delay in the administration of justice is in any case an evil but in a community abnormally given to crimes of violence it will also become a danger. A certain class of cases must, as now, go to the Sessions Courts. But whereas in a normally law-abiding community this class of cases could, and perhaps should, be greatly widened, it becomes conversely a necessity that in a community exceptionally prone to physical violence the class of cases which must be

dealt with by speedier and less elaborate methods must be considerably extended. In the peculiar conditions of this Province the Governor-in-Council is convinced that a change on the lines proposed in the Bill would, if applied to the North-West Frontier Province, result in a defeat and breakdown of the judicial administration.

4. As explained above the existing Sessions Courts are already heavily worked because, mainly, of the heavy incidence of murder. The similar heavy incidence of other crimes of violence would, if the proposed change were brought into effect, necessitate a large increase in the number of Sessions Courts. As a result not only would the Judicial Department of this Province become top-heavy but the standard and prestige of the Sessions Courts might at the same time be deleteriously affected by the necessity of having to add so largely to the personnel of these Courts. Indeed in actual practice this addition would have to be found from those whose capacity as section 30 magistrates has been the subject of adverse criticism, and, as pointed out by the Judicial Commissioner in para. 6 of his letter, it would be impossible to ensure that they would be men of suitable qualifications.

5. The Governor-in-Council would also emphasise another objection, already touched on in debate, namely that of expense. Not only would there have to be a large increase in the number of Sessions Judges but there would also have to be a concomitant and correspondingly large increase in the investigating and prosecuting branches. But not only would this heavy increase in cost fall upon Government but *pari passu* with it would come an increase in the cost of justice to those who seek it, and in this connexion the Governor-in-Council observes that apart from some of the replies received from Bar Associations there is no evidence of a public demand for the change that the Bill seeks to make. Indeed the Governor-in-Council is confident that the general public, if they realised the inevitable result, in this respect, of the change, would be opposed to it on this ground as well as on the other more important ground of the increased delay in the obtaining of justice.

6. In conclusion, although the Governor-in-Council is opposed for the reasons stated to the change proposed in this Bill, he finds himself in agreement with the view expressed by the Judicial Commissioner in paragraph 4 of his letter that care should be taken to invest only those specially qualified with powers under section 30, Criminal Procedure Code, and that if the numbers were reduced many of the objections to the present system voiced in the Assembly debate would perhaps disappear.

Judicial Commissioner, North-West Frontier Province.

I HAVE the honour to enclose of the opinions of officers and other persons consulted by me in respect of S Sant Singh's proposed Bill

for the amendment of Sections 30, 34-A and 35 of the Criminal Procedure Code.

2. It will be seen that the majority of non-officials consulted are in favour of the Bill, whilst officials are against it mainly on the score of expense and delay.

3. The effect of the Bill would be to abolish Magistrates with special powers with the result that all cases now tried by them under those special powers would be heard by Sessions Courts. I am of opinion that the Bill is impracticable because of the expense which would result from its enactment. The number of Sessions Courts in this Province would need to be more than doubled whilst the work in the courts of Magistrates would not be materially reduced, as in place of conducting a trial in such cases those Magistrates would have to conduct committal proceedings which are almost as lengthy.

4. The main objections to the present system are based on the view that Magistrates specially empowered have not sufficient judicial qualifications to deal with important cases and that they are subject to an impression that a high proportion of convictions may gain them kudos with the District Magistrate.

5. My own opinion is certainly that, as worked in this province, the provisions of the sections which it is now sought to delete, do lead to a considerable amount of inefficient administration of justice but I am not impressed by the view that magistrates are affected by any impression that a high proportion of convictions will necessarily redound to their credit. It appears to me that the grant of special powers in this province has always been made too freely. At the present time I understand that there are no less than 27 stipendiary Magistrates and 5 Honorary Magistrates who are invested with these powers, and in view of the small size of the total cadre of Magistrates, I think it scarcely needs pointing out that it is impossible to find such a large body of men with qualifications necessary to hear the most serious cases that are not punishable with death. It appears to me that if the number of Magistrates with special powers were radically reduced, the major objections to the present system would disappear. The cases concerned are important ones and there is no reason why they should not all be heard at district headquarters, though possibly it might be convenient that some might be heard at the headquarters of sub-divisions. It further appears to me that Magistrates of tried probity, mature experience and wide legal knowledge should, so far as possible, form the cadre of Magistrates with special powers. If so, seems anomalous that these Magistrates should spend much of their time on petty cases and miscellaneous matters.

6. I advocate that suitable Magistrates having been chosen to exercise special powers, they should hear cases under those powers and no other cases. If this suggestion be adopted, I think it probable that in the majority of districts one specially empowered Magistrate, apart from the District

Magistrate and the Sub-Divisional Magistrate would be able to cope with the whole of the work. We might thus find that as few cases would normally be heard by the District Magistrates and Sub-Divisional Officers themselves, the whole of the cases triable under special powers would be heard by five or perhaps six specially selected men. I think that if senior men were selected and retained continuously for this one duty, without defection to other duties, the standard of administration of criminal justice would at once improve and the objections to the present system would disappear.

7. Apart from the possibility of rendering the present system more efficient, I am further of opinion that the present system can and should result in a higher standard of justice being maintained than if all the cases concerned were heard in Sessions Courts. The procedure in Sessions cases with the necessity for committal proceedings is cumbersome and in itself sometimes affords such opportunities for manipulation of evidence as to defeat the ends of justice, whilst if the number of Sessions Judges were to be increased in order that they could cope with all cases now tried by Section 30 Magistrates, it would be impossible to ensure that they would be men of suitable qualifications.

District and Sessions Judge, Peshawar.

MUCH can be said both for and against the proposed amendment. In view of the fact that the question of separating executive from judiciary is under consideration of the Local Government, the Bill is premature so far as this Province is concerned. Again the present system has proved useful and beneficial. The changes suggested by the mover of the Bill will involve extra cost to the Government. A first class Magistrate invested with Section 30 powers does not get any additional pay and if the work done by Section 30 Magistrate were transferred to the Sessions Courts, the number of Sessions Judges will have to be increased without making any reduction in the number of Magistrates as they will still be required to make the preliminary enquiry, in Sessions case. Moreover in case tried by a Section 30 Magistrate, the accused and the witnesses are put in court immediately after the police enquiry is finished and the Magistrate disposes of the case finally as far as the court of original jurisdiction is concerned. The prosecution and the witnesses are saved the trouble of a two fold enquiry, one before the Magistrate and the other before the court of Sessions. In addition to this the witnesses escape the temptation of going back on their statements.

Under the circumstances I am not in favour of the amendment tabled by the mover of the Bill.

Sessions Judge, Derajat.

THE repeal of Section 30 of the Criminal Procedure Code is in my opinion impracticable owing to the enormous increase in expenditure it would

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involve. Curtailment of the powers of the existing Magistrates would necessitate the appointment of a considerable number of Assistant Sessions Judges on salaries presumably higher than those of the Magistrate.

I have however much sympathy with the mover of the Bill. It was the intention of the Legislature that only selected officers should be invested with enhanced powers under Section 30, Criminal Procedure Code. I must regretfully observe that in this Province the majority of the Magistrates exercising enhanced powers were not selected but were invested with enhanced powers as a matter of expediency. In a number of cases within my knowledge Magistrates exercising enhanced powers are not fit for even 1st class powers. They are young, inexperienced, and display a profound ignorance of the rudimentary principles of the Law basis being unable to express themselves with any degree of clarity in English.

If enhanced powers were granted literally to selected officers there would have been no cause to introduce the Bill in question, but under the present system the mover has, in my opinion, reasonable grounds for his assertion that the public are not entirely satisfied with the administration of justice by the subordinate judiciary.

Deputy Commissioner, Peshawar.

OPINIONS differ in this District. The Bar Association is definitely of opinion that the procedure of investing Magistrates (more especially those acting in an honorary capacity) with powers under Section 30 Criminal Procedure Code has outlived its usefulness.

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

In spite of such political activity and a great deal of talk, there can be little doubt that the vast bulk of the population is uneducated and backward. As City Magistrate I was in a position to hear innumerable complaints of the delatoriness of Judicial Procedure, which in the minds of the Local inhabitants is interpreted as injustice.

The abolition of section 30 Magistrates will have the effect of retarding even further the slowness of the law.

For these reasons I would suggest that the proposed amendment be postponed until such time as the province is fit to receive it. There is much truth in the criticisms levied by the movers of the Bill against the inefficiency of Honorary Magistrates; in this respect much improvement could be effected by more careful selection and supervision.

Deputy Commissioner Hazara.

A COPY of the opinion expressed in the matter by Chowdhari Muhammad Ali, Public Prosecutor, Hazara, with which I agree, is sent herewith.

Public Prosecutor, Hazara.

I HAVE carefully studied the proposed amendment regarding the abolition of the so-called Section 30 Magistrates. The amendment is based on the assumption that these Magistrates hurriedly proceed with the trial of serious offences in their zeal to show good disposal.

I am not aware if the public of other provinces is not satisfied with the work of Section 30 Magistrates. So far as N.-W. F. Province is concerned there is no complaint against their working. As a matter of fact this provision of law has proved useful and beneficent. In a trial by Section 30 Magistrate, the preliminary enquiry and the long wait between the order of commitment and the trial by the Sessions Court are eliminated. The prosecution and the witnesses are saved the trouble of a two-fold enquiry, on before the Magistrate and the other before the Court of Sessions. Moreover the undertrial persons are saved the torture of a long suspense, while they are waiting for their trial. In actual practice the trial by a Section 30 Magistrate is thus more convenient and economical from the point of view of defence as well. Apart from this, the proposal to eliminate Section 30 Magistrate is impracticable at least in N.-W. F. Province, because if the work done by Section 30 Magistrates were transferred to the Sessions Courts, the number of Sessions Judges will have to be more than trebled without making any reduction in number of Magistrates as they will still be required to make the preliminary enquiry in Sessions Case and our Province "Frontier Province", cannot possibly bear this additional cost of administration of Justice especially when it is not useful in any way.

One of the arguments advanced by the mover of the amendment is that Section 30 Magistrates are generally under the thumb of District Magistrates. This is not true in actual practice. Section 30 Magistrates are generally chosen here on account of their experience and efficiency and their work is periodically scrutinized by Sessions Judges and Judicial Commissioners who have never suggested that Section 30 Magistrate generally decides cases under the influence of the District Magistrate.

For the above reasons, the proposed amendment for the repeal of certain provisions of Criminal Procedure Code is unnecessary and an expensive luxury so far as N.-W. F. P. is concerned.

District Magistrate, Kohat.

I ENCLOSE a copy of memorandum from the Senior Sub-Judge, Kohat, giving the opinion of the Extra Assistant Commissioners serving in this District and of the local Bar Association in regard to the Bill.

I agree with the opinion expressed by the Senior Sub-Judge, which is shared by the other Extra-Assistant Commissioners of this district. The effect of the Bill would be to lengthen the procedure for the disposal of a large and important class of the criminal cases which come before the courts with consequent increase in pleaders' fees and in the number of attendances of witnesses. This lengthening of procedure and

increase in the cost of litigation could only be justified by a proportionately higher standard of justice. In my opinion there is no reason to believe that the standard of justice obtainable in the Courts of Magistrates specially empowered under the Sections mentioned in the Bill, is so low as to demand the trial of such cases by the Court of Sessions at such a heavy cost to the public. I consider that the highest interests of the public are served by providing the quickest procedure for the disposal of criminal cases consistent with a reasonable standard of justice. The Bill therefore seems to serve the interests of the Bar by providing them with higher scale of fees for this class of cases, rather than the interests of the litigating public.

Senior Sub-Judge, Kohat.

THE opinion of the Bar Association is attached herewith.

The Revenue Extra-Assistant Commissioner and the Treasury Officer, both consulted. We are of opinion that first class Magistrates who are not paid any allowance for the additional work of Additional District Magistrate would be believed to some extent of the responsibility and the unfortunate impression of the Bar, if not of the public, to be subservient to the wishes of the District Magistrates, which was strongly repudiated as to have never been influenced by the District Magistrate nor to have ever been instructed by any District Magistrate throughout our services in decisions of judicial cases.

There would hardly be any relief in work as committal proceedings shall still be carried on by Magistrates. The public shall hardly gain as in addition to heavy expenditure required for proceedings in two courts which cannot be within the reach of the majority of the public, there will be attempts always to retract witnesses and consequent failure of justice.

The suspension of Frontier Crimes Regulation has given impetus to crimes in the Province, and the present amendment is likely to increase it more when disinterested witnesses, who seldom take any interest in the administration of justice, would hardly remain consistent in their evidence owing to delay which would necessarily occur, if Additional District Magistrate cases are tried by higher courts.

The sentences of Additional District Magistrates are subject to appeal and in cases of heavy punishment to the highest judicial tribunal in the Province, and in case, if any improper sentence is passed, it is always set aside. If in spite of the above considerations, the Additional District Magistrate work is taken away from 1st Class Magistrates there shall hardly be any magistrate who shall feel sorry for it.

Deputy Commissioner, Bannu.

I HAVE consulted the following gentlemen in the matter and copies of their opinion are appended herewith :—

- (i) Public Prosecutor, Bannu,
- (ii) Assistant Commissioner, Bannu,
- (iii) Secretary Bar Association, Bannu.

I agree with the opinions of Public Prosecutor and Assistant Commissioner, Bannu, and do not recommend any change in the existing regulations.

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Public Prosecutor, Bannu.

ONE must have sympathy with the objects of the Hon'ble mover. Sessions Judges and Assistant Session Judges are generally speaking more competent than magistrates. A trial held with the aid of Assessors inspires more confidence than one without it. But to my mind there are many practical difficulties in the way of this Bill, as far as my province is concerned. It is a well-known fact that there is so much of the serious crime in the Province. In every district there are so many magistrates invested with powers under Section 30, Criminal Procedure Code, simply for the reason that work cannot be carried out unless they are so invested. If Section 30 is repealed the number of the Sessions Judges must be trebled, without reducing the number of existing magistrates. Can we afford this? At the same time I must say that the work of the magistracy is not at all unsatisfactory and there is no doubt that there is an additional advantage of accelerating proceeding at the trial by avoiding the delay consequent on commitment to the Sessions Court. It also affords relief to those who have to attend as witnesses in Court.

Having regard to all this, I would say that it is not expedient to repeal section 30, Criminal Procedure Code.

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Assistant Commissioner, Bannu.

I GENERALLY endorse the remarks of the Public Prosecutor.

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District Judge, Dera Ismail Khan.

THE consensus of public opinion locally, including that of the Bar, is unanimously in favour of the retention of Section 30, Cr. P. C. The powers under this section are only given to selected Magistrates by the High Court; in case of abuse or inefficiency such powers can be withdrawn. The procedure proposed by Sardar Sant Singh would entail protracted trial and increased expenditure by the accused and the Crown. The work of 30 Magistrates in this District appears to be satisfactory. The allegation that the District Magistrates exercise influence or interference in the work is clearly false.

The advantages conceived by the mover of the Bill are hypothetical and without foundation.

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Bar Association, Kohat.

THE Bar Association is unanimously of the considered opinion that the proposed Bill repealing Section 30, Criminal Procedure Code, and other Sections connected therewith, is a useful measure and be passed into law.

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Bar Association, Bannu.

THIS Bill proceeds to amend Section 30 of the Criminal Procedure Code along with some incidental amendments in Sections 34, 34-A and 35.

In accordance with Section 30, the Local Government can invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death in certain provinces. As these Provinces have achieved the status of Governor's provinces therefore now it looks very strange to deprive these Provinces from raising their status to that of other Provinces. No discrimination shall be permitted. Secondly the accused charged with serious offences are not satisfied with trials by Magistrates especially empowered. These Magistrates generally are not so well qualified and experienced as the Sessions Judges. Moreover such especially empowered Magistrates cannot give cool and calm consideration to the facts of the cases in Sessions trials.

Now-a-days there is a general wish to separate the judiciary from the executive and this Bill is a step towards this general demand.

In our opinion the enactment of the Bill will prove useful and beneficent to the public and the Government.

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Bar Association, Peshawar.

THE powers granted to Magistrates under Section 30 have outlived their usefulness. Originally the provinces where these powers were granted were non-regulated provinces where people were backward and where speedy and cheap justice in criminal cases was considered desirable. Since then these provinces have advanced, have made Governor's provinces and possess their own High Courts or Courts equal to the status of High Court. In such circumstances there is no necessity for the existing anomaly in the law which treats these provinces as different from the rest of India.

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

On top of all this, in this province, even Honorary Magistrates have been given powers under Section 30, some of whom, we regret to say, are not even sufficiently educated to understand the law books in Urdu. To empower such persons to inflict punishment up to 7 years and 14 years imprisonment is a crying in justice and the sooner it is remedied the better it would be.

The Bar Association of Peshawar is of opinion that the repeal of Section 30, Cr. P. C. is urgently required.

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**Khan Bahadur Saaduddin, Advocate,
Peshawar.**

I HAVE always been of the opinion that these enhanced powers should be curtailed if not altogether abolished. It is true that by the repeal of Sections 30 and 34, Cr. P. C., work in the Sessions Court will greatly be increased, but Administration of Justice is the only thing on which foundation of not only Government but

of every civilised society rests and no expense should be grudged. The wielding of such high powers by young or untrained Magistrates is a very serious matter and in my humble opinion it is uncalled for. I heartily support this Bill.

Rai Bahadur Diwan Chand Obhrai,
Advocate, Peshawar.

THE repeal of Section 30 is the principal amendment suggested by the Hon'ble mover, with certain incidental amendments in Sections 34, 34-A and 35 of the Criminal Procedure Code. Section 30 was a provision applicable to territories administered by Local Administration below the status of Governor empowering the Local Government to invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death. In Punjab and N-W. F. Province, this provision originally meant for non-regulation provinces would be an anomaly : and the mover's Bill aims at the removal of this anomaly, and discrimination. The powers to try as a Magistrate all offences not punishable with death, should only be vested in trained and experienced Magistrates, and whatever reasons existed in non-Regulation Provinces, with a Law cadre of service, to invest ordinary Magistrates of the first class with these powers, they cannot be said to exist in a well regulated province of the status of a Governor's Province. The repeal of Section 30, is bound to give greater confidence in the administration of justice, by vesting power to try serious cases to Sessions Judges, or Additional or Assistant Sessions Judges, with the aid of assessors. I am of opinion that the Bill proposed is sound in principle, and may be adopted with advantage, though I am not in full agreement with many of the arguments advanced by the Hon'ble mover when putting this Bill before the Assembly, especially his reflections on the efficiency of Magistrates 1st class, and their deference to police view of the case. Such Magistrates, there must be in all Provinces, but this is not a good ground for abolition of Section 30 Magistrates where the Local Government wants to deal with crime on a large scale, which cannot be successfully dealt with by the existing staff of Sessions Judges and Additional Sessions Judges. I think, however, that time has come when efficient help is available to the Government if recruitment as *Assistant Sessions Judges* is made from amongst the trained and experienced members of the Bar, of over 10 years' standing on a reasonable scale of salary, not involving a very large additional expense to the administration and ordinary first class Magistrates powers to try serious offences might be taken away by repeal of Section 30 in this Province.

No. 12.—BENGAL.

Anglo-Indian and Domiciled European
Association, Calcutta.

THE consensus of opinion received by this Association is in favour of the amendment of Sections 30, 34, 34-A. and 35.

No. 13.—BIHAR.

Government of Bihar.

THE Bill with Statement of Objects and Reasons was published in the Bihar Gazette of the 15th April, 1936, and was widely circulated for opinion.

2 The Bar Associations, with one exception, support the Bill, while all the Commissioners of Divisions and Deputy Commissioners are opposed to it.

3. The High Court is strongly opposed to the Bill. The minutes recorded by the Honourable Judges are enclosed. The Sessions Judges are almost unanimous against the Bill, only one officer supporting it.

4. The Governor in Council, while not endorsing the strong views taken on the subject by the Judges of the High Court, is also opposed to the Bill. He is satisfied that experienced Magistrates are better qualified to try these cases than Assistant Sessions Judges, and he is supported in his opinion by the fact that the High Court has continually urged the Local Government to make use of the provisions of Section 30 of the Code of Criminal Procedure, and, in paragraph 5 of the Annual Report on the Administration of Criminal Justice for the year 1933, has noted with satisfaction the more extended use made of this section.

5. The Governor in Council would stress the following points :—

- (a) The opinion of the High Court, frequently expressed, in favour of the use of the powers given by Section 30 of the Code of Criminal Procedure.
- (b) Only experienced Magistrates with a good judicial record are vested with these special powers. Cases tried under Section 30 of the Code of Criminal Procedure are usually no more important or complicated than those ordinarily tried by Magistrates, and an experienced Magistrate is better qualified to do justice in them than an Assistant Sessions Judge who has little experience of criminal trials.
- (c) The saving of time and money.
- (d) Many cases tried under Section 30 of the Code of Criminal Procedure are cases in which previous convictions have to be proved. In a jury trial the existence of a previous conviction cannot, despite all precautions, be concealed from the jury, with the result that juries are often prejudiced in cases in which it is known that a previous conviction will be proved after the verdict has been given. In such cases the procedure of Section 30 is therefore more fair to the accused persons.
- (e) The sections which the Bill seeks to repeal are only enabling sections, and it is inopportune when provincial autonomy is imminent for the Central Legislature to force such legislation on the provinces.

Minutes recorded by the Hon'ble Judges
on the Bill.

THE Court should oppose this Bill in the strongest possible terms. It is a private Bill substantially to repeal Sections 30 and 34 of the Code of Criminal Procedure whereby in the Punjab, Burma, Oudh, the Central Provinces, Coorg, Assam, Sind and in those parts of the other provinces in which there are Deputy Commissioners the Local Government may invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death. The Deputy Commissioner or such other Magistrate has, however, no power to pass a sentence of death or of transportation or of imprisonment exceeding seven years, his powers thus being the same as those of an Assistant Sessions Judge.

In this province the districts affected are the five (or including Dhanbad, the six) districts in Chota Nagpur, Sambalpur and the Santal Parganas, in all of which a large part of this class of criminal work is at present done by the Deputy Commissioner or by a Magistrate specially empowered. The Statement of Objects and Reasons certainly has no application to this province, and the proposal is in fact far more surprising than would be a Bill proposing to extend the provisions of Sections 30 and 34 to the Regulation districts of the province where they would work far better than the existing system (whether with or without a jury). Actually in certain cases Magistrates in the Regulation districts of Bengal do now exercise such powers under the Terrorists' Act and one may well predict that in future there will be an extension of the system.

This Court addressed Government on the subject on the 23rd August, 1929, and the letter No 203|1-1-29, dated 23rd August 1929 should be read. Government took action thereon and has gradually extended the operation (actual and not merely nominal) of Section 30. I would suggest that the attention of the Local Government be drawn to the views of the Court set out therein with the further observation that the experience of the six intervening years has abundantly justified the recommendation of the Court. Except in a few inaccessible thanas of the Ranchi district the system is universal in this province in non-Regulation districts and without any possibility of contradiction it can be stated to be working very well indeed both as regards expeditious disposal, the convenience to parties and the correctness of decision. It cannot be denied that there is sometimes a weak Magistrate—I know of one—but even his work is superior to that of the corresponding Assistant Sessions Judge: in fact, the work of these officers is uniformly superior to that of Assistant Sessions Judges. That was to be expected, from their long training as Magistrates, whereas the Subordinate Judge who is made Assistant Sessions Judge has generally little or no experience of a criminal trial and also is lacking in that knowledge of the interior requisite to enable him to decide the type of question of fact which often arises in criminal trials. The class of cases tried must be tried by either of the two agencies: in this province

it is quite idle to expect the Sessions Judge to have time for it.

An examination recently of the work done in the Santal Parganas showed that it was performed very satisfactorily. Exceptionally good work is also done by several Magistrates and Deputy Commissioners—much superior to the work which would have been done at a long delayed trial by the Assistant Sessions Judge. This Court must also remember with gratitude the enormous advantage which has accrued to the administration of justice by the relief obtained by the District Judge and the Subordinate Judges from this avoidable criminal work. The problem had since the amended Code of Criminal Procedure of 1923 become most grave. The District Judge and the best Assistant Sessions Judges had their time almost exclusively taken up by sessions cases of relatively small importance. The resulting fall in the efficiency of the civil side became a very serious concern to the Court and to the Local Government. I have been in close touch with the working of Sections 30 and 34 in this Province during the past many years with the result that I would press that the Court should oppose this Bill in the strongest terms as entirely opposed to the experience of this Province, as likely to be harmful to the interests of justice and as having no merits of any sort.

(Sd.) T. S. MACPHERSON.

I AGREE with Honourable T S M.

(Sd) J. F. W. JAMES.

I AGREE with the above. The promoter of the Bill suggests that it is a question of efficiency *versus* despatch: as if the A. S. J.'s could be counted on to do so much better work and give better decisions than the Magistrates that this should outweigh the disadvantages of the slowness of procedure due to (a) commitment followed by separate trial, and (b) congestion in the Sessions Courts.

My experience is otherwise. We get an occasional A. S. J. with a natural bent for criminal work but they are all too rare. There are not enough of them now for the work that A. S. J.'s have to do, and if this measure goes through we must give A. S. J. powers to more Sub-Judges some still further below the standard required. On the other hand, there are a large number of Magistrates to choose from and only a few need have the Section 30 powers; it is only occasionally that one finds these powers in fact being exercised by an officer unfit to have them, and it would be far easier to find 10 extra Magistrates who would do this work creditably than even 5 such extra A. S. J.'s.

(Sd.) G. ROWLAND.

I AGREE.

(Sd.) KHAJA MOHAMMAD NOOR.

So do I.

(Sd) S. B. DHAVLE.

I AGREE.

(Sd) S. P. VARMA.

At least in theory, for serious offences the ordinary form of sessions trial must be preferred to a trial by a Magistrate and perhaps

many of us if we were ourselves in the position of accused persons would rather be tried by the Sessions Court than by a Magistrate. It does not, however, follow that merely because the one form of trial is better than the other, the latter should be abolished. There are strong administrative reasons for retaining Section 30 in the Code and in my opinion no case has been made out for repealing it. I am told it has worked well in this province and I am not aware that it has given dissatisfaction in other places. I should, however, like to note that we should not be too harsh to our A. S. J.'s. They have certainly a more judicial outlook than the average Magistrate and their only defect is that they are inclined to try criminal cases like civil cases which can be cured only by experience. I do, however, consider that an experienced Magistrate provided that he is trained in such an atmosphere as not to regard legal forms and procedure as obstacles to justice makes a better criminal Judge than a newly recruited A. S. J.

(Sd.) S. FAZL ALI.

I HAVE nothing to add to the views expressed by Honourable Fazl Ali.

(Sd.) A. W. E. WORT

Copy of letter No. 203|I-1-29, dated the 23rd August, 1929, from the Registrar of the High Court of Judicature at Patna, to the Secretary to the Government of Bihar and Orissa, Judicial Department.

I AM directed to address you on the subject of the use of section 30 of the Code of Criminal Procedure in the districts where there are Deputy Commissioners, and in this connection to invite a reference to the correspondence ending with your letter No. 23-J R., dated the 6th May, 1929, in which it was intimated that the Additional Deputy Commissioner of Dhaubad had been instructed to use his powers under section 30 in all cases that can suitably be tried by him, and that a Deputy Magistrate had been vested with the powers at Chaibassa.

2. I am to say that after a further examination of the question in the light of the reports on the administration of civil and criminal justice, the present state of the files of the subordinate courts and experience of the work done by assistant sessions judges the Court has arrived at the conclusion that the fullest possible use should be made of the section in the districts of the Chota Nagpur executive division and in Sambalpur on the ground that greater efficiency would thereby be secured and because the shortage of civil judicial officers is so acute that the Court is unable to spare these officers from civil work even if the number of subordinate judges fit to exercise the functions of assistant sessions judges were sufficient as it is not.

3. The cases which would be tried by these specially empowered magistrates are now tried by assistant sessions judges whose work is nowhere very satisfactory and is disquietingly indifferent in Chota Nagpur, being distinctly inferior to that of the sub-divisional officers or senior deputy magistrates, so that in such cases

the commitment by an experienced magistrate to the sessions is in reality from the more competent to the less competent court. Moreover officers empowered under section 30 have far more knowledge of local conditions than the subordinate judges who act as assistant sessions judges. This is an important recent difference in the position, since formerly the sessions court was presided over by the Judicial Commissioner or Sessions Judge who had ordinarily wide experience both of criminal work and of local conditions. If the cases are tried under section 30 the depositions of comparatively unintelligent witnesses will be recorded soon after the occurrence by the Magistrate who is to conduct the trial to a conclusion, and these witnesses will not be harassed by the lengthy trial which is characteristic of the court of an assistant Sessions Judge. When the Deputy Commissioners of Ranchi and Sambalpur discontinued the exercise of their powers under this section 30, in the former district about 1903 and in the latter on the establishment of the district of Manbhum-Sambalpur, the position was that it was desired to keep a subordinate judge at these stations; but without numerous commitments to the sessions sufficient work could not be found for the Judicial Commissioner and the special subordinate judge in Chota Nagpur and for a subordinate judge at Sambalpur at which the Judge of the newly constituted district was expected to spend about a quarter of his time, while the considerations at Purulia were similar. The position has now completely altered and the Judicial Commissioner and the Judge of Manbhum-Sambalpur appear to be overwhelmed with work of pressing importance.

4. At present the Court is very anxious in the interests of the administration of civil justice throughout the province to be spared the necessity of appointing civil judicial officers to be assistant sessions judges in the districts named. The position may be gathered from the fact that because the subordinate judge of Purulia was employed as assistant sessions judge for 41 days in the first quarter of 1929 and 31 days in the second quarter (deciding 10 and 16 cases respectively out of a total of 28 and 24 disposed of) the original suits pending on his file over one year rose from 15 at the end of 1928 to 52 at the end of the first quarter, and 73 at the end of the second quarter of 1929, with the result that now an additional judge is required there for a long period. In the judgeship of Chota Nagpur 139 civil appeals were pending for over one year and 176 for over six months out of a total of 514 at the close of the quarter ending on the 30th June 1929. A serious feature of the situation in Chota Nagpur is that of the appeals more than one year old 29 and of those more than six months old, 43 were rent appeals, while in the opinion of the Hon'ble Judges rent appeals, save in exceptional circumstances should be disposed of by the Judicial Commissioner within three months. As Government are aware there is a serious shortage of civil judicial officers involving an absolutely unprecedented congestion in all civil courts in the province, but especially in those of subordinate judges and the Court is particularly anxious that no cases should be committed to the sessions which would entail the diversion of

the services of civil judges to criminal work which can be determined by another and an efficient agency. In the district of Chota Nagpur, of 16 cases tried at the sessions in each of the first two quarters, no fewer than 11 were tried by the Assistant Sessions Judge, and he spent on them 15 and 24 days respectively.

5. The Honourable Judges would, therefore, suggest that officers at the headquarters of all executive districts and at Dhanbad and so far as possible at sub-divisions in the six districts referred to, be vested with powers under section 30 where that has not been done already and, what is equally important, be directed to exercise them in all cases which may be suitably tried under the section.

No. 14.—MADRAS.

Government of Madras.

THE Honourable the Judges of the High Court, the Advocate-General and certain officials were consulted on the provisions of the Bill and I am to enclose copies of the opinions received.

2. His Excellency the Governor-in-Council sees no necessity for the legislation proposed.

3. The Bill was published in the *Fort St. George Gazette* in English and in the following vernaculars on the dates specified against each :—

English	..	26th February 1935.
Tamil	..	} 21st April, 1936.
Telugu	..	
Malayalam	..	
Hindustani	..	
Kanarese	..	28th April, 1936.

Sessions Judge, Bellary.

SUCH powers are never exercised in the Madras Presidency by a Magistrate ; but I am of opinion that an experienced Magistrate could be safely entrusted with such powers.

2. Whether the Government should be permitted to invest Magistrates under exceptional circumstances with such powers is a matter on which a Judge can hardly express an opinion, especially as these powers cannot be conferred on Magistrates of this Presidency.

Sessions Judge, Chittoor.

THE question at issue is whether selected and experienced first class Magistrates should on principle be granted extended powers under section 30 of the Criminal Procedure Code to try all cases not punishable with death.

In my opinion there is a real difference between the outlook or point of view of a District Magistrate and that of a Sessions Judge. I have been both. A District Magistrate's first care is the preservation of law and order and of a high standard of efficiency in the area for which he is responsible. In important or sensational cases especially he may find it difficult

L83LAD

to free his mind of such considerations as the possible effects of an acquittal—for example in a case in which the integrity of police investigation has been seriously challenged. Police diaries pass through the District Magistrate and from them he gets a one-sided picture of cases and an exaggerated notion of the vital importance to Police morale of securing a conviction in cases in which the Police have taken immense pains to secure evidence, to overcome rustic apathy and the tendency of the people in general to tolerate unpunished crime. This point may perhaps be expressed by saying that to a District Magistrate the end is more important than the means, though I am far from suggesting that the end aimed at is not always lofty or that the means are consciously admitted to be low. It is purely a question of relative importance, of emphasis.

First class magistrates naturally share the District Magistrate's point of view. They tend to put their duty to administer well first and the rights of the under-trial prisoner second. If a magistrate is strong and independent, he is in danger of coming into conflict with the Police by probing too deeply into their methods of investigation. Let a District Superintendent of Police read his Sub-Inspector's diaries as carefully and as critically as he pleases, he cannot help being influenced by emphatic and one-sided representations of trusted subordinates until he is honestly convinced of the truth of the prosecution evidence. His convictions are in due course communicated to the District Magistrate, for close co-operation between the District Superintendent of Police and the District Magistrate is essential to efficient district administration. When therefore a magistrate after hearing the evidence on both sides rejects the prosecution evidence in a case in which both the District Superintendent of Police and the District Magistrate have taken some interest and especially if the magistrate as so often happens is unable to express his reasons in writing convincingly or jumbles together a host of reasons good and bad for his conclusion, he incurs the suspicion and disfavour of the District Superintendent of Police and both these emotions are in due course conveyed to the District Magistrate (usually in diaries). The line of least resistance for a magistrate is to accept the Police case, for that is a line most likely to please his superior officers, and it is also a smooth, easy, and ready made path. There are weak magistrates and there are ambitious magistrates everywhere and it is they who are responsible for the misgivings of defence lawyers who spend their lives in attacking the edifice of evidence built up (often under grave handicaps) by Sub-Inspectors of Police. The position of a 1st class magistrate in India has been compared (I think by Mr. Justice Page of the Rangoon High Court) to that of a sheep upon a mountain forced to take shelter from the chill of the east wind and the fury of the north wind, both strangely enough blowing from the same quarter. The point of view of a judicial officer is so radically different from that of an executive official that the conflict is often painful when the same individual is called upon to exercise both functions.

To a Sessions Judge, however, the possible effects of an acquittal or of a conviction on the morale of the Police or on the tone of the District generally are wholly irrelevant. His position

and training tend to make him far more detached and able to concentrate on weighing the evidence. To him it does not much matter whether the Police are pleased or angry, whether the District Magistrate approves or disapproves, whether he is reversed in appeal or upheld - he is accustomed to both. The approval or disapproval of the District Magistrate or of the Police or of the Bar mean nothing to him; he has only to satisfy his own conscience and to attain the standard of alert intelligence which he sets himself. Moreover a Sessions Judge approaches cases from the point of view of the evidence alone. He will not convict persons because he thinks they are guilty but will acquit them unless they have been proved guilty by evidence which he can accept. Few magistrates can bring themselves to acquit persons whom they believe to be guilty even though the evidence offered to prove a guilt is open to grave suspicion, for it is not efficient to acquit really guilty persons and continuous acquittals of guilty persons are a sign of grave inefficiency. Administrative efficiency differs in kind from judicial standards.

In my judgment the lawyer lack of confidence in the administration of justice by magistrates is attributable to the real difference in point of view between magistrates and Sessions Judges. In a word the latter set the Police a higher standard and are more jealous of the rights of individual citizens and less ambitious to do something to make the executive machine work smoothly.

District Magistrate, Coimbatore.

I HAVE no remarks to offer as I have had no experience of the system in question.

Magistrate of Chingleput.

WE do not have section 30 magistrates in the Madras Presidency and I have no experience of them on which to base an opinion.

2. I can imagine, however, that they would be very useful in districts where grave crime was heavy or in districts suffering from aggravated disorder. Especially in the latter case the cumbrous procedure of Preliminary enquiry and sessions trial is liable to involve delays which lessen the effect of prosecution.

Public Prosecutor, Madras.

I HAVE not had many opportunities of scrutinising judgments of Special Magistrates under section 30, Criminal Procedure Code. So far as this presidency is concerned there are very few Magistrates who are functioning with special powers. I am not therefore in a position to state whether the amendment is necessary or not.

District Magistrate of Madura.

SARDAR Sant Singh desires to abolish the Magistrates who under section 30, Criminal Procedure Code are now empowered in certain provinces to try all cases not punishable with death.

2. There is no need for a person from Madras to make any remarks about the criticisms on the Magistracy made in the speeches. The provinces directly concerned can well do that.

3. These specially empowered Magistrates seem to do the work which in this Presidency is done by Assistant Sessions Judges, and the question that has to be discussed is 'which is the best agency to provide the relief that the Sessions Judge needs in certain Districts?'

Is the work done more satisfactorily by senior Magistrates of long experience specially empowered or by Civil Judges who often have had no previous experience of Criminal work at all and who for the disposal of most of the cases have to sit with a jury.

When put in this way, the question does not need argument.

The Bill may be opposed.

District and Sessions Judge, Vizagapatam.

THERE seems to me no necessity to continue the distinction between regulation and non-regulation provinces in the matter of the powers of punishment exercised by Magistrates. But the process of assimilation might, in my opinion, proceed on lines diametrically opposite to those proposed.

In the interests of efficiency, I consider it desirable that more adequate allowances should be paid to jurors and assessors (and probably witnesses as well). Until that has been done I doubt the desirability of increasing files of Sessions Cases either in this province or in any other province.

I consider that it would be a desirable reform if selected first-class Magistrates in the Madras Presidency were invested with powers under section 30, Criminal Procedure Code to inflict heavier sentences, which I suggest might extend to 4 or 5 years' rigorous imprisonment, but need not be as extensive as those provided at present under section 30.

The main reason for my making this suggestion is that I consider much time, labour and money is wasted by committing old offenders with a long string of convictions for trial before the High Court Sessions). The view I take is that if those old offenders really require 3 or 4 years' rigorous imprisonment (accompanied by an order under section 565, Criminal Procedure Code) then it should be possible for the trial to be polished off by a selected first-class Magistrate invested with special powers. I regard the system in force as wasteful. I can see no useful purpose served by the Sessions Judge, South Arcot being made to try a man who is caught carrying off a bag of rice on his head after six previous convictions, nor do I consider that a High Court Judge should have to spend time trying a pickpocket who steals a purse containing Rs. 7 because the offender has six previous convictions for theft.

I do not question the desirability of an old offender whose predilection is house-breaking by night with intent to commit theft and theft of property of a substantial amount, being committed for trial before a jury at sessions, and

even, if necessary, sentenced to transportation but it seems to me that the rules of the nature have in practice been extended beyond their legitimate scope.

The view I take is that petty thefts, even though following on numerous previous convictions, are not suitable for trial at Sessions. If Government chooses I have no doubt they can arrange the discontinuance of wholesale committal of old offenders to sessions, in which case my chief objections to the proposed amendments would vanish.

There are, however, one or two other directions in which the proposals deserve comment. Certain members of the Legislative Council of the Punjab appear to be somewhat sceptical about the competence of the 1st Class Magistrates selected for being invested with enhanced powers of punishment under section 30, Criminal Procedure Code. I am not going to contend that there is no ground for criticism. What has impressed itself upon me during the last few months is lack of adequate care by 1st Class Magistrates in framing the charge. The number and intricacy of various forms of breach of trust (with or without falsification of accounts) is increasing in the more advanced parts of the Madras Presidency. Much time and labour is in danger of being wasted if a Magistrate rushes through the framing of the charge at the end of a tiring day after examining a long string of witnesses.

Part of the difficulty arises from the fact that the police in their charge-sheet do not restrict the basis for the prosecution to the number of offences, which it is permissible to combine for trial under one charge according to the provisions of sections 234 and 235 (read with section 222), Criminal Procedure Code.

I suppose that if there are any arguments before the framing of the charge (which is probably rare) the Prosecution does not deal with the limitations imposed by sections 234 and 235 on the way the charge should be framed. I may hazard a conjecture that the defence considers such a question no part of its business at that stage but would think that a misjoinder of charges would serve the interests of the accused better than a properly framed charge. This means that the Magistrate is left without any help in a matter calling for a high degree of circumspection.

My view is that there is scope for improvement in the work of first class Magistrates in the trial of the more complicated cases, especially criminal breach of trust; but with due attention by Sessions Judges and District Magistrates, I think it may be possible to find selected Magistrates fit to be invested with enhanced powers of punishments under section 30, Criminal Procedure Code, if that section is extended to the Madras Presidency (with or without curtailment of the maximum sentences that may be inflicted by the selected first class Magistrates).

No doubt before any proposals were made in that direction it would be necessary to cover a wider field than that in the paragraphs above, to see what cases other than theft by old offenders which are now being tried by the Sessions Court, might be entrusted safely to first class Magistrates specially invested with enhanced powers.

Generally speaking, I think that in the interests of economy and efficiency the system in force in non-regulation provinces is preferable to the system in force in Madras.

District and Sessions Judge, Salem.

ONE Chief reason which the Honourable Mover of the Bill has adduced in its support is the acquisition by the territories referred to in section 30 of the Criminal Procedure Code, of the status of a Governor's province. With the greatest respect, I cannot consider this as at all a substantial ground for repealing the section in question. In these days when individuals as well as provinces are apt to press for and obtain, what I would venture to call an artificial elevation of dignity, the superior air assumed by a province seems to me to offer no guarantee that the exigencies which dictated the passing of a particular enactment have also disappeared. Indeed, the vital question for consideration is whether the grounds which induced the legislature to enact section 30 have ceased to exist in the provinces concerned. Obviously this is a point on which I am incompetent to pronounce any useful opinion. I have never worked in these provinces and possess no first hand knowledge of their conditions. The same remarks apply to the ground taken by one Honourable Member that an atmosphere of hurry and passion surrounds these magisterial proceedings. But I should just like to say if I may, that when in 1921, as a result of the Mapilla Rebellion in Malabar, it was found necessary to invest selected First Class Magistrates in that district with powers under section 30, the work done by these officers in their new capacity extorted the admiration of all concerned. As Public Prosecutor, I had much to do with the more important of those prosecutions, and it is bare justice to the magistracy before whom I had occasion to appear, to say that they acquitted themselves creditably and that their decisions were received with universal satisfaction.

2. One Honourable Member complained that standards of disposal had been fixed for courts which therefore worked with an eye to them. This phase in the judicial administration is not peculiar to any part of British India. In Madras for instance, such standards have been laid down both for civil and sessions courts: and I have never heard it said that judicial work suffered therefrom in any way. In the Mover's opinion, the accused persons are not generally satisfied with the trial before these specially empowered magistrates. This again is a question of fact on which I feel myself unable to pronounce any opinion. But I find that in the course of the discussion two distinct advantages were pointed out in the present system, *viz.*: speedy disposal, and economy in legal expenses: and statistics were quoted to show that the work done by these specially empowered magistrates was more satisfactory than that of the sessions judges. If this is a fact, I do not think there is any justification for the present enactment. I am one of those who strongly believe that justice delayed is justice denied.

3. One Honourable Member speaking in support of the Bill deplored the absence of

assessors in magisterial trials. Speaking with the utmost respect for these honorary workers, but with an experience gathered from more than a quarter of a century spent at the bench and the bar, I hope I may be forgiven for giving expression to my settled conviction that unless a Utopia exists in the provinces referred to, one should be thankful for not being subjected to trial by assessors. Some prominence was given in the discussion to the necessity for the separation of judicial from executive functions. At the present day, there hardly exists any great difference of opinion on this topic. But it is not relevant to the issue before the House and affects the whole of India. Finally, I cannot see the advisability of the present legislation at a time when the Assembly itself is verging towards extinction, and the dawn of a new era of constitutional reform based upon provincial autonomy is in sight. Why should not the provinces concerned defer the consideration of the question till that day (which I hope is not far distant) and try to work out a solution in the light of local opinion and conditions?

Inspector-General of Police, Madras.

I HAVE the honour to state that I have no remarks to offer on the proposed amendments to the Code of Criminal Procedure.

District Magistrate, Malabar.

THE matter does not concern Criminal justice in this Province and I have no remarks to offer.

Sessions Judge, Tinnevely.

1. I HAVE had no personal experience of a section 30 Magistrate. *Prima facie*, it appears reactionary and unreasonable to deny to the Punjab, Oudh and the Central Provinces, which have now full provincial status, the same rights in this matter as the old-established Presidencies of Madras, Bengal and Bombay.

2. The main point in controversy during the Legislative Assembly debate appears to have been the fitness and competence of section 30 Magistrates, particularly in the Punjab, to try a large number of cases which, in Madras, have been tried exclusively by Sessions and Assistant Sessions Judges. So far as Madras is concerned, I think experienced first class Magistrates will try such cases just as impartially and efficiently as Assistant Sessions Judges. The danger of perverse and unfair decisions by the Magistracy on pressure by District Magistrates or executive agencies may, in this Presidency, be said to be non-existent. I have always found District Magistrates in such matters scrupulously fair and impartial both to their subordinates and to accused persons.

3. There is a great deal of force in the opposition to the repeal of sections 30 and 34, C. P. C., by the Punjab Government on the score of economy and speed. There is a large class of cases in this Presidency triable exclusively at Sessions, such as theft by old offenders, milder forms of dacoity, forgery, etc., which do not appear to require a committal inquiry and a

full-dress Sessions trial. The latter is a long drawn out affair. The Judge cannot cut it short, as the Magistrate can, and discharge or acquit at any stage. I have often felt the time taken in many cases committed to Sessions a sheer waste of time. Many accused persons are also often detained on remand for several weeks, and two trials appear to be quite unnecessary. As regards the juror and assessor system, on which the promoters of this Bill lay some stress, I have little faith in it as it is worked in India. Juries often convict old offenders on unsatisfactory evidence as readily as they acquit well-to-do accused persons on a sufficiency of evidence. The system of appeal should be an amply sufficient safeguard in many of the minor Sessions cases which occupy the time of Sessions courts to-day. As regards them, for sheer efficiency, economy and speed, I am in entire agreement with Punjab Government view and would abolish the juror and assessor system and introduce section 30 Magistrates in this Presidency also. But these are not the main objectives. There has unfortunately been a lot of public opinion levelled against Magistrates trying important criminal cases and at the same time performing executive functions. The association of the public in the administration of justice is more obvious in a Sessions Court than in the Court of a Magistrate, who often takes his cases about into camp. Public opinion has often expressed great faith in "Judges", whereas "Magistrates" have always been the butt of a great deal of unnecessary and, in my view, entirely unjust criticism. It is purely a question of sentiment and nomenclature. There is bound to be a huge outcry in this Presidency if section 30 Magistrates is introduced.

3. It would, I think, in the circumstances, be impolitic and reactionary to oppose the repeal of sections 30, and 34, C. P. C., a step which will bring the whole of India into line in criminal trials. Speed, economy and efficiency can, I think, be achieved by suitable legislation, permitting "Assistant Sessions Judges" *all over India* to try many of the minor Sessions cases such as are being tried to-day by section 30 Magistrates, without jurors or assessors and by a modified form of magisterial procedure which will obviate the necessity of a preliminary inquiry and allow the charge sheet to be laid by the prosecuting authorities direct before them. Legislation of this kind will be beneficial to the whole of India and will avoid the hackneyed clamour for separation of judiciary from executive. Such legislation will also help considerably to give Assistant Sessions Judges in this Presidency a far earlier training than they now receive in criminal work. I am not in favour of the present system, where Subordinate Judges, at the fag end of their service spent entirely in the domain of civil law, being suddenly plunged into a criminal atmosphere.

I think, from the standpoint of India, as a whole, sections 30 and 34, C. P. C., should be now repealed and that the powerful arguments for their retention so ably put forward by the Punjab Government should find expression in other legislation which will achieve speed and economy in this class of cases throughout the whole of India.

District and Sessions Judge, Madras.

THE Bill is primarily concerned with the question whether in the provinces referred to in section 30 of the Code, serious offences not punishable with death may be tried by District Magistrate or should be tried only by Sessions Courts. The debate in the Legislative Assembly descended at times to a rather unseemly discussion about the merits and demerits of Magistrates and Sessions Judges trying criminal cases. Whatever may be the conditions of work in those provinces of which I have no personal knowledge, I venture to say without hesitation that in this part of the country there is no question that trials by Sessions Courts command greater public confidence than trials by Magistrates. When I say this I mean no disrespect whatever to the class of Magistrates, many of whom are able people, quite competent to try such cases and whose conclusions are generally sound. But the conditions of the system under which they work—the combination of executive and judicial functions in the same individual and the large points of contact which they have with executive authority—are not calculated to inspire the same confidence in the minds of the public as in judicial tribunals entirely divorced from and independent of executive control and authority.

If therefore the people in the particular provinces concerned desire a change on this very ground, I can see no objection to the same, provided of course the cost to the State is not materially enhanced and speedy despatch of work can be secured.

District Judge of North Malabar.

THE Bill is to repeal Section 30 of the Code of Criminal Procedure. In so far as its necessity rests upon local conditions prevailing in the Provinces to which the Section applies, my remarks must have to some extent an air of unreality as I am not acquainted with those conditions.

2. Generally speaking, and on principle, there appears to be no special need to differentiate these Provinces from the rest of India, and to confer upon District Magistrates and specially empowered First Class Magistrates in the Provinces referred to in Section 30, powers which are exercised in the older and major Provinces only by Sessions Judges and Assistant Sessions Judges. The Punjab, Burma, Central Provinces, Assam and Sind have all now become Governor's Provinces, each having, I presume, Ministers and Legislative Councils. The necessity as well as the desirability is felt by the public of having the help of jurors and assessors in the trial of serious crimes.

3. There is also the impression—I do not say justifiable—that a more independent and impartial attitude may be expected from the Sessions Judges than from First Class Magistrates.

4. The argument that the repeal would mean a little more delay in the disposal of these cases will apply to all Sessions cases as well. Sessions Judges and Assistant Sessions Judges are sitting every month to try Sessions cases which having always precedence over civil work, are disposed of without such delay.

5. In my opinion, time has arrived for a safe repeal of Section 30 of the Criminal Procedure Code.

District Magistrate of Salem.

The Bill may be passed.

Commissioner of Police, Madras.

THE suggested amendment seems to me to be dictated by feelings of sentiment rather than practical considerations. The arguments contained in the speech of Khan Bahadur Shaikh Khurshaid Muhammad represent, I should say, the opinion of all experienced executive officers. The question is of domestic interest only to the particular areas specifically mentioned in Section 30, Criminal Procedure Code and, beyond admitting that local public opinion is in sympathy with the amendment, I have no other remarks to offer.

Chief Presidency Magistrate, Madras.

I HAVE the honour to state that the 2nd, 3rd and 4th Presidency Magistrates and myself are not in favour of the proposed amendment to sections 30, 34, 34A and 35 of the Code of Criminal Procedure.

District Magistrate of North Arcot.

THE conferring of special powers on District Magistrates was apparently considered necessary in backward areas to provide specially for the speedy disposal of cases which elsewhere would be tried by a Court of Sessions sitting at considerable intervals, and also to afford relief to those who are to attend as witnesses. The mover of the resolution seems mainly to have been obsessed by a dislike of magistrates *as such*, and the facts elicited during the debate show that there is no need to repeal the sections in question. Conditions apparently vary in the several provinces and while we in Madras have no knowledge of local conditions elsewhere, no *prima facie* case has been made out to warrant any alteration in the law.

Registrar, High Court, Madras.

THE Hon'ble the Judges have no remarks to offer in the matter.

Government Solicitor, Madras.

IN view of my imperfect acquaintance with the conditions in the provinces referred to in section 30 of the Criminal Procedure Code, I have no remarks to offer on the proposed measure.

No. 15.—ASSAM.

Government of Assam.

I AM desired to say that the Bill was published in the Assam Gazette on the 27th February, 1935. Copies of selected opinions received are annexed.

2. In Assam, the only Magistrates who are at present empowered under section 30 are the Deputy Commissioners of the Khasi and Jaintia Hills and of Cachar for the trial of cases in the hill areas. In the plains districts very sparing use has been made of the section. In the last 30 years, Magistrates were given these powers only on two occasions—in 1918 and again in 1920.

3. With few exceptions non-officials support the Bill while officials oppose it. The former consider that the retention of section 30 in this province is an anachronism and that accused persons should always have the right to be tried by Sessions Judges aided by jurors or assessors, even if this costs more and means delay in the disposal of cases. The latter while admitting that in Assam the section is seldom used, think it unwise to repeal it as occasions may arise when for reasons of economy or for the speedy disposal of cases it may prove useful.

4. While it is true that section 30 is most sparingly used in Assam, the Governor in Council holds that there are times when its need is felt and that it is well to have the section to fall back on when required. In this connection it may be noted that it has been found necessary in Bengal and Assam for certain classes of offences to constitute special tribunals to avoid the cumbrous procedure of a sessions trial. Conditions might arise in which the granting to carefully selected Magistrates of powers under section 30 might obviate the necessity of seeking legislative powers to constitute special tribunals.

5. As a minor point it may be noted that the repeal of section 30 would also involve a modification of section 408 (b), C. P. C.

Government Pleader, Sylhet.

HAVING gone through the extract from the Legislative Assembly Debates, I am convinced that section 30 of the Code of Criminal Procedure is a necessity in the Punjab and Burma. In my own district of Sylhet, I am aware of only one occasion when a case was tried by a special power magistrate, but the number of cases annually tried by such special power magistrates in the Punjab and Burma appears to be considerable. The repeal of the section would, in those provinces, be followed by an enormous increase in the number of sessions triable cases. Apart from the expense involved, the quality of justice is not likely to improve. It is unfortunately the case that, in this country, jury trial is only tolerated as a necessary evil, and I am strongly of opinion that under existing conditions, any extension of the field of jury trial is not to be thought of. I am opposed to the Bill.

District Bar Library, Sylhet.

SECTION 30 of the Criminal Procedure Code should be repealed and Sections 34, 34-A and 35, Cr. P. C. should be amended as proposed in the Bill. The reasons given are quite cogent. As the Central Provinces, Coorg, Sind and Assam are now no longer non-regulation

Provinces and all of them have now achieved the status of a Governor's Province. Section 30 should find no place in the General Criminal Law of the land.

So far as the trial of accused is concerned it is always desirable that the trial in more serious cases should be held by a Sessions Judge. So long as the Judicial and the Executive are not separated, a magistrate trying a man charged with a serious offence, is likely to be influenced by the police. Further the magistrates in their eagerness to dispose of cases hastily may not give the same serious consideration to these cases as is usually given by and expected of Sessions Judges. Hence there is a chance of the accused being prejudiced in their trial. Last of all, the accused in such cases are deprived of the advantage of a jury trial.

Hence considering the fact from all points of view, it is expedient in the interests of Justice that the proposed Bill should be passed.

District and Sessions Judge of Sylhet.

PERSONALLY I am opposed to any extension of the system of trial by jury in India. From the information at my disposal I am convinced that dissatisfaction with the results of such trials is wide-spread and increasing. Allegations of wholesale bribery and corruption are freely made nowadays.

If trial is to be held with assessors, it merely means substituting trial by an Assistant Sessions Judge for trial by a Magistrate specially empowered under section 30. I see no reason for holding that Assistant Sessions Judges are more competent or more conscientious than such Magistrates.

I am therefore opposed to the amendment proposed.

No. 16.—BENGAL.

European Association, Calcutta.

My Committee is in favour of the repeal of sections 30 and 34 and the proposed consequential amendments which have for their object the removal of anomalies arising from altered circumstances in the areas affected and of bringing these areas under the same conditions as prevail in the rest of British India.

My Committee feels that considerable social and economic changes have taken place in the areas affected since the year 1898 and they are in sympathy with the promoter of the Bill in seeking to draw attention to the need for bringing the judicial administration of these areas into line with present conditions with the popular desire for a uniform system of justice.

My Committee have not overlooked the additional expenditure that would be entailed in setting up courts in these areas but they consider that this matter could have been discussed in the debate relating to the creation of such provinces as include the areas affected, and they cannot regard the added cost as a sufficient argument against a desirable improvement in the administration of justice.

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LEGISLATIVE ASSEMBLY DEPARTMENT.

Paper No. II.

OPINIONS

ON

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(Amendment of Sections 30, 34, 34A and 35.)

(Introduced by Sardar Sant Singh, M.L.A.)

Opinions No. 17.

BURMA.

PAGES.

No. 17.—From the Secretary to the Government of Burma, Judicial Department,
No. 225-W./36 (795), dated the 18th June, 1936 and enclosures .. 29—50

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No. 17.—BURMA.

Government of Burma.

I AM directed to say that the Bill, together with its Statement of Objects and Reasons, was published in the Burma Gazette of the 4th April 1936, and that the fact of such publication was duly intimated to the public in a press communicate which was issued in English and in Burmese to the Press generally on the 2nd April 1936 and published in Burmese in the Headman's Gazette of the 8th April 1936.

2. The Hon'ble Judges of the High Court of Judicature at Rangoon, all Commissioners of Divisions, the Inspector-General of Police, Burma, the Commissioner of Police, Rangoon, the Bar Library Association, Rangoon, the Bar Association, Mandalay, the Pleaders Association, Rangoon, the Burma Chamber of Commerce, Rangoon, the Burmese Chamber of Commerce, Rangoon, the Burma Indian Chamber of Commerce, Rangoon, the Chinese Chamber of Commerce, Rangoon, the Rangoon Trades Association, Rangoon and the Nattukkottai Chettyars' Association, Rangoon, were consulted. Copies of the replies (and their enclosures) received are forwarded herewith for the information of the Government of India.

3. I am to observe that the Hon'ble Judges of the High Court are not in agreement in the expression of their views and that all others except the Burma Indian Chamber of Commerce, Rangoon, the Chinese Chamber of Commerce, Rangoon, the Bar Association, Mandalay, and the Pleaders Association, Rangoon, are not in favour of the proposed measure.

The Burma Indian Chamber of Commerce, Rangoon, has merely intimated that it accepts the principle underlying the Bill, while the Chinese Chamber of Commerce, Rangoon, considers that the proposed amendment, if practicable, will be desirable but that in view of the fact that the trial by Sessions Courts of the cases now tried by Special Power Magistrates will involve much delay and expense suggests that the amendment be made in such a way as to prevent the operation of Section 30 of the Code only in all important towns and cities of the province. The Bar Association, Mandalay, supports the Bill and considers that Burma having been a Governor's province for some time should not be given any unequal treatment from other Governors' provinces. The Pleaders Association, Rangoon, fully supports the Bill and is of the opinion that whatever justification there might have been for the application of Section 30 and 34 of the Code in Burma when the Province was a non-Regulation province, such a justification does not exist at present. On the other hand, the Burmese Chamber of Commerce objects to the Bill and considers that it will not be expedient to do away with Special Power Magistrates but recommends that in future special powers be given only to Judicial Officers of approved service, the objection being not so much to Magistrates being granted special powers at all as to executive officers such as Township Officers, Subdivisional Officers, and Deputy Com-

missioners being Magistrates with or without special powers.

4. All the Commissioners of Divisions and the Deputy Commissioners who were consulted have expressed their opposition to the proposed Bill and His Excellency the Governor in Council wishes to draw particular attention to the remarks of the Commissioner, Sagaing Division regarding the practical difficulties which would result from the great size of some of the Districts in that Division and the poor means of communications therein, if the proposal were to be adopted. It may be observed that similar conditions obtain in the majority of Upper Burma Districts.

5. His Excellency the Governor in Council has given the matter careful consideration and agrees with the local administrative officers that the provisions of the proposed Bill are impracticable as things stand in Burma. It is not proposed to recapitulate the arguments against the Bill which have been ably put forward by the opponents of the Bill, especially the two Burma representatives, Mr. R. M. MacDougall, I.C.S., and Mr. F. B. Leach, C.I.E., I.C.S. (Retired), in the debate in the Legislative Assembly, and with which His Excellency in Council entirely agrees. I am, however, to stress that His Excellency in Council considers that the existing system has been working satisfactorily on the whole, both as regards expeditious disposal of cases, convenience to the parties concerned and the quality of justice administered; and so far as this Province is concerned, public opinion has never expressed itself against the system of Section 30 Magistrates. His Excellency in Council wishes also to endorse the views trenchantly expressed by two of the Hon'ble Judges of the High Court that the extra Sessions Judges who would be required under the proposed system would have to be drawn from the existing Magistrates with special powers, that they would not be more capable or honest if they were called Sessions Judges instead of Magistrates, and that the Bill would thus defeat its own object.

6. An attempt was made to obtain an estimate of the probable cost to Burma the proposal would entail, but it has not been possible in the time at this Government's disposal to obtain more accurate figures than those given by Mr. MacDougall in the debate in the Assembly. Nevertheless His Excellency in Council fully agrees with the Hon'ble Judges of the High Court that about 40 more posts of Additional Sessions Judges would have to be created if the Bill were to become law and that the initial and recurring expenditure would in any case be prohibitive and that for the time being the question of finance would preclude any change being made.

7. In conclusion I am to add that His Excellency in Council has noted the views of the Hon'ble the Chief Justice and a majority of the Hon'ble Judges in favour of a more clearly marked division between judicial officers and the executive but is of opinion that if that reform is to come to Burma it must be after full consideration and on terms that will suit

Burma's special conditions and that in any case, the Bill under consideration does not provide a suitable opportunity.

Registrar, High Court of Judicature at Rangoon.

I AM directed to forward herewith copies of notes by the Honourable Judges on the provisions of the Bill.

With regard to paragraph 2 of the letter No. 22-5-W.-36 (795), dated 14th April, 1936, it is regretted that it was impossible in the limited time available to obtain exact figures. Moreover any figures that could be obtained would necessarily be only approximate. Mr. McDougall's figures however, appear to be correct in that about 40 more posts of Additional Sessions Judges would have to be created to deal with extra cases that would, were the Bill to become law, have to be committed to Sessions for trial.

Hon'ble Mr. Justice Mya Bu.

I THINK that, due regard being had to the rights and privileges of accused persons, the system of having cases triable by the Court of Sessions other than those punishable with death tried by Special Power Magistrates is wrong in principle, and is one which trained lawyers have just grounds for regarding as highly unsatisfactory. Special Power Magistrates are not men who have had any training as lawyers, and all the experience that they have gained has been acquired as Magistrates. Where under the ordinary law the sanctity, the independence and the efficiency of the Court of Sessions are required to deal with certain classes of cases Special Power Magistrates are a bad substitute. The system is rendered more objectionable by the fact that even executive officers who are Magistrates are in many cases invested with special powers. In the case of judicial officers the objection cannot be so strong, but so long as they when employed as whole-time Magistrates are placed under the control of the District Magistrate, who is a Deputy Commissioner and who in conjunction with the District Superintendent of Police is responsible for the peace and tranquillity of the district, I fear that they cannot command the public confidence which should ordinarily be reposed in a Court trying heinous offences and invested with the power of sentencing convicted persons to as much as 7 years' rigorous imprisonment provided it is within the limit allowed by law for the offence. In my opinion, therefore, unless judicial officers are removed absolutely from the control of the executive it is not feasible to allow them to function as Special Power Magistrates, and the executive officers should never be made Special Power Magistrates. For practical reasons I am prepared to modify this view to the extent that Special Power Magistrates may be appointed for the mere purpose of dealing with offences which, though ordinarily within the competence of First Class Magistrates, fall beyond such competence owing to application of the provisions of section 75 of the Indian Penal Code.

When I speak of the control of the District Magistrate in the above note I do not mean the appellate jurisdiction which is not possessed by the District Magistrate but by the Court of Session; but I mean general superintendence and control.

Hon'ble Mr. Justice J. M. Baguley.

I PERSONALLY am strongly against the proposal to abolish giving special powers to Magistrates. I can give complete lip-service to my brother Mya Bu's note, but, I am afraid, it is *inpartibus* and really has very little relation to existing facts. What has to be looked at is the position as it exists now, and what it would be if no Magistrates were allowed to exercise power under section 30. At the present time cases are disposed of by Special Power Magistrates on the whole satisfactorily. No man has these powers given to him unless after an examination of some of his cases he is considered by a Judge of this Court to be fit to exercise the special power. The figures given by Sir Henry Craik on page 21 of the Debate certainly suggest that Special Power Magistrate do their work at least as well as Sessions Judges. If all cases that require more than two years' imprisonment as a punishment had to go to Sessions, for every Magistrate from whom special powers are taken away, a Sessions Judge would have to be appointed, but practically the same number of Magistrates would still be required as all the cases would have to be committed to Sessions and as things are now, with the Bar insisting upon cross-examining witnesses both in the Committing Court as well as in the Court of Session, the committal would probably take as long as the trial of the case; so the Government would be put to the extra expense of as many Sessions Judges, with staff as there are now Special Power Magistrates.

In addition to this, as is well known, when witnesses have to be examined twice over the accused have better chances of getting at the witnesses, while the double cross-examination at an interval facilitates the "establishment of discrepancies" which would probably result in a percentage of people who should be convicted getting off.

Then, again, would the work be done any better? The new Sessions Judges would have to be raised from somewhere and, I suppose, they would be created from among the existing Magistrates who now exercise special powers and from members of the Bar appointed direct. The existing Special Power Magistrates would not presumably be any more capable or honest if they were called Sessions Judges instead of Magistrates, but there would, of course, be a considerable number of new appointments as Sessions Judges direct from the Bar and, I suppose, that they would be made on somewhat the same lines as Barrister appointments have been made in the past.

I have looked up in the History of Services and the Civil List the records of the Barristers who are now Sessions Judges: They are U Ba Saing, Mr. Urquhart, U Kyaw U and Mr. Havock, and I find that all four when at the Bar were either Assistant Government

Advocates or Government Prosecutors or both. After reading Sardar Sant Singh's speech it would be amusing to see what his reaction would be if Government agreed that the Special Power Magistrates whom he dislikes so much should be replaced either by the same men or the same class of men with a different name, or else by Government Prosecutors promoted to the Bench.

Trial by Jury in a Sessions Court is, of course, unknown here and could never be made to work until the mentality of the people has changed. The Rangoon special Juries with a strong leavening of Europeans owing to the preponderance of Scotchmen among the Europeans have evolved a verdict based on their verdict of non-proven : " We were all satisfied that he had done it, but we did not think that the police have proved it "—A verdict which was made to me once by a Foreman of the Jury. A Rangoon common Jury may do anything. One Jury I had with the accused charged alternatively with murder and da cutting, when he pleaded not guilty formally but said he had cut with a da but had not committed murder, were for acquitting him by seven to two, while the Burman Buddhist, who thinks the next worst thing of committing a crime is to punish another man for having committed it, is useless as a Jury.

Some of the speakers have said that trials with Assessors are much better than trials by Magistrates because great attention is paid to the opinions of Assessors. In Burma no Sessions Judge who knows anything about his work pays the slightest attention to the opinion of his Assessors. He just notes them because he has to do so.

The claim that trained lawyers are far better than Magistrates for dealing with cases of complexity and so on, and for this reason only petty cases should be tried by Magistrates has really no application. The vast majority of cases tried by Special Power Magistrates turn solely on the evidence and one may get far more indirect points of law in a petty case than in the ordinary seven-year case. The example given by Mr. MacDougall on page 2 of the Debate was a very good one, and, after all, in this country, when an appeal in cases of conviction is almost automatic, these points of law can always be cleared up very easily on appeal.

The iniquities of the Special Power Magistrate, as detailed by Sardar Sant Singh and Mr. Sham Lal, are confined to the Punjab if true. I have no idea whether they are true or not. They look like the standard charges of a politician who states as facts anything he is told without taking the trouble to verify them, but, I am quite sure, things are not like this in Burma to anything like the extent suggested.

I am of opinion that it would be a good thing if special powers were confined to whole-time judicial officers and District Magistrates, if this could be done, but to abolish all Special Power Magistrates would : (1) put the Province to very great expenditure ; (2) result in a large number of guilty people, who are now convicted, being acquitted ; (3) cause great delay

in the disposal of cases ; and might (4) result in innocent people, who are now acquitted being convicted if the jury system were introduced.

Hon'ble Mr. Justice Ba U.

It is rather strange that section 30 of the Criminal Procedure Code should be made use of only in certain provinces and not in others. I do not propose to hazard any opinion as to why section 30 has not been made use of in other provinces. We must, however, accept the accomplished fact and see whether it will be possible to abolish Special Power Magistrates altogether. As things are, I do not think in so far as Burma is concerned it will be possible to abolish them. If they are abolished a certain number of Assistant or Additional Sessions Judges will have to be appointed to try the cases now tried by them with the result that there will be an increase in expenditure. As we are on the brink of separation the country may not be able to bear extra expenditure that may be incurred in connection with the creation of these highly paid appointments. In fact, if the speeches of the mover of the Bill and his supporters are read carefully, it will be seen that their main object is not to abolish Special Power Magistrates altogether but to remove them from the control of District Magistrates.

Sardar Sant Singh says : " My complaint is that in the trial of such cases where a quota has been fixed and where the advancement of the magistrate depends upon the goodwill of the District Magistrate, no justice with the best of intentions, is possible "

Mr Sham Lal says : " There are other qualifications, no promotion without conviction is the principle observed here "

Dr F. X DeSouza says : " The general feeling is—I do not know, it may be right or it may be wrong, personally, I think it is wrong, —that the magistracy is amenable to executive influence "

Mr Lalchand Navalrai says : " It could be positively proved that it is the District Magistrate's recommendation which goes to the Commissioner or the Governor ; he decides their promotion and their living "

The reason why they want to remove these Special Power Magistrate from the control of District Magistrates is, to use the words of Dr F. X. DeSouza " to gain the confidence of the public in the integrity of judicial administration "

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

In the case of *Vellu Thevar and another v King Emperor* (10 Rangoon 180) the Chief Justice says : " Mr Barretto is both the Deputy Commissioner and the District Magistrate of Pyapon, and I agree with the view of my learned brother Sen, J., to whom an application for the transfer of these proceedings has

already been made, that the diary of the First Additional Magistrate of Bogale, who granted bail to the first petitioner, supports the allegation that he subsequently cancelled the bail bond by the sureties of the first petitioner under orders of the District Magistrate, Pyapon

* * * * * Now, one of the essential ingredients of the due administration of justice is that every order passed by a judicial officer should be the outcome of his own impartial and unprejudiced opinion. It is for this reason that any direct or indirect attempt to influence the decision of a Judge or Magistrate in a matter of which it is his duty to take cognizance in a judicial capacity, or to approach him in connection with any proceeding within his jurisdiction except in the manner prescribed by law, invariably excites general and whole-hearted condemnation. The decision of a Judge or Magistrate may be right or wrong—no one is infallible; but that directions should be issued, or suggestions made, I care not from whomsoever they come, to a Judge or a Magistrate as to what his decision should be in a matter or proceeding before him is utterly reprehensible, and will not be tolerated”.

And in the case of *Sem Tha U v Maung Kyaw Khine* and another (13 Rangoon 336) the Chief Justice again says: “It is sometimes said that the complete separation of the judiciary and the executive is an Utopian dream, which for financial and administrative reasons cannot be realized. That is a matter of policy about which I say nothing. But if it be so it follows that it is of importance for the due administration of justice that persons performing the dual rôle of Deputy Commissioner and District Magistrate should ever be mindful that their outlook and action in one capacity should not impinge upon their outlook and action in the other. I am fully alive to the difficulties inherent in the position in which such officials find themselves, but I make bold to say that officials who function both as Deputy Commissioners and District Magistrates ought to take meticulous care to differentiate between their exacting, and to some extent incompatible, duties as Deputy Commissioners and as District Magistrates; for it can hardly be expected that an independent and courageous magistracy will be “created if Magistrates are compelled to perform their judicial functions in dread of the sting as well of the east as of the north wind, both strangely enough blowing from the same headquarters”.

These are the only two cases which have come to the notice of this Court judicially and in which the interference of the District Magistrates in the work of their subordinate magistrates is conclusively proved. I am sure there must have been some more cases where District Magistrates did interfere in the work of the subordinate magistrates as the District Magistrate did in the abovementioned two cases. In fact, if one were to believe what one heard, it seems that such interference is of frequent occurrence in districts where the District Superintendents of Police are men of dominating personality. I do not blame them. They are responsible for the peace, tranquillity and

prosperity of their Districts. For the purpose of securing these conditions they think that crime in their respective Districts must be reduced to a minimum and to reduce crime to a minimum they feel rightly or wrongly that the percentage of convictions as recorded by their Magistrates must be high and if there is a high percentage of convictions they think it will act as a deterrent to would-be evil-doers. With this object in view some District Magistrates sometimes interfere with their subordinate Magistrates in the administration of justice. That object, however laudable it may be, is sometimes frustrated by the fact that when an innocent man gets convicted not because there is sufficient evidence against him but because of their undue interference with the administration of justice the public begin to lose confidence in the administration of justice and they refuse to co-operate. Unless and until we can secure the co-operation of the public crime, in my opinion, can never be reduced and in order to secure the co-operation of the public I feel that it is our duty to make them have confidence in the administration of justice. To achieve that object I cannot do better than quote the words of Lush J. as used in (1877) 2 Q. B. D., 558 at 567, “The important object is to clear away everything which might endanger suspicion and distrust of the tribunal, and so promote the feeling of confidence in the administration of justice which is so essential to social order and security”.

I make these remarks not with the object of casting any aspersion on anybody. I realise and I know that most of the officers are a splendid body of men actuated by the sole desire of doing what is just and right, but there are a few who, when carried away by their enthusiasm and zeal in the discharge of their duties, sometimes over-step the bounds of their legitimate duties. Because of that the confidence of the public in the pure administration of justice is sometimes shaken. In order to prevent that I should like to suggest the following:—

- (1) All officers belonging to the Judicial Department should be placed under the direct control of District and Sessions Judges as was done some years ago.
- (2) Only in special cases and only under special circumstances officers belonging to the Executive Department should be recommended for special powers.
- (3) District Magistrates, as is the case in the Punjab, should not be allowed to make confidential reports on the work of officers who do purely magisterial work.
- (4) The confidential files of officers who do purely magisterial work should be kept in the custody of District and Sessions Judges, who should be directed to initiate reports on the work of those officers and submit them to the Local Government through this Court.

Hon'ble Mr. Justice A. H. L. Leach.

THE system under which criminal cases are tried by Special Power Magistrates instead of by Sessions Judges is a system which, in my opinion, should not be continued for a moment longer than can be avoided. I appreciate that the cost involved in the appointment of more Sessions Judges to cope with the cases now tried by Special Power Magistrates would be heavy and that for the time being the question of finance will probably preclude any change being made. But as soon as funds are available I consider that it is in the interests of justice that the present system should be abolished and persons possessing proper qualifications and experience should be appointed Sessions Judges in sufficient numbers to try the cases now dealt with by Special Power Magistrates. I do not agree with the view that the change would "result in a large number of guilty people who are now convicted being acquitted". On the contrary, I consider that there would be a marked improvement in the administration of justice if the change were made and the right people appointed. It takes training and experience even to judge questions of fact.

At the same time, I agree with Baguley J. that trial by jury in the Sessions Courts is out of the question. Trial by jury, even in Rangoon, has often led to grotesque results. But this is no reason why criminal cases which may involve severe punishment should be tried by Special Power Magistrates who are not even whole-time judicial officers.

Opinions of Hon'ble Messrs. Justices J. Dunkley and J. Spargo.

DUNKLEY, J. remarks that the extra Additional Sessions Judges who would be required were there no Magistrates with special powers would have to be drawn from the men who are at present Magistrates with Special Powers and they would, as Additional Sessions Judges, have greater powers than they have at present as Special Power Magistrates. The Bill would thus defeat its own object. As to control, appeals from Special Power Magistrates Courts, where sentences of over 4 years are passed, lie to the High Court in the same way as appeals from Sessions Courts. He is however of opinion that except for the District Magistrate only Judicial Officers should be invested with Special Powers.

SPARGO, J. considers the provisions of the Bill quite impracticable, owing to the large number of posts of Additional Sessions Judge which would have to be created. The defects in the trial of cases by Magistrates (such as discontinuous trial, difficulty in obtaining witnesses) are offset by the disadvantages of Sessions Trials (delay in disposal; cross examination on meaningless 'discrepancies' between statements of witnesses in trial and in committal case). He does not think that in practice Special Power Magistrates are influenced by the District Magistrate as is suggested. In theory only Judicial officers should be invested with Special Powers and this would meet one of the principal objections to the present state of affairs; but in practice this is impossible as

there is not the sufficient number of officers available.

Hon'ble Mr. Justice E. H. G. R.

I AGREE with the note of Leach, J. If the number of Sessions Judges is increased the only persons eligible in many instances would be Special Power Magistrates and it would merely be altering their names before they did Sessions Judge's work.

Commissioner, Arakan Division.

I AGREE with Mr. Steavenson the Deputy Commissioner, Akyab, that the proposed amendment of the Criminal Procedure Code is unnecessary and undesirable for the reasons given by Mr. R. M. MacDougall in his speech in the Legislative Assembly.

Deputy Commissioner, Akyab.

IN my opinion, the Bill has been adequately disposed of in the trenchant speech of Mr. R. M. MacDougall. When you have said, and proved, that its Statement of Objects and Reasons contains no objects and no reasons, you leave very little room for any further criticism of a measure.

Commissioner, Irrawaddy Division.

I HAVE the honour to say that concurring with the three Deputy Commissioners to whom I have found time to circulate the enclosures to your letter, namely, the Deputy Commissioners of Myaungmya, Maubin and Pyapon, I am strongly opposed to the provisions of Sardar Sant Singh's Bill to abolish Magistrates specially empowered under Section 30 of the Criminal Procedure Code. I may point out that the Hon'ble mover of the motion for circulation screened himself behind that motion and in effect contended that, because the Bill was only to be circulated for the purpose of eliciting opinions, it was therefore not necessary for him to justify the introduction of the Bill. That is the clear effect of the bald speech with which he introduced it. The reasons against the Bill have been cogently and clearly put in the debate in the Legislative Assembly. The reasons in its favour have not yet been uttered. In these circumstances I do not think that detailed comment is required.

Commissioner, Magwe Division.

THE charges made against Special Power Magistrates working in Burma by Mr. Sant Singh are entirely unfounded. The comparison between the work of Special Power Magistrates and Sessions Judges is also unfounded. Of course, there are Special Power Magistrates whose work is not up to the mark but the same applies to Sessions Judges and Additional Sessions Judges. The Local Government should oppose the proposal on the grounds that the charges made are false and that the adoption of the proposal will involve a wanton waste of money and also lower the efficiency of judicial

administration by delaying the trial of accused persons.

I have the honour to forward the opinions of the District Magistrates, Thayetmyo, Magwe and Pakokku with which I agree.

—————

District Magistrate, Thayetmyo.

1. It does not appear to me that the Bill is desirable.

2. I share the views expressed by Mr. R. M. MacDougall and Mr. F. B. Leach in their speeches made in the Assembly.

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District Magistrate, Magwe.

I AGREE with Mr. MacDougall. His arguments are unanswerable.

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District Magistrate, Pakokku.

I AM at one with the views expressed by Messrs MacDougall and Leach in the Assembly.

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Commissioner of the Mandalay Division.

I DO NOT suppose there is a single Officer serving in Burma who would find himself obliged to differ from the opinions recorded in the Assembly by the Hon'ble Sir Henry Craik and by the two Burma representatives, Mr. MacDougall and Mr. F. B. Leach. These three Officers have said, in my opinion, all that there is to be said on this Bill, which in my opinion is ill-conceived and absolutely unnecessary. The most striking failure of the introducer of the Bill was his inability to show that there was any demand for it on the part of the general public. On the other hand, it was shown by the opponents of the Bill that the existing practice did not involve any miscarriage of justice and that it was far more expeditious and far less costly than the system which the Bill proposes to introduce in its place. There is no need for me to recapitulate the arguments against the Bill which have been repeated *ad nauseam* by its opponents. I am totally opposed to the adoption of the amendments.

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District Magistrate, Mandalay.

I HAVE the honour to submit a copy of the opinion of the District and Sessions Judge, Mandalay.

2. I am opposed to the abolition of Special Power Magistrates both on grounds of administrative convenience and expense. I do not think there is any more to be said than was said in the Legislative Assembly by Mr. Leach and Mr. MacDougall.

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* Mr. C. B. de Kretser, Mandalay.

I DO NOT think there is much to be said for the amendment either from the practical or theoretical point of view, MacDougall and Leach have dealt fairly exhaustively with the practical difficulties in the way and I agree generally with what they say.

I should also like to point out that so far as Burma is concerned, and I expect this applies to India as well, the position for the present is for all practical purposes the same as it would be if the proposal was adopted—that is—the final decision in the case of all convicted persons lies with the Sessions Judge or the High Court and the Magistrate really does nothing more than record the evidence. I do not suppose there is a single case in which no appeal is filed to the High Court or the Sessions Judge. The facilities for appeal are so many that every order of conviction comes up before Sessions Judge or High Courts. The ultimate decision therefore under the present system *does* lie with the Sessions Judge or the High Court.

It might happen in very rare cases that a "Convicting" Magistrate might convict an innocent man and he be sent to custody for a day or two before he can file a bail application but my experience has been that there are very few cases of this sort—certainly not enough to justify this expensive amendment.

It may also be pointed out that under the present system the S. J. passes his final order on appeal within about 45 days from the man being first sent up before the S. P. Magistrate. I am assuming a duration of 30 days in the S. P. M. Court and a duration of 15 days in the appellate Court. For the privilege of getting exactly the same result—that is a decision of the Sessions Judge—after a regular Sessions Trial, the accused would have to wait or the earliest about 70 to 100 days (*i.e.*, committal proceedings + Sessions proceedings). It is not possible to take up every Sessions case as soon as it is committed as the above figures are about right I think for more districts.

The amendment would also throw extra note on the High Courts. At present about two-third appeals from S. P. Ms. are disposed of by Sessions Judges. If the amendment is adopted, the High Court would have to take all appeals. The average murder appeal takes about 2 months in the High Court, while the ordinary Criminal appeal might take 4 months. Therefore it might take an accused 5 to 6 months so as to get a final order from the High Court (Committal Court 1 month, Sessions' Court 1½ months, High Court 3 to 5 months)—I am referring to special power cases only. Under the present system he could get a High Court order within 3 to 4 months (as a rule) from the time he was first sent up and a Sessions Court order within 1½ months from the time he was first sent up.

Summing up my views—the position at present is that Sessions Judges and High Court Judges *do* in actual practice adjudicate on practically every criminal case.

2. I do not think there is any serious disadvantage in not actually hearing witnesses oneself. Actually in practice there is not much help to be gained in noting the demeanour of a witness in the box. Only very few witnesses conduct themselves in such an abnormal way as to help the Court in deciding on the credibility or otherwise of their evidence. It is the facts brought out in cross-examination that help in deciding whether a witness should be believed or

not, and these facts are all recorded. So far as the recording of evidence is concerned, all S. P. Ms. are perfects capable of doing this.

3. The most useful function of S. P. Ms. in fact is that they do the spade work for S. Js. and High Court Judges by recording the evidence of the witnesses. The actual decision of the case is for all practical purposes in the hands of the S. Js. or High Court even under the present system. The recording of the evidence can be done first as well as by S. P. Ms. as by S. Js. and they do some S. Js. and the High Court a lot of valuable time. This is not possibly a very enacted view of S. P. Ms., but after all this is what is comes down to.

4. Most of the speakers have overlooked the great facilities for appeal, revision, etc., open to the poorest convicted person, and the fact that it is easier to appeal to the Sessions Court or the High Court than to file an ordinary complaint in a 323 case.

Commissioner, Pegu Division.

I HAVE the honour to forward copies of replies from the Deputy Commissioner, Hanthawaddy, Insein, Pegu, Tharrawaddy, and Prome, whom I have consulted in matter.

2. I agree with them in considering that it would be very undesirable that the Bill should be passed into law.

Deputy Commissioner, Hanthawaddy.

My views are the same as those of Mr. R. M. MacDougall as expressed in the Legislative Assembly on the 20th February 1936.

Deputy Commissioner, Insein.

I AM not in favour of the Bill and I have nothing to add to the arguments of Mr. MacDougall.

Deputy Commissioner, Pegu.

I HAVE very carefully studied the proceedings of the Assembly debate on the Bill and am of the opinion that the proposals are not only unnecessary but would also involve the Government in wasteful expenditure. Mr. MacDougall has very ably stated the reasons and I have nothing new to add. The system of section 30 magistrates has been in practice for many years in Burma and has not at any time provoked any complaint or dissatisfaction. On the other hand it has worked very well and has not in the least lowered the standard of judicial administration. The statements made by the Hon'ble Member for West Punjab may have some foundation in the Province of the Punjab but absolutely none in Burma. I do not hesitate to recommend that the Government of Burma should strongly oppose the proposals. The Additional District

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Magistrate (U Ka) and the Headquarters Assistant (U On Gaing) who were consulted entirely agree with my opinion.

Deputy Commissioner, Tharrawaddy.

I TOTALLY disagree with the amendment to the Code of Criminal Procedure proposed by Sardar Sant Singh, which recommends the abolition of Special Power Magistrates.

The number of cases tried by Special Power Magistrates in this District last year was 165 or nearly 3 times as many as those tried by the Courts of the Sessions Judge and Additional Sessions Judge added together. It is obvious, therefore, that anyway, so far as this District is concerned, the appointment of 2 or 3 Additional Sessions Judges would be imperative to cope with this amount of additional work. As MacDougall in his excellent speech before the Legislative Assembly pointed out, the resulting cost to the Local Government would be absolutely prohibitive.

I am also entirely in agreement with Captain Rao Bahadur Chaudhri Lal Chand when he says "It has been said that the accused are not satisfied with the trial before Magistrates. This is absolutely incorrect and a gross mis-statement of facts" Personally I am in favour of quiet justice. Is the incredibly long-drawn procedure of committal and Sessions trial in favour of the best interests of justice? It is certainly very much in favour of the pockets of members of the Bar, of whom Sardar Sant Singh is obviously one.

So far as my experience goes, cases are usually well tried by Special Power Magistrates, nor is there any truth, so far as I am aware, in the allegations made by the proposer of the amendment, to the effect that District Magistrates sit over the heads of Special Power Magistrates, exercising an inordinate amount of supervision of their work and insisting on a minimum number of cases being tried by them every month. Naturally, District Magistrates supervise Special Power Magistrates' work in a general way and require them, like other Magistrates, to explain what appear to be undue delays, but Sardar Sant Singh has, I think, distorted the actual facts.

To conclude, I entirely agree with Mr. MacDougall's ultimate remark "I would ask the house whether it is justifiable to incur enormous expenditure on what must be regarded as quite the most undeserving section of the population when the law-abiding community is in dire need of extending services in the matter of education, public health, and other nation-building activities. To that there can be only one answer and that is a very emphatic "No".

The humanity of this begin Government to the cut-throat and the bandit is proverbial, but surely a limit must be set somewhere. Has it come to "poor" dacoits and robbers being asked by which Courts they would like to be tried chiefly that they may benefit by the Law's delay and swell the pockets of the advocates?

Deputy Commissioner, Prome.

THERE are four section 30 Magistrates in this district and the number of special power cases disposed of by them during the years 1933, 1934 and 1935 are 136, 112 and 163 respectively. The present system has been working very well here both as regards expeditious disposal, convenience to the parties and correctness of decision; and so far as the Prome District is concerned, public opinion has never expressed itself against the system of section 30 Magistrates. The extracts from the Legislative Assembly Debates, dated the 13th and 20th February, 1936, show on what flimsy foundation the Bill has rested; and it seems hardly necessary to add anything to what has already been said by those who have spoken against it, namely, Khan Bahadur Shaikh Khurshaid Muhammad, Mr. R. M. MacDougall, Captain Rao Bahadur Chaudhri Lal Chand, Rai Bahadur Shyam Narayan Singh, Mr. F. B. Leach, and the Honourable Sir Henry Craik. Its protagonists had no relevant facts and figures nor reasoned arguments to offer in support of the Bill, while the oppositionists have clearly demonstrated how the proposals are unnecessary, uncalled for, and prohibitively expensive. I would recommend that the Bill be opposed at every later stage with all the force at the command of Government.

Commissioner of the Sagaing Division.

I HAVE the honour to submit the following reply.

2. All the District Magistrates consulted have expressed their opposition to the proposed Bill which will take away the special powers at present used by District Magistrates, Additional District Magistrates and Special Power Magistrates in Burma. A copy of the replies received together with the statements attached to them is submitted with this letter.

3. Before discussing in detail the opinions and statistics which are contained in the enclosures the following general conclusions may be stated. It will be seen from the number of cases tried in this Division by Special Power Magistrates that the change, even if the Bill were passed this year, could not possibly be brought into operation until time had been given to organise the administration of criminal justice afresh. A number of new Sessions Judges would have to be appointed, buildings, clerical establishments would have to be arranged for, and the change could not be effected for several years. The only way in which work could be disposed of in the interval would be by evading the provisions of the amending Act by empowering a large number of Special Power Magistrates as Additional Sessions Judges or as Assistant Sessions Judges.

4. The inconveniences which would be felt by witnesses particularly in the northern districts of this division, that is in the Bhamo, Myitkyina and Upper Chindwin Districts constituting the Frontier Sessions Division cannot easily be appreciated except by those with actual

knowledge of the state of communications in many parts of this extensive area. Witnesses spend much time over one hearing of a case but if there were committal proceedings and then a sessions trial at the headquarters of a neighbouring District, the administration of justice would be greatly hampered.

5. There is no reason to believe that Special Power Magistrates do their work at a lower standard than Sessions Judges. The figures give somewhat surprising evidence that in a number of cases the work of Special Power Magistrates can be compared favourably with that of Sessions Judges.

6. The figures given showing the very large number of cases tried by Magistrates in the exercise of their special powers compared with the number of Sessions Trials in the Sagaing, Lower Chindwin and Shwebo Districts demonstrate that there are many offences which owing to their nature or to the offenders having previous conviction require sentences beyond the power of a first class magistrate but do not require the elaborate procedure of a Sessions Trial at which sentences of death or very long sentences of imprisonment may be passed. The Sessions Judge of the Sagaing and Lower Chindwin tries very few cases except murders and serious dacoities.

7. If the amending act was passed a certain proportion of the cases now tried by Special Power Magistrates would be tried by Magistrates with ordinary, first class powers, but even allowing for that the additional expenditure on pay for new Sessions Judges and their establishments would be considerable. There would be large additional expenditure on fees for Public Prosecutors and fees for witnesses.

8. Statement "A" attached to the first letter from the District Magistrate, Lower Chindwin, shows in how small a proportion of cases tried under special powers (less than one-fifth) were the sentences of cases appealed against such as had to go up to the High Court, *i.e.*, the sentences were not over four years. The Sessions Judge disposed of over four-fifths of them. All cases tried by the new Sessions Judges or Additional Sessions Judges would be appealed to the High Court with a consequent very great addition to its appellate work.

9. The Sessions Division comprising the Sagaing and Lower Chindwin Districts is manned by a Sessions Judge and one whole time Assistant Judge with Special Powers and an average of nearly 200 cases per year are tried under Special Powers. It would be necessary to have at least one full time Sessions Judge in each District and the Assistant Judge would have to be made an Additional Sessions Judge.

The figures regarding the results of appeals and revisions given by the District Magistrate, Sagaing, in his statement and by the District Magistrate, Lower Chindwin in his Statements "B" and "D" show that the work of Special Power Magistrates is of adequate quality and does not compare unfavourably with the work of Sessions Judges.

10. The statement sent on by the District Magistrate, Shwebo, shows that an average of 176 cases are tried annually under special powers, while the Sessions Judge (including cases from Katha District) average 38 Sessions Trials per annum. It appears that a whole time Additional Sessions Judge would be necessary for Shwebo District.

In the same Sessions Division is Katha District, which has comparatively few special power cases, the average being only 53 per annum. A whole time Sessions Judge or Additional Sessions Judge would be required for Katha though he would probably not be heavily worked. It may be pointed out that the free use of Additional Sessions Judges would mean the use of many of the present Special Power Magistrates under another name.

It will be seen that in Shwebo also the work of Special Power Magistrates does not compare unfavourably with that of Sessions Judges.

I particularly draw attention to the remarks of Mr. Fishwick regarding the difficulties which result from the great size of the Katha District. There are not many cases which would require to be committed to Sessions from the Mogok (Ruby Mines) sub-division, but each such case would be a very serious tax on the time of witnesses and would be expensive in witness fees to Government. They are far better dealt with at Mogok where there is generally a Special Power Magistrate.

11. The Bhamo District does not present any problem. Serious crime is negligible in amount and can be disposed of by the District Magistrate as Additional Sessions Judge under either system, but the idea underlying the Bill under consideration is certainly opposed to giving District Magistrates the powers of Additional Sessions Judges.

12. In Myitkina District the District Magistrate is Additional Sessions Judge and his Headquarters Assistant is also Additional Sessions Judge. In no other way could the small number of cases that might be committed to sessions be disposed of in a reasonably efficient manner with any regard for the duration of cases, convenience of witnesses and expenditure on witnesses' fees and on escorts. To have all such cases sent to Katha for trial by the Sessions Judge at that place would be the only way of carrying out the intention underlying the draft Bill, and would be, for the reasons given above, an impracticable measure.

13. Conditions are similar in the Upper Chindwin District. If the small number of cases which should not be tried by a Magistrate with ordinary first class powers have to be committed to the nearest Sessions Judge they will have to be sent to Monywa for trial. That means anything from two to five days journey by steamer down the Chindwin and three to eight days up on the return journey for all parties concerned. The only feasible system is the present one, by which the District Magistrate is Additional Sessions Judge and has

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his case work lightened by a Special Power Magistrate at Mawlaik, and if possible at one other sub-divisional headquarters.

14. Summing up the draft Bill would be a serious blow to the administration of justice in this division, would be a most unjustifiable harassment of those on whose readiness to give evidence the administration of justice depends and would give rise to a greatly increased expenditure. There is also no reason to believe that the conduct of cases actually brought to court would be improved by the new procedure.

District Magistrate, Sagaing.

I HAVE the honour to submit a statement showing the number of cases tried by the Special Power Magistrates and the Sessions Judge, Sagaing and the number of cases set aside or materially altered in appeal, for the years 1931 to 1935. For the years 1931 and 1933, the result of the trials conducted by the Special Power Magistrates compares very favourably with that of the cases conducted by the Sessions Court, but for the other three years the result when compared with that of the Sessions cases is not so satisfactory. Even so, I do not think that it can be said with any justification that the work of the Special Power Magistrates is bad. The Special Powers are given to First Class Magistrates, when they have gained sufficient experience and when they have given sufficient proof that they are sound in their views and can be trusted to deal with more important cases. Of course, it will have to be conceded that an accused person will prefer to be tried by a Sessions Judge, if he has a choice. But in a criminal country like Burma, if all the criminal cases now tried by the Special Power Magistrates are to be tried either by the Sessions Judges or the District Magistrates, the number of Sessions Judges and the District Magistrates will have to be at least doubled, as the number of cases disposed of by the Special Power Magistrates and the Sessions Judges during the last five years will show. Thus there is sure to be increased expenditure on the pay of officers. There will also be increased expenditure on the witness fees, as at present witnesses, in cases tried by Special Power Magistrates, attend only one court, whereas, if these cases were to be tried by the Sessions Judges, the witnesses will have to attend two courts, the Committal and the Sessions Courts.

In my opinion the work of the Special Power Magistrates, even if considered to be bad, is not so bad as to call for increased expenditure mentioned above. Further it is also very doubtful whether the country will be able to bear this additional expenditure that will entail. It is not necessary really to repeal sections 30 and 34 of the Criminal Procedure Code and amend sections 34A and 35, as contemplated in the draft Bill received with your letter. The Special Powers are conferred upon experienced Magistrates after consulting the Sessions Judges and the High Court. If the work of any of the Special Power Magistrates is found to be bad, the powers can be withdrawn. In my opinion, the draft Bill should therefore not be allowed to pass into Act.

Statement showing the cases tried under special powers in Sagaing District for the last 5 years.

Year.	Name of Court.	Total No. of cases tried.	No. of cases set aside in appeal.	No. of cases materially altered in appeal.	Total of Columns 4 and 5.	Percentage of Column 6 to Column 3.	Remarks.
1	2	3	4	5	6	7	8
1931	Special Power Magistrates ..	58	1	2	3	5.17	
	Sessions Court ..	28	1	4	5	17.86	
1932	Special Power Magistrates ..	97	5	3	8	8.25	
	Sessions Court ..	11	0	0	0	..	
1933	Special Power Magistrates ..	97	4	3	7	7.22	
	Sessions Court ..	20	1	3	4	20.00	
1934	Special Power Magistrates ..	81	7	3	10	12.35	
	Sessions Court ..	19	0	1	1	5.26	
1935	Special Power Magistrates ..	105	15	4	19	18.09	
	Sessions Court ..	14	0	1	1	7.14	

District Magistrate, Lower Chindwin District.

I HAVE prepared two statements A and B showing the number of special power cases tried in the Lower Chindwin District in 1931-35, the number of cases acquitted or discharged in the original courts, the number of convictions in which no appeal was preferred, convictions in which appeal was preferred either to the Court of Session or High Court, and interference of sentences by these two courts. Statement A shows that the total number of special power cases brought to trial during the last five years was 543 and in the other statement it will be seen that the number of convictions was 449 out of 543, a percentage of 82.68. Out of 449 convictions no appeal was preferred in 114 cases and in the rest appeal was preferred. In 249 cases out of 335 sentences of the original courts were confirmed; in 48 cases out of 335 sentences were either altered or reduced by the two appellate courts, recording a percentage of 14.32 but this percentage is reduced to 10.6 if the number of cases in which such interference was made is considered with reference to the total number of convictions 449. In 38 convictions the sentences were set aside by the two appellate courts, recording a percentage of 11.34 but if this is considered with reference to the total number of convictions the percentage is reduced to 8.4. These figures speak for themselves on the high standard of work performed by the Special Power Magistrates in this district in the last five years. On the figures that I have furnished in the two statements I am of opinion

that the work of Special Power Magistrates is as equally good as the work of Sessions Judges in the trial of special power cases. I think this was the view expressed by the member for Burma Mr. F. B. Leach, I.C.S., the former Chief Secretary of the Government of Burma during the debate in the Legislative Assembly when the proposed Bill was discussed.

On account of the expense that would be involved I think the establishment of a separate Sessions Court in this district is out of question. If the Courts of Special Power Magistrates are abolished the additional work brought upon the District Magistrate will no doubt be serious as the special power cases will have to be shared between him and the Sessions Judge. The expenses that will be involved in committal proceedings combined with sessions trials will not, I think, justify the creation of the court of sessions to try special power cases when these cases can be disposed of adequately by Special Power Magistrates. I may point out that in paragraph 18 of the Report on the Administration of Criminal Justice in Burma for the year 1934 it was shown that 4,031 cases were disposed of under special powers by the Special Power Magistrates excluding District Magistrates and Additional District Magistrates. At the close of the year in 1934, excluding District Magistrates and Additional District Magistrates there were 156 Magistrates specially empowered under section 30 of the Code of Criminal Procedure. Of this number 15 were performing duties which did not involve the exercise of magisterial powers and 13 were on leave. Therefore there were 128 effective Special Power

Magistrates during the year. If these Magistrates were no longer competent to try 4,031 cases some more Additional Sessions Judges or Assistant Sessions Judges, or Additional District Magistrates would have to be appointed. It is obviously out of question to expect the District Magistrates to dispose of these cases as they have to perform other multifarious duties as Deputy Commissioners, especially so with the advent of the Reformed Constitution some other more duties will be thrown upon them. The appointment of additional Sessions Judges or Assistant Sessions Judges will entail a heavy financial burden on the finances of the Province in the shape of enhanced emoluments to these Judges and the extra expenditure involved in two proceedings of Sessions trials before the committing Magistrates and before these Judges.

It has been pointed out that under Section 10 of the Code of Criminal Procedure it is possible for the Local Government to appoint any Magistrate of the 1st Class to be an Additional District Magistrate. As the choice is to be made from the same class of Magistrates from which Special Power Magistrates are drawn at present the position would be materially same as now. I do not know the policy of the Local Government on the appointment of Additional District Magistrate but it seems to me that an Additional District Magistrate is appointed in heavy districts to relieve the District Magistrate of the judicial administration of his district. There are very few districts in Burma in which an Additional District Magistrate is appointed. These districts are Pegu, Tharrawaddy, Rangoon Town and Akyab. Even the creation of these appointments will entail extra expenditure as I understand that officers of the provincial civil service appointed to these posts draw enhanced emoluments.

The Mover of the Bill in proposing to repeal section 30 of the Code of Criminal Procedure has given his reason that the accused charged with serious offences are not satisfied with the trial before Magistrates who are specially empowered under these sections, meaning Sections 30, 34, 34A and 35 of the Code of Criminal Procedure. In my opinion this is a rather sweeping remark to make and cannot be considered to apply to all Magistrates specially empowered under these sections. It may be noted that only those Magistrates whose integrity and competency have been tried to the satisfaction of the Honourable Judges of High Court are invested with powers under Section 30 of the Code of Criminal Procedure. The records of cases tried by them are scrutinized by the Sessions Judges and the Honourable Judges of the High Court before they are recommended to the Local Government to exercise these powers. As a result of this rigid test on the Magistrates recommended for special powers we find that only those Magistrates with mature judicial experience are invested with special powers. Nor do I agree with the statement of the Mover of the Bill that these Magistrates hurriedly proceed with the trial with the result that cool and calm consideration of the facts of the case is not possible as is actually the case in Sessions trials. In my experience the Magistrates exercising special powers are alive to the serious responsibility of trying the

accused charged with serious offences as the Sessions Judges. The figures that I have furnished would clearly show that the reason advanced by the Mover of the Bill that the Special Power Magistrates are not as efficient as Sessions Judges as to be totally untrue. If the accused convicted of serious offences by the specially empowered Magistrates are grieved at the orders of these Magistrates, they have the right of appeal to the Court of Sessions and also to the High Court. With this check on the work of the specially empowered Magistrate one fails to understand the reasons advanced by the Mover of the Bill in trying to do away with the courts of the specially empowered Magistrates. For all these reasons I am of opinion that it is not necessary to repeal the sections of the Code of Criminal Procedure relating to the conferment of special powers.

I have the honour to submit herewith two more statements 'C' and 'D' showing the figures of interference by the High Court with the orders passed by Sessions Judge. In statement 'C' the number of cases tried by the Sessions Judge, Sagaing Division, in the past five years was 110, the number of cases acquitted or discharged was 29 leaving the total number of convictions at 81. In 25 cases out of 81 no appeal was preferred to the High Court, and in 56 cases appeal was preferred. In 9 cases out of these 56 cases sentences were either reduced or altered and in 6 cases convictions were set aside. Therefore in 11.11 per cent of the total number of convictions the orders of the Sessions Judge were altered by the High Court and in 74 per cent of the total convictions the orders were set aside, as shown in Statement 'D'.

A comparison of these figures with the figures furnished in Statements 'A' and 'B' will clearly indicate that the work of Special Power Magistrates is not inferior to that of Sessions Judges. If the same standard of work is shown in other districts, the case for abolition of courts of Special Power Magistrates is not made out. There is only one difference between the work of Sessions Judges and the work of Special Power Magistrates, namely, the offences tried by Sessions Judges are mostly murders, culpable homicide not amounting to murder and armed robberies or dacoities in which the evidence of approver is involved, whereas the majority of offences tried by Special Power Magistrates are dacoities, grievous hurts under Section 326, rape, arson, offences relating to counterfeiting coins, armed robberies and they also try previously convicted offenders for offences under Chapters XII and XVII of the Indian Penal Code. Most of these offences which Special Power Magistrates try differ from the offences tried by the ordinary 1st Class Magistrates in degree, not in kind; the functions of these Magistrates appear to be to inflict enhanced punishments for a certain class of criminal offenders. The majority of these offences are decided on questions of facts and whatever question of law is involved is such as a Magistrate of ordinary intelligence can adequately deal with. In view of the high standard of work performed by the Special Power Magistrates, the proposal to repeal such useful section as Section 30 of the Code of Criminal Procedure is anything but wise.

STATEMENT A.

Courts.	Year.	No of Cases decided Special Power Lower Chindwin District.	No. of cases acquitted or discharged in the original court	Convicted Cases.							Interfered by High Court.	Remarks.	
				Lower Court convictions in which no appeal preferred.	Appealed to Sessions Judge.			Appealed to High Court.					Orders passed by Sessions Judge.
					Sentence upheld (Confirmed).	Sentence reduced or altered.	Sentence reversed (Set aside).	Sentence upheld (Confirmed).	Sentence reduced or altered.	Sentence reversed (Set aside).			
1	2	3	4	5	6	7	8	9	10	11	12	13	
H. Q. M., Monywa ..	1931	105	29	15	28	23	5	13	2	..	..
	1932	80	21	12	29	5	5	6	1	1	..		
	1933	26	4	5	9	2	1	4	..	1	..		
	1934	36	3	12	14	1	3	3	..	..	..
	1935	42	9	9	15	3	3	3	..	..	..
S. D. M., Monywa ..	1933	28	4	7	12	..	2	3	..	..	..
	1934	15	4	3	3	1	3	1	..	..	..
S. D. M., Yinmabin..	1931	30	1	8	10	1	3	6	1	..	..
	1932	59	2	9	34	4	2	8	..	..	..
	1933	38	3	10	19	3	1	1	..	1	..		
	1934	42	2	11	18	3	5	2	1	..	..
	1935	8	..	5	1	..	..	1	1	..	..
2nd A. M., Monywa..	1934	5	..	2	..	2	1	..	..	..	..
	1935	24	10	4	3	3	1	2	1	..	..
District Magistrate, Monywa	1933	1	..	1	..	..	..	..	..	..	..
	1934	1	..	1	..	..	..	..	..	..	..
	1935	3	2	..	..	..	..	..	1	..	..
Grand Total	..	543	94	114	195	41	35	54	7	3	..		

STATEMENT B.

1. Total Number of Special Power Cases tried in Lower Chindwin District in the years 1931-1935	543	Number of convictions .. 449 out of 543 = 82.68%
Discharged or acquitted	94	Number of convictions in which no appeal was preferred 114 out of 449 = 25% (say)
Total	449	Number of convictions in which appeal was preferred 335 out of 449 = 75% (say)
2 Cases in which sentence are reduced or altered by Sessions Judge	41	Number of convictions in which sentences were altered or reduced by High Court and Court of Sessions 48 out of 335 = 14.32%
by High Court	7	(But the percentage is reduced to 10.6% if considered with reference to the total number of convictions 449).
Cases in which sentences are set aside by Sessions Judge	35	Number of convictions in which sentences were set aside in appeal by High Court and Sessions Judge 38 out of 335 = 11.34%
by High Court	3	(But the percentage is reduced to 8.4 if considered with the total number of convictions 449).
Total	86	Sentences confirmed .. 249 out of 335 = 74.32%
3. Cases confirmed on appeal	249	
Cases not appealed	114	
Grand Total	449	

STATEMENT C.

Statement showing number of Sessions trials disposed of during last 5 years from 1931-35 for lower Chindwin District.

Year.	No. of cases decided for Lower Chindwin District.	No. of cases acquitted or discharged.	Convicted.				Remarks.	
			Convictions in Sessions Court in which no appeal preferred.	Appeal to High Court.				
				Sentence upheld (Confirmed).	Sentence reduced or altered.	Sentence reversed (Set aside).		
1.	2	3	4	5	6	7	8	
1931	7	8	4	7	4	4	Murder. 27	Others. ..
1932	17	7	4	4	2	..	16	1
1933	18	2	7	7	2	..	17	1
1934	32	8	7	16	..	1	31	1
1935	16	4	3	7	1	1	11	5
Total ..	110	20	25	41	9	6		

STATEMENT D.

(1) Total number of Sessions Trials in the Lower Chindwin District for the years 1931 to 1935.. .. 110

Discharged or acquitted 29

Total convictions .. 81

(2) Cases in which sentences were reduced or altered 9

Cases in which convictions were set aside .. 6

Cases confirmed 41

Cases not appealed 25

Total .. 81

(3) Number of convictions .. 81 out of 110 = 73.63%

Number of Convictions in which no appeal was preferred 25 out of 81 = 30.85%

Number of convictions in which appeal was preferred 56 out of 81 = 69.14%

Number of convictions in which sentences were reduced or altered by High Court 9 out of 56 = 16.07%

But the percentage is reduced to 11.11% if considered with reference to the total number of convictions 81.

Number of convictions in which sentences were set aside in appeal by High Court 6 out of 56 = 10.71%

But the percentage is reduced to 7.4% if considered with reference to the total number of convictions 81.

Sentences confirmed .. 41 out of 56 = 73.21

District Magistrate, Shwebo.

I HAVE the honour to submit statements showing the number of cases tried by Special Power Magistrates in this district during the previous five years and also the number of cases tried in the Court of Session during the previous five years. These statements will show you that the number of cases reversed or materially altered in appeal by superior courts was proportionately greater in the Court of Session than in the Courts of Special Power Magistrates. It is true of course that the High Court is more inclined to alter or materially interfere with the orders of a Sessions Judge in a murder case than is a Sessions Judge in dealing with the orders passed by a Special Power Magistrate in a dacoity or serious hurt case. Nevertheless the figures I have provided show that the work of Special Power Magistrates is on the whole satisfactory and it is doubtful whether the standard of justice meted out to accused persons is going to be so much improved by the abolition of Special Power Magistrates as to justify the passing of the proposed Bill. So far as Shwebo is concerned it would be out of the question for the District Magistrate to try all cases now tried by Special Power Magistrates. It would also be out of the question for the Sessions Judge to take these cases. If, therefore, Special Power Magistrates were abolished it would be necessary to appoint Assistant Sessions Judges or in the alternative to nominate the same magistrates who now exercise special powers as Additional District Magistrates. The appointment of Assistant Sessions Judges would not improve the standard of justice because the persons appointed would be no better qualified than the magistrates at present exercising special powers. Then there would be the increased labour and cost involved by committal proceedings. All cases now tried by Special Power Magistrates would have to be tried twice over. The only district I have served in in Burma proper where the District Magistrate himself has time to try all special power cases is Sandoway—which is of about the same population and importance as an ordinary subdivision. Another light district I have served in is Katha but I do not think the District Magistrate there could try all special power cases as he has such a lot of touring to do in the cold weather and if we consider the feverish climate of Katha together with the fact that District Magistrates are more often than not young and inexperienced officers who find it no easy task to cope with their ordinary administrative work I do not think we shall find it feasible to ask the District Magistrate, Katha, to try special power cases. I remember when I was at Katha in 1925 my time was fully taken up with touring and ordinary administrative work. I was admittedly inexperienced then and the administrative work took me longer to get through than it would now. I was also laid up with fever at various periods. But even now after several years experience as a Deputy Commissioner I should not like to be posted to Katha and told to try all special

power cases myself. My carefully considered opinion which is based on several years' experience as a Deputy Commissioner in various parts of Burma is that it would be fantastic to ask District Magistrates to try special power cases except in very light districts such as Sandoway, Kyaukpyu, Mergui, Tavoy or Kyaukse. This means that in most of the districts in Burma it will still be necessary for some agency other than the District Magistrate to deal with special power cases. The present system of empowering experienced first class magistrates under section 30, Criminal Procedure Code is in my opinion the only practical solution. A senior officer like yourself who was a District Magistrate in Burma long before the war might argue that in his day there were no such things as Special Power Magistrates or very few of them and that the District Magistrate had to take up special power cases himself. If you were tempted to put forward such an argument I should have to remind you that conditions have changed very much since those days. There is a great deal more serious crime in Burma than there was before the war and the number of special power cases must therefore have increased considerably. Administrative work has become much more complicated since the war and the average Deputy Commissioner has a great deal more correspondence than his predecessor in the old days. Commissioners are not so reluctant nowadays to interfere with the orders of Deputy Commissioners and they expect the orders of Deputy Commissioners on all cases to be very long and carefully worded. Commissioners nowadays are much more frightened than they used to be of having their own orders upset by the Local Government and consequently they will not pass anything sent up by a Deputy Commissioner unless it is absolutely appeal-proof. The Local Government is much more likely in these days to upset the orders of local officers and no one nowadays considers it necessary or desirable to uphold the prestige of those holding authority under him. All this means that the present-day Deputy Commissioner has to write a tremendous lot on everything that is likely to go up to a higher authority. Whereas in the old days he could write an order of a couple of lines nowadays he is expected to write at least a couple of pages. I am sure you will agree with me that although the Deputy Commissioner is no longer the same Pooh-Bah as he formerly was the area of paper which he is nowadays expected to cover with typescript is so many times greater than it was before 1914 that he no longer has the time to be a Jack of all trades. It is very rare nowadays for a Deputy Commissioner—even the keenest—to take up original criminal cases unless he is absolutely obliged to do so. As there would be no justification for condemning the present-day Deputy Commissioner as a lazier and less efficient person than his predecessor of 25 years ago I think it must be admitted that except in very light districts (some of which are overdue for abolition as districts) it is impossible for the Deputy Commissioner as District Magistrate to try special power cases.

Statement showing the number of special power cases tried and the number of such cases in which orders were reversed or materially altered in appeal or revision.

Year.	Name of Court.	Cases tried.	Cases in which orders were reversed or materially altered in appeal or revision.	Percentage of column 2 to 1.
		1	2	3
1931	S. P. M., Shwebo	22	5	..
1931	1st A. S. P. M., Shwebo	24	4	..
1931	2nd A. S. P. M., Shwebo	84	4	..
1931	S. D. M. (S. P.), Ye-u	21	2	..
	Total ..	151	15	10
1932	S. P. M., Shwebo	36	5	..
1932	1st A. S. P. M., Shwebo	22	2	..
1932	2nd A. S. P. M., Shwebo	90	5	..
1932	S. D. M. (S. P.), Ye-u	29	9	..
	Total ..	177	21	11
1933	S. P. M., Shwebo	2	..	..
1933	1st A. S. P. M., Shwebo	14	..	..
1933	2nd A. S. P. M., Shwebo	72	7	..
1933	S. D. M. (S. P.) Ye-u	28	3	..
1933	H. Q. M. (S. P.) Shwebo	16	..	..
	Total ..	132	10	7
1934	S. P. M., Shwebo	22	7	..
1934	1st A. S. P. M., Shwebo	11	1	..
1934	2nd A. S. P. M., Shwebo	67	11	..
1934	S. D. M. (S. P.), Ye-u	43	1	..
1934	H. Q. M. (S. P.) Shwebo	4	..	..
1934	S. D. M. (S. P.), Kanbalu	7	..	..
	Total ..	154	20	13
1935	S. P. M., Shwebo	42	11	..
1935	1st A. S. P. M., Shwebo	7	..	..
1935	2nd A. S. P. M., Shwebo	71	6	..
1935	S. D. M. (S. P.) Ye-u	26	1	..
1935	S. D. M. (S. P.), Kanbalu	9	3	..
	Total ..	155	21	13
	Grand Total ..	769	87	11

Statement showing the number of sessions cases tried and the number of such cases in which orders were reversed or materially altered in appeal or revision by the High Court.

Year.	No. of cases tried.	No of such cases in which orders were reversed or materially altered in appeal or revision by High Court.	Percentage of column 2 to 1.
1931	43	9	..
1932	36	4	..
1933	29	6	..
1934	18	4	..
1935	15	1	..
Total ..	141	24	17

District Magistrate, Katha.

I HAVE the honour to observe that the Bill as drafted would appear not only to do away with Special Power Magistrates but also to reduce (as far as powers of sentence are concerned) District and Additional District Magistrates to the status of First Class Magistrates. From the tone of your letter and from the tone of the speeches which I read in the newspapers while the debate was going on it appears that the complaint of the Members of the Legislative Assembly is not directed against District and Additional District Magistrates. If therefore, such Magistrates are to retain the powers at present exercised by them the draft Bill will require substantial re-drafting.

Katha is not the headquarters of a Sessions Judge and so no records of Sessions trials are available here for reference, so that while I have been able to collect statistics showing the cases of interference with the orders of Special Power Magistrates by Sessions Judges and the High Court I have not been able to compare these with the figures for interferences with the orders in Sessions cases. Over the past 5 years a total of 264 cases have been dealt with under Special Powers of which 181 resulted in conviction. In 38 of these cases the orders passed were revised or materially altered in appeal, 31 by the Sessions Judge and 7 by the High Court. Of the 7 cases in which the orders of Special Power Magistrates were interfered with by the High Court 2 cases had already been dealt with in appeal by the Sessions Judge, the appeals being dismissed by him. It therefore appears that roughly 75 per cent of the cases dealt with by Special Power Magistrates which ended in conviction were not interfered with by the High Court or the Sessions Judge a figure which in my opinion shows that cases are generally well tried and that the conclusions reached are sound.

If my assumption that District and Additional District Magistrates will continue to exercise their present powers it follows that the District Magistrate will have either to take up some 50

or 56 cases a year or else the number of cases committed to Sessions will greatly increase. On an average at least 4 days are fully occupied in hearing each Special Power case and probably the same time is occupied in hearing a Sessions case. It will be impossible for the District Magistrate of Katha to hear all the Special Power cases himself and while these cases could be dealt with by a District and an Additional District Magistrate such a procedure would defeat the object of the promoters of the present Bill. If however District Magistrates are to have only the power of a First Class Magistrate the effect of the proposed Legislation will be to require the establishment of a Sessions Court for Katha. Katha could provide a good day's work for a full time Sessions Judge if all cases now dealt with by a Special Power Magistrate together with the cases now committed to Sessions were committed for trial. On the other hand the number of officers with the qualification and ability of the present officers serving as Sessions Judge is limited, and the result of appointing numerous new Sessions Judges throughout the country will be merely that officers of the type now appointed as Special Power Magistrate will be designated as Sessions Judges and will be given powers to order even a sentence of death or transportation for life and the promoters of the Bill may find themselves in a far worse position than they now are.

The Bill is also objectionable on the grounds of poor communications. Mogok is roughly 160 miles from Katha and the journey from Mogok to Katha can be accomplished in two days if the steamer services happen to coincide with the date fixed for trial but attendance for even one day will involve a week's absence from home for every witness in cases from Mogok tried in Katha. The expenditure on fares alone at the lowest rate will amount to Rs 8 per witness in addition to subsistence allowance for one week. There will be similar expense on witness fees and compensation for loss of time for cases now tried by the Special Power Sub-divisional Magistrate, at Wuntho who according to the figures attached to this letter does

very nearly half the cases tried under Special Powers.

.I therefore, consider in view of the comparatively small number of officers suitable for exercising the powers of Sessions Judges, and of the large area of the average district in Burma

that the proposed Legislation is neither practicable nor desirable.

I append statements showing a number of cases tried under Special Powers and committed to Sessions in the Katha District for the last five years from 1931 to 1935.

Statement showing the number of cases tried under Special Powers in the Katha District in the last five years from 1931 to 1935.

Name of Court.	No. of Special Power cases tried.	No. of Special Power cases ended in conviction.	No. of Special Power cases the orders passed have been reversed or materially altered in appeal.	Remarks.
1931.				
D. M., Katha	4	2	*1	*1 case—S. J., summarily dismissed the appeal. But the High Court reduced the sentence of the Lower Court in revision. †1 case—Accused was acquitted by the High Court in Appeal.
S. P. M., Katha	48	31	†7	
S. P. A. M., Mogok	3	3	2	
Total for 1931	55	36	10	
1932.				
D. M., Katha	2	1	..	1 case—3 out of 5 convicted; Accused were acquitted by the High Court in appeal.
S. P. M., Katha	50	31	5	
S. P. S. D. M., Mogok	8	8	1	
Total for 1932	60	40	6	
1933.				
S. P. M., Katha	22	12	1	
S. P. H. Q. M. Katha	12	9	1	
S. P. S. D. M., Katha	4	3	..	
S. P. S. D. M., Mogok	8	6	1	
S. P. S. D. M., Wuntho	6	5	1	
Total for 1933	52	35	4	
1934.				
S. P. M., Katha	12	6	†1	†1 case—S. J., summarily dismissed the appeal but High Court altered the sentence of Lower Court in revision.
S. P. H. Q. M., Katha	7	6	1	
S. P. S. D. M., Mogok	4	4	1	
S. P. S. D. M., Wuntho	22	19	4	
Total for 1934	45	35	7	
1935.				
S. P. M., Katha	11	5	1	§1 case—The conviction of 1 out of 2 convicted accused altered; 1 case accused acquitted; and 1 case conviction altered and sentence reduced by the High Court in appeal.
S. P. H. Q. M., Katha	5	3	2	
S. P. S. D. M., Mogok	14	11	2	
S. P. S. D. M., Wuntho	22	16	5	
Total for 1935	52	35	11	
Grand Total for 5 years 1931-35	264	181	38	

Statement showing the number of case committed to Sessions in the last five years from 1931 to 1935

Number of cases committed	Section of the Code under which Committed	Remarks
	1931.	
3	302 I P C	
1	302 & 324	
1	302, 302/109	
1	302, 302/114	
1	302, 307 & 309.	
2	304 (ii)	
1	395/397	
1	124A	
11		Total for 1931
	1932	
8	302	
1	302/394	
1	395/397	
1	396	
11		Total for 1932
	1933	
9	302	
1	395/397	
1	396	
11		Total for 1933
	1934	
3	302	
1	304 (ii)	
1	376/302	
1	392/398	
1	395/397	
7		Total for 1934.
	1935	
3	302	
1	302, 201(i)	
1	304 (i)	
2	395/397	
1	392/397	
8		Total for 1935
48		Total for five years— 1931-35

District Magistrate, Bhamo.

I HAVE the honour to state that within the last 5 years Magistrates of this district other than the District Magistrate have in the exercise of Special Powers under section 30, Criminal Procedure Code disposed of a total of 28 cases of which 20 resulted in convictions. There were 12 appeals from these convictions out of which 2 resulted in a material alteration but not in complete reversal of orders, the remainder were dismissed. The percentage which the number of alterations on appeal bears to the number of convictions is therefore 10 per cent.

The District Magistrate disposed of 22 cases in 11 of which a conviction resulted. Appeals were lodged in 5 cases with a material alteration of orders in one case only. The percentage of material alterations to convictions is therefore 9 per cent.

The Additional Sessions Judge, Bhamo disposed of 4 cases in none of which were the orders reversed or altered on appeal. There was no interference by the High Court.

The difficulty over Sessions Trials referred to in paragraph 4 of your letter will not arise in this district so long as the District Magistrate continues to be empowered under section 9 (3) Criminal Procedure Code as Additional Sessions Judge.

The work of the Special Power Magistrate cannot be said to be heavy in this District, seeing that the average total number of cases is under 6 per annum or, with the District Magistrate's cases included, 10 per annum. While therefore it is possible to say that if necessary so far as Bhamo district is concerned the District Magistrate can take over the cases which would ordinarily be handed to a Special Power Magistrate for disposal, it should also be borne in mind that serious crime in the district is negligible. It is consequently dangerous to argue from the particular case of Bhamo to the general case for the abolition of Special Power Magistrates throughout the Province. My own view, speaking from my experience in Yamethun, is that it would create an impossible situation for the District Magistrate unless he were assisted by Additional District Magistrates. Nor has my experience shown that the Special Power Magistrates in their work generally compare unfavourably with Sessions Judges or District Magistrates. In my opinion the objects and reasons for the proposed Bill are unsupported by facts and the Bill should be strenuously opposed.

District Magistrate, Myitkyina.

In my view, if this Bill becomes law, the administration of Criminal justice in the more criminal districts of Burma will come to a complete standstill, even supposing the rather complicated instructions recently promulgated by the High Court on the subject of committal to Sessions are fully understood and obeyed. The present machinery of the Sessions Court is expensive, cumbersome, and greatly harasses witnesses. If this is so in Lower Burma

districts, where communications are good, the effect of the measure over a great part of Burma, where communications are bad, will be indescribable. The Bill, if passed into law, will certainly mean that Additional District Magistrates will be necessary in all districts and if these are appointed under Section 10, Criminal Procedure Code, it seems to me that they will merely become Special Power Magistrates under another name.

This district is not of course a typical one but I have examined the records from 1931 onwards. Of 79 cases tried in the years 1931 to 1935 under special powers, sentences were reduced on appeal in four cases only (*e.g.*, from 7 to 4 years R. I.), and in one other case the conviction was altered though the actual sentence passed was confirmed. To my mind, this proves conclusively that the work of Special Power Magistrates was of a high standard, and the percentage of interference was only such as is normally to be expected by a higher court in revision or appeal.

I assume it is realised that, as far as this district is concerned, extra work tending to keep the District Magistrate at headquarters and extra Sessions work, which also falls on the same individual, could not be done without detriment to the ordinary administration of the district.

In my opinion, the Bill should be strongly opposed.

Deputy Commissioner, Upper Chindwin.

I AM strongly against the proposal.

2. As directed by you, I submit a statement showing the number of Special Power Cases tried in this district during the past five years. From this it will be seen that the work of Special Power Magistrates has been quite satisfactory.

3. I submit also a statement showing the number of Special Power cases tried by the District Magistrate under his special powers. The District Magistrate here is also Additional Sessions Judge of the Frontier Division. The second statement submitted shows the number of Sessions Trials conducted by the District Magistrate in his capacity as Additional Sessions Judge. I regret that I am unable to give the results of these trials on appeal or in revision as the records are in your Court *qua* Sessions Judge, Frontier Division.

4. I have little to add to the strong reasons given in your letter under reply against the proposal to abolish Special Power Magistrates. It will be impossible to establish a case for the appointment of a separate Sessions Judge for this district. It may be possible to make out a case for the appointment of a separate Sessions Judge for the whole of the Sagaing Division.

5. It is possible that as a corollary to the present proposal the special powers of the District Magistrates in this province may be taken away. In that case the cost of committal proceedings in a district like this with long distances and poor communications will be prohibitive. On the score of additional cost alone I consider that the proposal to do away with Special Power Magistrates should be abandoned.

Statement showing number of Special Power Cases tried by the District Magistrate Upper Chindwin under Special Powers and the result of appeals, etc.

Year.	Number of Special Power cases tried.	Number of cases acquitted or discharged.	Number of cases convicted	Number of cases in which decisions were confirmed.	Number of conviction and/or sentences.		Remarks.
					Reversed on appeal or in revision.	Materially altered on appeal or in revision.	
1931	16	10	6	1	.	4	One case did not go up for appeal or for revision.
1932	9	.	3	2	1	.	
1933 .. .. .	..	.	..	..	..	..
1934 .. .. .	..	..	..	..	..	..
1935 .. .. .	..	..	..	..	..	..
1936	5	1	Four cases pending.
Total	30	17	9	3	1	4	

(Sessions trials conducted by District Magistrate in his capacity as Additional Sessions Judge.)

1931 .. .. .	..	..	..	..	..	..	9
1932 .. .. .	..	..	..	..	..	..	5
1933 .. .. .	..	..	..	..	..	..	10
1934 .. .. .	..	..	..	..	..	..	4
1936 .. .. .	..	..	..	..	..	..	9
Disposed of .. .. .	..	..	..	..	..	..	37 Sessions Trials.
1936 .. .. .	..	..	..	..	..	..	1 Pending.

N.B.—(The average number of Sessions Trials is 7 cases).

Statement showing the number of Special Power Cases and the result of appeals, before the Courts of Special Power Magistrate (including District Magistrates) in the Upper Chundwin District, for the last five years.

Year.	Number of Special Power cases tried.	Number of cases acquitted or discharged.	Number of cases convicted.	Number of cases in which decisions were confirmed	Number of convictions and/or sentences.		Remarks.
					Reserved on appeal or in revision.	Materially altered on appeal or in revision.	
1931	19	11	8	1	1	4	2 cases did not go up on appeal or for revision.
1932	14	6	8	5	1	..	2 do. do.
1933	23	9	14	5	1	3	5 do. do.
1934 .. .	27	9	18	5	6	4	3 do. do.
1935 . .	27	9	18	7	1	2	8 do. do.
Total	110	44	66	23	10	13	

- N.B.—Average number of Special Power Cases tried during the last five years is 22 only.

Commissioner, Tenasserim Division.

I HAVE the honour to submit copies of letters from the Deputy Commissioners, Toungoo, Thaton and Amherst Districts, who were consulted in the matter, and to say that I agree with the views expressed by them.

I have tried as District Magistrate many "special power" cases and have had occasion then and since to examine the Records in a very large number of such cases. It is in my opinion absurd to suggest that Magistrates, in the interests of prompt disposal, deal with such cases hurriedly and without "cool and calm consideration of the facts".

I am wholly opposed to the changes in the administration of the law proposed to be effected by the Bill under consideration.

Deputy Commissioner, Amherst District.

I HAVE the honour to say that the speeches of Mr. MacDougall and Mr. Leach in the Legislative Assembly clearly show that if the Bill were to be passed the initial and recurring expenses would be prohibitive. Moreover, no class would benefit by the proposed change except the lawyers.

Deputy Commissioner, Toungoo.

I AM opposed to the provisions of the Bill. Obviously if Section 30 of the Code of Criminal Procedure was repealed a very large number of Additional Sessions Judges would have to be appointed to cope with the extra work which would be thrown on the Sessions Courts and the Additional expenses and delay involved in the holding of preliminary committal proceedings would follow.

I do not know what conditions in Indian Provinces may be but in Burma where offences

under Section 326, I. P. C., which generally call for heavier sentences than a First Class Magistrate has power to inflict and cases under Section 376, I. P. C. and 395, I. P. C., are common, it appears to me extremely desirable on every ground that they should be dealt with, with as little delay as possible. As far as my experience goes the general standard of the work of Special Power Magistrates in Burma is reasonably good and there is generally speaking no less confidence in their decisions than in those of Sessions Courts. As far as I am aware there is no general feeling in this country that cases of the classes I have mentioned should be dealt with in the Courts of Sessions and not by Special Power Magistrates.

Deputy Commissioner, Thaton.

I ASSOCIATE myself entirely with the views expressed by Messrs. MacDougall and Leach in the Legislative Assembly, and am strongly opposed to the abolition of Special Power Magistrates in this Province.

If it were possible to ascertain the views of the public and of accused persons, as opposed to the views proposed on their behalf by members of the Bar, I should be extremely surprised if the verdict were not in favour of trial by Special Power Magistrates. The long and complicated procedure and the double trial in cases dealt with by Sessions Judges is not understood and, I think, disliked by the public.

Inspector-General of Police, Burma.

I CONSIDER the proposed amendments to Sections 30, 34, 34-A and 35 of the Code of Criminal Procedure, 1898, would be disastrous in this Province. The necessity for committal trials as well as Sessions cases for all offences where a

sentence of over two years' imprisonment is involved would greatly retard the speedy administration of criminal justice. This would be particularly emphasised in cases where a sentence of more than two years is necessary as regards Section 75 of the Indian Penal Code. I also cannot see that a Magistrate is likely to function any better because he is termed an Additional Sessions Judge rather than a Special Power Magistrate. After all it would simply involve posting the same Magistrates as Additional Sessions Judges instead of Special Power Magistrates. The only alleged advantage gained would be that they would be under the immediate orders of the Sessions Judge instead of the District Magistrate. I personally doubt if this would be of any advantage. Apart from these reasons the cost would be prohibitive. It is true that the number of Additional Sessions Judges would be approximately the same as the present number of Special Power Magistrates, but an equal number of Subordinate Magistrates would still be necessary to try the committal proceedings.

2. With reference to paragraph 2 of your letter under reference, it is impossible for me to give any estimate of the additional cost as far as the Police Department is concerned until I have the following figures :—

- (a) the number of new Additional Sessions Judges' Courts ;
- (b) the number of Special Power Magistrates' Courts abolished ; and .
- (c) the number of Subordinate Magistrates' Courts established to try the committal proceedings.

I should require these figures for each district separately. When these figures have been furnished to me I can then estimate the extra number of Court Prosecuting Sub-Inspectors, and Head Constables and Constables for Court Escorts which will be required. It would appear that it will be necessary to obtain these figures as regards the extra number of Courts involved from District Magistrates but it is possible that a rough estimate could be worked out from the figures for Special Power cases contained in the Annual Report for the Administration of criminal Justice after consultation with the High Court of Judicature.

Commissioner of Police, Rangoon.

I CAN see nothing at all in favour of the Bill and heaps against it.

As regards paragraph 2 I am not in a position to give figures as there are not I regret to say in Rangoon any Special Power Magistrates of the kind referred to.

Bar Library Association, Rangoon.

So far as Burma is concerned the proposed amendment of the Criminal Procedure Code is inexpedient and undesirable at the present juncture on the following grounds :—

- (1) That work of the Special Power Magistrates have been fairly satisfactory,

- (2) That the Sessions Courts will have much more work and more Sessions Judges or Additional Sessions Judges may have to be appointed,
- (3) That the appointment of Magistrates to be Sessions Judges or Additional Sessions Judges may have to be stopped and if not stopped it will have to be made of Magistrates who have not had the necessary experience of trying cases punishable with more than 2 years' rigorous imprisonment ; and neither alternative is desirable,
- (4) That there is not much substance in the objection that trial by Special Power Magistrates affects the right of the accused to be tried with assessors since the opinion of the assessors is not binding on the Court and it is overruled more often than not.

Bar Association, Mandalay.

BURMA has been a Governor's province for some time, and, therefore, there should not be any unequal treatment from other Governors' provinces. This Association support the Bill.

Rangoon Pleaders' Association.

My association is in favour of the proposed amendments to Sections 30, 34, 34-A and 35 of the Criminal Procedure Code and supports the Bill introduced for that purpose in the Legislative Assembly by Sardar Sant Singh.

My association is of opinion that whatever justification there might have been for the application of Sections 30 and 34 in Burma when this Province was a non-Regulation province such a justification does not exist at present.

The arguments put forward by the Hon'ble Members of the Government of Burma as well as the members of the Government of other provinces against the amendments, that the trials by the Special Powers Magistrates have proved very satisfactory and that if these Courts are abolished more Sessions Courts will have to be created, entailing additional expenditure.

My association differs from these arguments :

The High Court of Judicature was established at Rangoon in the year 1922 and Burma is no longer a backward and non-Regulation Province.

The trials by Special Powers Magistrates have not proved to be at all satisfactory as stated by the Hon'ble Members. They are not free from outward influence in dealing with cases before them.

My association is of opinion that, if extra expenditure is to be incurred by the establishment of Sessions Courts, it is in the interest of better administration of justice and should not be withheld. Large revenue is obtained from the Judicial Department and this extra expenditure, if any, could be easily met.

It is absurd to say that the trial by Special Power Magistrates is just as good as trial by Sessions Courts. If that was so, the Legislature would not have made special provisions in the Criminal Procedure Code.

Burma is no longer a non-Regulation Province and as the province has made great progress educationally and politically no necessity now exists for the retention of these Courts and they should be abolished.

My association fully supports Sardar Sant Singh's Bill to abolish the Courts of Special Power Magistrates.

Burma Chamber of Commerce.

THE Chamber is fully in accord with those Members of the Assembly who spoke against the Bill. In so far as the attack on Special Power Magistrates is not a purely political manoeuvre, it is a complaint against the quality of justice which they administer. Khan Bahadur Shaikh Khurshaid Muhammad and the Hon'ble Sir Henry Craik gave figures of successful appeals from the judgments of Special Power Magistrates as compared with the percentage of successful appeals from the judgments of Sessions Courts, which indicated very clearly that in respect of quality of justice, the Special Power Magistrates are at least up to the standard of the Sessions Judges. Mr. F. B. Leach, C.I.E., pointed out that if the object of the Bill were carried out, it would be necessary to promote a large number of the officers who are now Special Power Magistrates to be Additional Sessions Judges, and the only difference obtained would be the extra expense. If Sessions Courts did administer a markedly higher standard of justice than Special Power Magistrates, there might be some justification for the extra expenditure involved, but in the light of the statistics referred to above there is not even this argument in favour of the Bill.

The Hon'ble Sir Henry Craik furthermore gave figures which indicated that administration of justice by Special Power Magistrates is appreciably more expeditious than that by Sessions Judges. Mr. R. M. MacDougall, C.I.E., clearly demonstrated that the course proposed by the Bill would be extremely expensive.

It, therefore, appears to the Chamber that Special Power Magistrates administer an exceptionally high quality of justice very expeditiously and at considerably less cost than would be incurred were they abolished as proposed in Sardar Sant Singh's Bill. For this reason the Chamber is opposed to the Bill.

Burmese Chamber of Commerce.

THE Chamber is against the Bill. There should be Magistrates specially empowered under Section 30 of the Code of Criminal Procedure. Such Magistrates not only relieve Sessions Courts of much work but also get training and experience for appointment as Sessions Judges and Additional Sessions Judges. The objection is not so much to Magistrates being granted special powers at all as to executive officer such as Township Officers, Sub-Divisional

Officers and Deputy Commissioners being Magistrates with or without special powers.

There can be no serious objection if only Judicial Officers such as Sub-Divisional Judges are granted special powers to prepare them for appointment as Sessions Judges. There is not much substance in the objection that trial by Special Power Magistrates affects the right of the accused to be tried with assessors since the opinion of assessors is not binding on the Court and it is overruled more often than not.

It will not be expedient to do away with Special Power Magistrates for the following reasons :—

- (a) That the Sessions Courts will have much more work and more Sessions Judges or Additional Sessions Judges may have to be appointed, and
- (b) That appointment of Magistrates to be Sessions Judges or Additional Sessions Judges may have to be stopped and if not stopped it will have to be made of Magistrates who have not had the necessary experience of trying cases punishable with more than two years' rigorous imprisonment; and neither alternative is desirable.

The Chamber accordingly objects to the Bill and recommends that in future special powers be given only to Judicial Officers of approved service.

Burma Indian Chamber of Commerce.

I AM directed to say that my Committee accept the principle underlying the Bill.

Chinese Chamber of Commerce.

THIS Chamber is of opinion that the trial by Sessions Courts of the Sessions Cases which are now being tried by Magistrates empowered under Section 30, Cr. P. C., will involve much delay and expense.

This Chamber therefore suggests that the amendment be made in such a way as to prevent the operation of Section 30, Cr. P. C., only in all important towns and cities of the province just as is being done in Rangoon.

The proposed amendment if practicable is all that can be desired.

Rangoon Trades Association.

THIS Bill has been placed before the Members of this Association, who have gone very carefully into the same, and they have directed me to inform you that they are not in favour of this becoming Law, and are of the opinion that it should be strongly opposed.

Nattukkottain Chettyars' Association, Burma.

I AM directed by my Committee to say that they are not in favour of amending Sections 30, 31, 34-A and 35 of the Code of Criminal Procedure as proposed in the Bill, in view of the prohibitive cost it would entail this province.