Shri H. V. Kamath: (C. P. & Berar: General): May I suggest that for the word "after" which Mr. Santhanam suggests, the word "from" would be more appropriate? "After" is not correct.

The Honourable Shri K. Santhanam: "From" may mean that for the first six months he should be member and afterwards if he ceases to be member he may continue to be minister. That is the lacuna which we are trying to fill up.

Shri T. T. Krishnamachari : There is only one point I would like to mention in respect of Mr. Santhanam's amendment. His amendment is practically the same, except for a minor difference, namely, in a position where a person is a Minister who after having been elected duly and later on during four or five months after the original election some irregularity is found in the election and the election is set aside. Mr. Santhanam's amendment would not cover such a case. So I would suggest that we should err on the safe side and that the House should accept the amendment moved by me.

The Honourable Shri K. Santhanam: I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put No. 446. The question is :

"That in clause (5) of article 62, for the words 'who from the date of his appointment is, for a period of six consecutive months, not a member' the words 'who for any period of six consecutive months is not a member be substituted."

The amendment was adopted.

Article 147

Shri T. T. Krishnamachari: I move No. 447, which reads thus:

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws.' the words 'to which the executive power of the State extends' be substituted."

I have already explained the position while moving amendment No. 445 which the House was good enough to accept. This merely seeks to remedy the position so far as the Governor's powers of granting pardon are concerned.

Mr. President : The question is ;

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which' executive power of the State extends' be substituted."

The motion was adopted.

Article 175

Shri T. T. Krishnamachari : Sir, I move:

"That to article 175 the following proviso be added—

'Provided further that the Governor shall not assent to, but shall reserve for consideration of the President any Bill which in the opinion of the Governor would, if it law, to derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill'."

The reason why we have to bring in this amendment at this stage is this. An amendment had been tabled by Dr. Ambedkar—No. 3406 of Volume It of amendments to amendments—seeking to recast the 4th Schedule, which the House has now decided to drop. and therefore Dr. Ambedkar could not move it. In that amendment. in clause (7) provision had been made in regard to the substance of the proviso which I have now moved. If the 4th Schedule had been there, this amendment would not have been necessary. At the time we considered article 175 we were not quite sure whether the 4th Schedule will be a part of the Constitution or not. That is my explanation for bringing forward this amendment.

On the merits, the House will recognise that the High Courts happen to be, so far as appointment had jurisdiction and all that is concerned, a matter exclusively of Central competence. But there are matters in which the Provinces also can interfere and this proviso is intended to protect any hasty action by a province in regard to the powers of the High Court and it directs that the Governor should reserve such Bills for the assent of the President. The matter is by itself very simple and follows a principle accepted in the body of the Constitution. I think there can be no serious objection to this amendment.

Shri H. V. Kamath: Mr. President, I would request my Friend Mr. Krishnamachari to throw some light on an obscure aspect of the matter, obscure to me. I do not follow his argument when he says that some measures or Bills might be introduced which might endanger the position. First of all, of such Bills were going to be introduced would it not be ultra vires of the legislature at its very inception, *ab initio*? Will not the introduction of the Bill be prevented by the Constitution? Then again, I have some objection to the language used in the last portion of this amendment. It is very cumbrous. It could be simplified with advantage to all concerned. Instead of saying, "as to endanger the position ... and all that, will it not be enough to say so derogate from the powers of the High Court conferred upon it by (or under) the Constitution"? That would bring out the meaning of the article clearly. I do not see any necessity for this cumbrous verbiage towards the end of the amendment.

The Honourable Dr. B. R. Ambedkar : The clause moved by my Friend Mr. Krishnamachari is of old standing. It occurs in the Instrument of Instructions, issued to the Governor of the provinces under the Government of India Act. 1935.

Paragraph 17 of the Instrument of Instructions says:

"Without prejudice to the generality of his powers as to reservation of Bills, our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, *i.e.*

(b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act. designed to fulfil."

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unnecessary to have any such schedule containing instructions to the Governors of the States in Part 1, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Court are placed under the Centre as well as the Provinces. So far as the Organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Provinces have no power either to alter the organisation of the High Court or the territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be

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entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the Entries contained in List II, for instance, debt cancellation or any such matter, it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath: What about my suggestion to simplify the language?

The Honorable Dr. B. R. Ambedkar: I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath: All right : Do it later on.

Mr. President : I will now put it to vote.

The question is :

"That to article 175 the following proviso be added:

'Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would. if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill'."

The amendment was adopted.

Article 13

Mr. President : There is a previous amendment of which notice has been given—amendment No. 415.

Shri T. T. Krishnamachari : I do not propose to move it.

Sir, I move.

"That in clause (2) of article 13, after the word 'defamation' the word 'contempt of court' be inserted."

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a