

THE  
**COUNCIL OF STATE DEBATES**  
(Official Report)

VOLUME I

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**FIRST SESSION**  
OF THE  
**COUNCIL OF STATE, 1921**



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# COUNCIL OF STATE.

*Tuesday, 8th March, 1921.*

The Council met in the Council Chamber at Metcalfe House at Eleven of the Clock, with the Honourable the President in the Chair.

## QUESTIONS AND ANSWERS.

### RICE CONTROL PROFITS FOR BENEFIT OF CULTIVATORS.

194. The HONOURABLE MAUNG PO BYE: (a) Is it a fact that the Government of India agreed that the whole of the rice control profits derived last year should be placed at the disposal of the Local Government of Burma for expenditure for the benefit of the cultivators?

(b) If so, do the Government propose to inquire and see that the allotted sum of money is not spent on any other purposes than for the benefit of the cultivators?

(c) Do the Government propose to see that the whole cost of the proposed construction of railways at three sections, Pyinmana to Taungdwingyi, Alon to Saingbyin and Moulmein to Ye, may not be taken from the rice control profit allotment?

(d) If the answer to (c) be in the negative, do Government propose to see that the profit or income from these railway extensions be earmarked for the future benefit of the cultivators only to relieve them of indebtedness and for veterinary aid to the agricultural cattle?

The HONOURABLE MR. B. N. SARMA: (a) Yes.

(b), (c) and (d). The decision as to what schemes will benefit the cultivators is a matter which the Government of India are content to leave to the Local Government which has intimate knowledge of local conditions and opportunities of consulting local opinion. The expenditure will of course be subject to the sanction of the Government of India in cases where this sanction is required by financial or other rules.

### DEFLATION OF G. C. NOTES.

195. The HONOURABLE SIR MANECKJI DADABHOY: Will Government be pleased to state the total amount of G. C. Notes deflated during 1920-21?

The HONOURABLE MR. E. M. COOK: The total note circulation in 1920-21 had been contracted by 10 crores 70 lakhs up to the 15th February 1921.

### REVERSE COUNCIL BILLS.

196. The HONOURABLE SIR MANECKJI DADABHOY. (a) Will Government be pleased to state the total amount of Reverse Council Bills sold since 2nd February 1920, as also the incidental loss, if any, to this Government?

(b) Was any Reverse Council Bill paid out of the gold held in England in the Indian Paper Currency Reserve ?

(c) If so, what is the total of outgoings from the Indian Paper Currency Reserve on this account ?

(d) Was it ever intended that payments would be made out of the Indian Paper Currency Reserve for Reverse Council Bills ?

(e) If not, why this deviation from the principle on this occasion ?

(f) Has the partial depletion, if any, of the London section of the Indian Paper Currency Reserve been made up ?

(g) If so, how and to what extent ?

(h) If not, what is the Government's intention on the subject ?

The HONOURABLE MR. E. M. COOK : (a) The total amount of Reverse Councils sold since the 2nd February 1920 is £49,988,000. I am afraid I do not precisely understand what the Honourable Member means by 'incidental loss,' but if he means the difference between the market rates and the rate at which the Bills were sold, then the answer is that at the prevailing market rates at the time the above sum represented Rs. 2,82 lakhs more than was actually received. I must point out however that these calculations are based on the improbable assumptions, first that the sale of Reverse Councils had no effect on the market rates, and secondly, that if Reverse Councils had been sold at market rates, the latter would not have been affected thereby.

(b) No.

(c) This does not arise.

(d) Payments of Reverse Councils were made from the Home Treasury balances, but whenever these needed to be replenished, transfers were made from the Paper Currency Reserve to the Home Treasury against corresponding payments from Treasury to Paper Currency Reserve in India. The Paper Currency Reserve was used only as a channel of remittance, and the payments did not constitute a final charge on it.

(e) There was no deviation from past practice.

(f) The depletion in the London section was met as already explained by a corresponding increase in the Indian section.

(g) and (h). The value of securities withdrawn from the Paper Currency Reserve in England in aid of the Home Treasury balances between the beginning of February and the close of September 1920 was a little over £44 millions and the amount paid into the Currency Reserve in India was about 66½ crores including 32½ crores in Indian Treasury Bills. It is intended to reduce these Treasury Bill holdings gradually, and legal provision has been made to this effect in section 13(3) of the Indian Paper Currency (Amendment) Act XLV of 1920.

#### ADJUSTMENT OF WAR ACCOUNTS.

197. The HONOURABLE SIR MANECKJI DADABHOY : (a) Will Government be pleased to state if the War accounts between this Government and the Imperial Government have been adjusted and with what results ?

(b) Will information be supplied as to the balance due to this Government in January 1920, for expenditure incurred by them on account of the Home Government during the War ?

(c) Has any portion of this balance been liquidated ?

(d) If so, to what extent and in what manner ?

The HONOURABLE MR. E. M. COOK : The annual accounts of the Government of India are compiled according to the financial year ending 31st March and not according to the calendar year. The Government of India receive from the Home Government monthly advances against estimates of recoverable expenditure prepared by the Controller of War Accounts, and the Home Government have made final payment of all sums claimed in the War Accounts rendered by the Government of India up to the 31st March 1920, although certain items in these accounts are still under examination on the part of His Majesty's Government.

#### RUPEE STERLING EXCHANGE.

198. The HONOURABLE SIR MANECKJI DADABHOY : (a) Do Government hope to be able to steady the rupee sterling exchange at the adopted rate of 2s. to the rupee ?

(b) If so, when ?

(c) If not, what measures, if any, do Government propose to take to remove the present uncertainties of the rupee-sterling exchange ?

(d) Do Government intend to make a full statement on the whole question of the rupee-sterling exchange, with special reference to the future policy of Government ?

The HONOURABLE MR. E. M. COOK : I can only refer the Honourable Member to the Finance Member's remarks on this matter in his Budget speech.

#### CONFERENCE IN LONDON.

199. The HONOURABLE SAIYED RAZA ALI\* : (a) Is it true as announced by certain newspapers that a Mussalman gentleman has been sent to England by the Government of India in connection with the forthcoming Conference in London ?

(b) Will Government be pleased to state the nature of his mission and the scope of his authority ?

(c) Will he take part in the deliberations of the Conference or simply assist His Majesty's Ministers ?

(d) Have the Government of India sent him with specific instructions or will he be allowed to put forward his own views on questions coming up before the Conference ?

(e) Will Government be pleased to state whether representative Moslem bodies like the All-India Moslem League and the Khilafat Committee were consulted about the choice of the representative ?

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\*The Honourable Member was absent.

(j) Has the gentleman referred to gone to England as the representative of the Government of India or of the Indian Mussalmans and the Indian people?

The HONOURABLE SIR WILLIAM VINCENT: The attention of the Honourable Member is invited to the Honourable Member's speech in the Council of State on the 21st February.

(a) It is assumed that the gentleman referred to is Dr. Hasan Imam.

(b), (c), (d) and (f). He, His Highness the Aga Khan, Mr. Chotani and Dr. Ansari have proceeded to England to represent to His Majesty's Government the views not of the Government of India, but those of their own community on the Treaty of Sevres.

(e) No.

### DISTRIBUTION OF LEGISLATIVE ASSEMBLY LIST OF BUSINESS, ETC., TO MEMBERS OF THE COUNCIL OF STATE.

The HONOURABLE THE PRESIDENT: I have received a suggestion from one of the Honourable Members of this Council proposing that I should direct copies of the List of Business and Questions for meetings of the Legislative Assembly to be circulated to members of the Council of State for their information.

With reference to this, I should like to say, in the first place, that the distribution of papers of the Legislative Assembly is primarily a matter for the orders of the President of that Assembly, but that, if there were any general desire on the part of this Council for such a distribution, I should be prepared to approach him. I understand, however, that there are certain facilities and I will ask the Honourable the Secretary to inform the Council what those facilities now are.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, to meet the convenience of the Members of the Assembly who live at Raisina, I have taken steps to send copies of all Council Lists of Business, Bills, and so on to Raisina to be posted on the Boards of the various Hostels. That practice has been going on for some time. For the convenience of the Members of the Council of State, who live at Metcalfe House, I am taking steps to have notices similarly posted in two places in Metcalfe House so that they may readily obtain Lists of Business and copies of Bills that are to be taken up in the Assembly. In addition to that, any Member of the Council of State who happens to be at the Secretariat will always be able to obtain a copy of Assembly Notices from the Notice Room adjoining the Assembly Chamber.

The HONOURABLE THE PRESIDENT: If Honourable Members, after considering the remarks of the Honourable Mr. Moncrieff Smith, desire to proceed further in the matter, I shall be happy to entertain and consider any suggestions if made to me in writing or outside this Council.

## RESOLUTION *RE* RELEASE OF PRISONERS SENTENCED BY MARTIAL LAW COURTS.

The HONOURABLE SARDAR JOGENDRA SINGH : Sir, in moving the Resolution which stands in my name, *viz.* :—

‘ This Council recommends to the Governor General in Council that the persons detained in India without trial and those imprisoned under the sentences passed by Martial Law Courts be released or, failing that, be given an opportunity of proving their innocence in regular Courts ’.

I do not wish to awaken any dying controversies but to put them to sleep by inviting the Government of India to do the last and the final act of justice and mercy. We, who have heard the moving words of His Royal Highness the Duke of Connaught and the statement made on behalf of the Government of India, know that His Majesty the King-Emperor has heard of our wrongs, and that the Government of India has discovered its mistake. And now what is likely to humiliate our Government is no less humiliating for us.

In inviting the Government of India to release the remaining prisoners detained under Acts which the Government of India is appointing a Committee to repeal, I am only asking that all those who have not been given a chance of proving their innocence be released. I must, however, acknowledge the very careful consideration which His Excellency the Viceroy and his Government have always given to any proposals placed before them. If His Excellency had permitted me to publish the long interview he gave me over the Punjab affair, he would have escaped much of the cruel criticism to which he has been subjected. I found Sir Edward Maclagan no less anxious to help. Indeed, he told me to bring any hard cases that came to me to him. The kind consideration he gave to all the cases and his unfailing courtesy and patient courage in spite of many difficulties have won for him the confidence and the respect of the people. From my long experience of the Government of India, dating back to the days of the late Melabari, I am glad to say I have never known a good cause fail. It is not, therefore, to embarrass the Government that I am moving the Resolution, but to lead the Government to paths of justice which won for it the confidence of the world. The Government have admitted that some men who were detained were wrongly detained. Some of the influential and powerful men who were then apprehended are now occupying positions of responsibility and trust. Why, then, should the poor men be still under detention? My Honourable friend Sir William Vincent will soon tell us that their cases have been carefully scrutinised and some of them revised by two Judges. I do not for a moment doubt that the evidence as it stands has been carefully considered, but my submission is, and I am sure Sir William Vincent from his long experience of judicial work in India will admit, that prosecution evidence is of little value generally. Do you not agree with me Sir William?

The HONOURABLE SIR WILLIAM VINCENT : If I may say so, I certainly do not agree.

The HONOURABLE SARDAR JOGENDRA SINGH : In a great many cases where prosecution evidence seems altogether complete and without a single flaw it fails altogether in ordinary Courts every day. Take the case of Mr. Labh Singh, Barrister-at-Law. The Martial Law Court

[ Sardar Jogendra Singh. ]

held that he was against the disorder and helped the Government and yet he was given a long sentence. Mr. Labh Singh was released and is now the President of the Gujranwala Municipal Board. Rai Bahadur Ganga Rama told me of a poor man from the United Provinces whose master sent him to get a pair of eye-glasses mended and who happened to be in the crowd when it was fired upon, and received a pellet which was considered sufficient evidence of his being party to waging war against His Majesty's Government. I am not going to weary the Council by further details which can be easily traced in the Hunter and the Congress Committee Reports. As for some of the political prisoners and the Sikh prisoners specially, I am bound to say that some of them are detained for expressing opinions which are now expressed everywhere. At one time the merest mention of Swaraj was sedition, and to-day His Royal Highness the Duke of Connaught spoke of Swaraj as the goal of responsible government. I ask this Council is it fair to detain these men ?

I may mention the case of Sikhs concerned in 'Komagatu Maru'. Some of our men went to settle down in Canada. They were told that if they reached there without breaking journey, they would be allowed to settle down there. These men mortgaged their properties and set sail and were not allowed to land. They had spent all that they had and were naturally discontented.

I approached, not the Honourable the Home Member, but Sir Charles Cleveland who was Head of the Intelligence Department and asked him to let some of us go and rescue these men and bring them home. We wanted to know why they were not allowed to settle down in the British Empire for which their kith and kin laid down their lives. No arrangements were made and the result was that things happened in Calcutta which led to the imprisonment of some and the apprehension of others. The Sikhs feel deeply that some of those prisoners have not been released, and I very earnestly ask the Honourable the Home Member to consider the question of Sikh prisoners and release them.

I will come to the point directly. It used to be said that under British rule the tiger and the goat drank from the same fountain ; to-day judgment of common opinion on the question is cynical. Sir William Vincent will perhaps rise and defend what has been done. I appeal to him to defend justice, rough justice, yes, but justice. Nothing has done more harm in the Punjab than the attempt at camouflage that followed ; and in this way the fair name of the Province won in many a battlefield under the British flag was besmirched to cover errors of judgment. People in the village understand justice and clemency, and they know the facts ; when justice miscarries they say it has been miscarried and their verdict is final. Popular opinion holds many a man now in jail wholly innocent. I have rarely in my long experience found this judgment wrong.

A belief is abroad that men of influence have been released, while the cause of the weak and the poor has found little sympathy. The moving words of His Royal Highness are ringing in our ears, the Government has been largely Indianised, the dawn of a new era is on its wing calling for clemency and British justice, holding every man innocent till the contrary is proved in an open Court of law. That is why I appeal to you to recommend to the Government the release of prisoners who have not been given the chance ; and failing



that, permit them to have their innocence proved. I have no doubt that the Resolution will be whole-heartedly supported by this Council, particularly by my European Colleagues, for on them rests the greater responsibility to uphold and vindicate British justice and British honour and thus strengthen the links of partnership.

**THE HONOURABLE COLONEL SIR UMAR HAYAT KHAN :** After having served along with the Sikh troops, I consider them the best comrades-in-arms, and one cannot help admiring them.

I think a large number of Sikhs as well as others in jails were only accomplices of some of the arch leaders who since have been set free.

Like other religions, a Sikh can be a saint as well as a criminal ; thus some discrimination is necessary. These men who are detained in jails, whatever religion they may profess, I think, should be divided into classes.

To allow the desperadoes to ravage the peace-loving subjects would be to allow the wolf to play havoc among the sheep, as it is said in Persian that to do good to the wicked is equal to doing bad to the good. It is for this that I would suggest they should be divided into four classes.

1. The least offenders might be pardoned altogether.
2. Another class, next to it, might be allowed to leave jail, but their movements should be restricted till they prove that they are not harmful, and on the understanding that if they do mischief they will have to undergo their previous sentences.

3. Those of a more objectionable nature should be kept under heavy securities to be given by more than one surety, say for three years.

4. I think the most serious offenders should be kept in jail.

With these reservations I support the Resolution, but I do not altogether agree with the remarks that things were camouflaged and magnified. If it has been so, it is the other way about.

I offer my support on the score of clemency alone and not on account of innocence as many mistakes equally occur in the ordinary law Courts where sometimes the guilty escape and the innocent suffer.

**THE HONOURABLE DIWAN BAHADUR RAMABHADRA NAIDU :** Sir, every one of us is well aware that His Imperial Majesty the King Emperor wants to govern India through his officials with sympathy and justice. Of this fact we have been reassured by His Royal Highness the Duke of Connaught ; and also that it is the intention of our Sovereign to rule India not by force and not by terrorism.

No doubt the art of governing so wide a country as India, abounding with millions of population, is a difficult task. It is only known to those who actually govern it. The task is all the more great when unrest prevails. The success of a British statesman in governing India is due to his ability to adapt himself to the needs of the times. It is a wise thing to understand the present situation and the temperament of the people. Already the non-co-operationists are gaining strength day by day. They are out of control of the educated people. The rural population are being captured by their teachings. May I venture to appeal to the Government that they should accept the Resolution and thereby catch the imagination of the people earlier and forestall the non-co-operationists? The sooner the Government

[ Diwan Bahadur Ramabhadra Naidu. ]

do it the better. Belated action on the part of the Government, however, well intentioned it may be, will have no desired effect. With the inauguration of the Reforms, let us begin with a clean slate, when we find now that 'co-operation and good-will' is the theme of every speaker.

The HONOURABLE SIR WILLIAM VINCENT: Sir, I want to begin by referring to one or two remarks which fell from the Honourable Mover. He said that the Government had on a previous occasion admitted its mistakes in relation to the Punjab disorders. I think that if my remarks are to be cited, it is only fair that they should be cited in full. What I did say—I am speaking from memory—in the discussion on the Punjab disorders was that it was necessary for both parties to be perfectly candid and admit that reprehensible acts had been committed on both sides. I never suggested at all, as was put by the Honourable Member, that the Government alone was to blame.

The Honourable Member then went on to say that in the same discussion I had admitted that certain persons had been wrongly arrested and detained. I did. But what was the reference to? I referred to certain persons who were arrested during the martial law disorders, detained in custody for a certain time, and were released after detention without trial. None of those persons are in custody at the moment. This Resolution does not therefore apply, directly or indirectly, to any one of those persons. It is, in these circumstances, I think, a little unfair to cite that admission as affecting the present debate.

The Honourable Member went on to say that the injustice done to many persons under confinement has been admitted in the Hunter Report. I have read that Report—for my sins I have had to do so very frequently, and I am unaware of any admission of that kind, any statement of that nature regarding any person convicted by the Courts. Another statement of the Honourable Member was that men are in jail at the present moment merely for desiring to attain Swaraj. There is no person that comes within the category of those mentioned in this Resolution under confinement for any such thing, and I defy the Honourable Member at this moment to give me any single case of that kind which comes within the scope of this Resolution. I put to him now, and I should like to pause, if I may, for one moment for a reply. Otherwise, I will deal with it later . . . .

The HONOURABLE THE PRESIDENT: I think the Honourable Member would be well advised to deal with it later.

The HONOURABLE SIR WILLIAM VINCENT: Perhaps you are right, Sir.

The Komagata Maru affair was again referred to. Now, this was a matter into which I personally inquired very fully at the time. The position was that when these men were detained in the Punjab they had been guilty—on provocation or no provocation, I did not go into the merits—of shooting down a number of people in Calcutta. In any case, this again is a matter entirely outside the scope of this Resolution. In fact these statements are purely attempts to prejudice this Council in favour of this Resolution which deals with a different subject. There is not one of these men in jail at present or under detention, unless he has been convicted for some later offence. There were a

certain number of trials at that time for sedition. Honourable Members will remember that there was about that period a definite conspiracy in the Punjab to cause a revolution during the war, and I believe—and I am assured by my Honourable Colleague who sits by my side—that at that time the efforts of Government to suppress this revolutionary movement during the war had the full support of public opinion in the Punjab.

Now, let me turn to the subject-matter of the Resolution. I have hitherto merely attempted to divest this Resolution of all these side issues which are really not concerned with it—these attempts to make out that men are in jail for the Komagata Maru affair, that men are in jail under the martial law régime, for wanting Śwāraj and so on. I say that that these are absolute misstatements of the facts. What are the facts about the martial law courts? and what persons are now under detention without trial at all? I refer again for one moment to the wording of the Resolution. It begins by a reference to: 'persons detained in India without trial'. Now, if I tell this Council that there are three persons only detained without trial in the whole of India, will that satisfy them? Three persons, two men arrested for conspiracy in the North-West Frontier Province, whose cases are now under consideration by the Foreign and Political Department, and one Arab about whom I am afraid the Home Department have little or no information, and with whom this Resolution is not concerned. So that, so far as the release of persons detained without trial is concerned, the answer is very simple—there are none except those three that I have mentioned at any rate. That is my information.

Now let me come to the persons who were convicted. The Honourable Member has cited a certain number of cases in which he said men were wrongly convicted. I do not know whether that is so or not. But I do know that the Government made every effort to secure the immediate release of any person about whose case there was any possible doubt. And when I cite the figures to this Council, I believe that I shall be able to satisfy them that this is so. Now the facts are as follows:—There were 1,779—I hope Honourable Members will note these figures which are important—persons convicted in connection with the disturbances in the Punjab last year. I believe that approximately 1,700 have now been released, some on expiry of reduced sentences, some on remission or pardon. The real point however is that there are 86 persons only now in jail for offences connected with the Punjab disorders. We did everything we could at the time of the King's Amnesty, and from the date on which disorder ceased, we have unceasingly endeavoured to give full weight both to the Amnesty proclaimed by the King and to every political consideration for the exercise of clemency. I say further that there is no person who can be alleged to have been convicted of what can be fairly called a political offence now under detention unless you call murder and similar crimes political offences. Of these 86, I may add that originally all but 4 were sentenced to death or transportation for life, and the sentences have been very largely reduced. The Honourable Member said that these men did not have proper trials and that no steps were taken to sift the evidence. Of these 86 men now in jail, the cases of 72 were reviewed by two Judges, one being an Indian Judge from another Province, and both, I may say, Judges of the High Court. I will show later what their report on these cases was. As a matter of fact, of these 86 men 6 were not tried at all by martial law commissioners at all, but by tribunals of another character. Further, from time to time, since the disorders were suppressed the Government of India have been in communication with the Local Government on this subject, as

[ Sir William Vincent. ]

to whether it would be safe to release any more of these prisoners, and the opinion has been expressed that in present conditions this would be unsafe, and when I recite the offences for which these men have been convicted, I believe this Council will agree with that opinion. Far from saying that these men were not properly tried, what did the Hunter Committee say ? They said :

‘ It is not within the scope of the inquiry with which we have been entrusted for us to consider individually the different cases presented to the tribunals. Without however expressing any opinion whether, in any particular case, a right or wrong conclusion was reached.’

That alone contradicts the statement made by the Honourable ‘Mover that the Committee expressed the view that men were wrongly convicted.

‘ Without however expressing an opinion . . . . we desire to make one or two general remarks upon points arising in connection with the institution and working of these Courts. The substitution of tribunals, similar to those under the Defence of India Act, for courts-martial ensured that cases would be tried more in consonance with the rules prevailing in civil Courts than would otherwise have been the case. A copy of the rules dealing with the preliminary stages of a trial before the Commission and with the procedure to be followed at the actual trial was submitted to us. The trials seem to have been correctly described to us as lengthy, detailed and careful.”

That is their verdict on it.

When we come to the remarks of the reviewing Judges, they also said that the Judges of these Courts were entitled to great consideration—I think those were the words, and, having regard to the fact that these tribunals were in most cases presided over by a High Court Judge, I think the remarks were justified.

We were, however, very anxious that all these cases should be carefully investigated, and we appointed two Judges to review them and I want to cite their remarks on some of these cases. We have examined them ourselves repeatedly. Here is one case, Harnam Singh’s. This man was concerned in the attempt to murder Mr. Wale. I do not know whether Honourable Members are sufficiently familiar with the details of this unfortunate case. What did the Judges say ?

‘ We consider the guilt of the convict proved beyond all doubt . . . . We have no recommendation to make.’

Here is another case—a very sad case. I do not want to dwell on it, but every one’s heart must have been moved by the National Bank murder, one of the saddest in the whole of this unfortunate event.

‘ We have examined the whole case carefully and are of opinion that the evidence is sufficient to warrant the conviction in the case of all of the convicts with the exception of one man.’

That one man has since been released. Here is a case of an attack on an unfortunate woman—a Mrs. Eason.

‘ We have considered the case of all the convicts. As regards Muhammad Akram, we consider that there is ample evidence to prove that he took an active part in the offence and that his own version is quite false. As regards the other convicts also we consider that their guilt is fully proved by the evidence, with the exception of Muhammad Sadiq.’

Muhammad Sadiq has been of course released. Here is another case of the murder of a man named Robinson.

'We are satisfied that there is ample proof that Kanhya took part in beating guard Robinson to death. We see no reason to doubt the evidence of eye-witnesses, and we consider that the case is fully proved against Kanhya.'

Now I should like to go on and show what all these men were convicted of, but time will not admit. I may say, however, that there is no man now in jail who has not been convicted of some grave offence. It is no question of minor offences, cutting telegraph wires or anything of that kind. These men have all been convicted of very serious and grave offences of which I can detail a good many in this Council, if I may, because I am anxious that Honourable Members should understand that the Government have only detained in custody those men whose release would be dangerous to society. The first is the Kasur case, that case everyone probably remembers in which a train was attacked. Two unfortunate men were murdered. I think they were warrant officers. This was one of the cases which the authors of the Congress report said was the worst case they had come across. Then you have a railway derailment case—a very serious matter, derailing a train; I forget whether it was in this case or another that it resulted in the death of several innocent persons. Surely that is a very serious offence. The third case is the Hafizabad case. There is also the Nizamabad case. Then you come to this National Bank case, and the Alliance Bank case. Now everyone knows what those cases were—they were cases of murder, dacoity, arson and looting. Then you have this case to which I have already referred, the attempt to murder Mr. Wale; the attack on Mrs. Easdon, Guard Robinson's murder and the burning of a railway station and so on.

The actual position is this, that we have carefully examined these cases. We have released persons convicted in any case in which the offence could be described as of a minor character. We have only detained in jail those men who were guilty of serious offences, such as murder, arson, dacoity and wrecking of railway trains with resulting injury to human life and property. Those are the only men who have been kept in jail at present. I see that in the motion of the Honourable Member he has contended or rather suggested that there might be a retrial of these cases. He has not referred to that in his speech, and I think every Member of this Council will admit that it is really an impossibility that such a course would be, in point of fact, a legal impossibility. The men have been tried and cannot be tried again: there is an end of it, and even if such a course were legal, it would be impossible after the lapse of so much time to secure any kind of evidence, and any new trial would mean the re-awakening of bitter feelings and unrest throughout the Province to an extent which nobody could desire. As to a further review of the cases, they have already been reviewed by two Judges, and I am not willing to cast any slur upon their work by getting the same work done again, knowing that they are both Judges of eminence and very just and impartial officers. We are left therefore with the question of release.

Now, if there is one person, I suppose, who would be anxious to exercise clemency, if it were possible, it is His Excellency Sir Edward Maclagan.

Those who have any acquaintance with his administration in the Punjab, those who are intimately acquainted with him as I am, know how anxious he has been always to exercise the utmost clemency in all the cases, and it is not

[ Sir William Vincent. ]

without reason that he says that he cannot agree to release the men now with due regard to public safety. Honourable Members of this Council are aware of the state of unrest that prevails in the Punjab and of the dangerous and anxious time through which the officials and non-officials of that Province are passing. Dangerous elements are now abroad in parts of the Province working up disorder to a serious, and, in my opinion, a dangerous, degree—so dangerous is the position that I have myself, on the invitation of His Excellency Sir Edward Maclagan, thought it necessary in the past month to proceed twice to Lahore to discuss the situation with him, and I am satisfied that it would be unsafe, in the public interests at this moment, to add to any of those elements of disorder. We have released all prisoners that it is safe to release ; we have gone to the verge of safety ; only these 86 men are left in jail, all of whom are convicted of the gravest offences. Is this Council going to take the responsibility of advising the Government of India to let loose men of this character—desperate criminals who have been tried and convicted of grave offences—upon the community at large at this juncture ?

Turning now to a large number of men who have been released under the Amnesty, has their conduct been such as entirely to justify us ? Have we been treated with any consideration by many of them ? What have many done ? They have concentrated attacks on Government. Many of them are engaged in promoting serious disaffection and disorder. I am not in the least afraid of naming some of them. I will say that two men who were interned and were released at the Amnesty, Muhammad Ali and Shaukat Ali, have never done anything but preach disaffection against the Government ever since they were released ; that they have done their best to stir up disorder and almost revolution. In these circumstances, are you going to ask the Government, which has already proceeded far—too far as many think and possibly not without reason—at a moment of the gravest danger to proceed further and release a large number of dangerous criminals ? I hope not.

I want now to go back for one minute, before I finish my speech, to a question of general principle. I refer to these perpetual applications that are made to us to release prisoners of certain classes for no reason sometimes. Any appeal for clemency naturally finds sympathy among a charitable people. But what is the result ? It is this, that directly any man is sentenced, he says,—it does not matter to me, “I know quite well that within six months I shall be released”, and the deterrent effect of punishment is lost. Take, for instance, the Katarpur case. 30 Muhammadans killed, some roasted alive, and a charitable individual, a Member of this Council, I think, gave notice of a Resolution that all these poor persons convicted in that case should be released. In the present case you have in this case men who were murdered, unoffending people, not only Europeans, but both Indians and Europeans. You have men who were guilty of causing death to harmless and inoffensive men and of injuring women, and we are asked to release them. I maintain that this is an unsound principle of administration, and I will go a great deal further ; I will say that many of the unfortunate murderers and criminals who are kept in the Andamans and in jail year after year for ordinary offences are far more deserving of sympathy than these particular people. Think of the many who, to protect their honour, commit some crime of violence. It happens every day. They are sent either to the Andamans or to jail and there is never a word said for them. Think of the men driven to crime by poverty,

by the oppression of the money lender ; I never hear of applications for their release, and I say that these men for whom the Honourable Mover asks for clemency, convicted in these so-called political cases which are not political cases at all are much less deserving of the sympathy of this Council than any of those who receive none.

Now, having regard to the points which I have placed before the Council, namely, 1,700 of these men have already been released and that we have now under detention only those men whom we believe to be really dangerous, men who have been convicted of serious crime ; having regard to the fact that His Excellency Sir Edward Maclagan—a Governor whose mind is always attuned to mercy—is averse to this action, and having regard to the fact that the condition of the Punjab is now such that it would in my judgment, and, I believe, in the judgment of the Local Government, be unsafe to release these desperate criminals at this moment, I ask this Council to reject this Resolution. I am quite prepared, however, if the Honourable Member puts before me any individual cases which for good reason he thinks deserve re-examination or re-consideration, to go into them ; but I ask the Council at this moment not to embarrass the whole of the administration by calling upon Government to release wholesale a lot of criminals upon the Province at this dangerous juncture.

The HONOURABLE LALA SUKHBIR SINHA : Sir, I had no intention of speaking on this subject to-day, but as the Honourable Sir William Vincent has referred to my Resolution about the Katarpur prisoners, I think I should say something on this Resolution.

Of course, I agree with him that the men in the Punjab were tried by Court-martial and the Katarpur case was tried by a Court under the Defence of India Act ; but is there any guarantee that all these prisoners, who were tried, were guilty ? Does not my Honourable friend Sir William Vincent know the proceedings of these Criminal Courts, and does he not know that these cases were tried at a time of excitement when little evidence was forthcoming in defence of those who were accused and convicted ? I know that in the Katarpur case many prisoners could not find evidence on account of police *zabburdusti*. They tried to get evidence from here and there, but were not able to produce it before the Court. Have we any guarantee that all the prisoners who were convicted—of whom 135 were sent to jail and 4 hanged—were really guilty. Of course I admit that the offence was very grave, and many Muhammadans were burnt and killed, but is there any proof that all those who were accused and convicted were in reality the culprits ? I admit that some of them were so, but not all of them. Four of them have been hanged and many of those who were sent to jail are innocent Sadhus, Mahatmas and Pandits who never committed any crime in their lives. Anyhow, they were accused and brought before the Court by the police.

As regards the Punjab, everybody knows that the people who were accused were tried and convicted at a time of excitement, and therefore if Government shows mercy to them, at this time when we are introducing reforms all over the country, I think it will be an act of justice, and the Government of India will be well advised to release all those men who have been in jail for a long time. Whether they have been there for a few years or for a few months, they have been in jail and they will not forget what they have done, if they have done anything at all.

The HONOURABLE MR. SHAFI: Sir, I had no desire to intervene in this debate, but in view of what the Honourable Lala Sukhbir Sinha has just said, it is necessary for me to inform the Council of what actually took place in connection with the Katarpur appeals to His Excellency. As the Council may be aware, ordinarily appeals for mercy made to His Excellency are disposed of in the Home Department.

But in this case, that is to say, the Katarpur case, my Honourable friend Sir William Vincent himself proposed that the records be examined, not by the Home Member alone, but by the Law Member and another Member of the Council. His Excellency was pleased, therefore, in view perhaps of the somewhat long experience I have had at the Bar, to choose me as the third Member. Three of us—the Honourable the Law Member, the Honourable Sir William Vincent and myself—carefully went into the case of every single one of the prisoners convicted in the Katarpur case; and if Honourable Members were to see those records, they will find that in several of the cases we actually reduced sentences materially. I can assure the Council that there was not a single case in which there was even a slight difference of opinion between us where some remission was not made. In the remaining cases all three of us were unanimously of opinion that there was no ground whatever for the Government of India to interfere in the judgment of the special tribunal, appeal against which had also been rejected by the Local Government. And so far as the Punjab cases are concerned, in addition to the fact already mentioned by the Honourable Sir William Vincent, that is to say, that the cases of these particular individuals who are now in custody were carefully examined by two Judges of the High Court, one from Bihar and one from the Punjab, I can assure Honourable Members of this Council that many of the really serious cases—of the big cases—were gone into by the whole of the Executive Council.

The HONOURABLE THE PRESIDENT: Before any other Honourable Member speaks I should like to say that the Honourable Sir William Vincent introduced the Katarpur case as a side issue in his speech and I allowed the Honourable Lala Sukhbir Sinha to deal with it in his remarks as it seemed only fair he should be allowed to comment on what had been said. I put it to the Council, however, that the case is really not relevant to the Resolution before us, and I trust that future speakers will abstain from dealing with the matter.

The HONOURABLE MR. SETHNA: Sir, the Resolution as worded had enlisted the sympathy of Honourable Members of this Council, but I must confess that the explanation given by the Honourable the Home Member has perhaps taken the sting out of it. Reading the Resolution as it stands, one would think that the number of prisoners detained without trial was very large. From the speech however of the Honourable Sir William Vincent, it is clear that there are only three such prisoners, one of whom is not an Indian subject. In regard to the other prisoners tried by martial law Courts one would naturally conclude, again from the wording of the Resolution, that they were all political prisoners. But from what the Honourable the Home Member has said not one of them is in jail for political offences, but they are there for such offences as murder, arson, dacoity and train wrecking.

The Honourable Sir William Vincent took exception to some of the remarks made by the Honourable the Mover which he cited from his



speech made in another place. Whatever that may be from the speeches made by Sir William in another place within the last few days, it is evident to this Council and to the Legislative Assembly that it is indeed the intention of Government to respect Indian public opinion as best they can, and I do not think in a matter like this that Government can view public sentiment in the manner in which they do, with safety.

From the facts which the Honourable the Home Member has placed before us, we learn that there are 86 persons in prison at present whose offences are what he has enumerated. I do not think that the Honourable the Mover could urge that those persons who are responsible, namely, the particular cases Sir William referred to, Hernam Singh and others responsible for the death of so many innocent persons, should be released or that they be given a fresh trial. If, on the other hand, the Honourable Mover can satisfy us that in his opinion the persons who have been sent to jail are not the actual culprits, but are innocent people suffering for the misdeeds of others who have escaped scot-free, the case will be different. Sir William has given us the history of half a dozen men out of the total of 86 who are still in prison and who deserve no sympathy. It would appear from his remarks that the other cases are just as bad.

Sir, we who sympathise with the object of this Resolution will feel thankful to the Honourable the Mover if he can show us that amongst these cases quoted by the Honourable Sir William Vincent there are, in the opinion of the general public, persons who are innocent; and also if he can satisfy us that out of the 86 cases mentioned, there are any persons who have been convicted for offences other than murder, arson, dacoity and train wrecking. If he does so, he will elicit more sympathy and support but if otherwise, as the Honourable the Home Member has put it, we will be letting loose on society elements of disorder and disturbance, particularly dangerous at a time like the present.

The HONOURABLE RAJA SIR HARNAM SINGH: Sir, the detention of persons without trial and the imprisonment of people under the sentences passed by the Martial Law Courts have aroused a good deal of feeling in this country. It is not impossible that there may be some innocent men among those detained without trial who are now suffering the humiliation and inconveniences of loss of liberty which they did not deserve, when no opportunity was given them to prove their innocence. The Martial Law Courts dealt with cases in a summary way, and they have not the same confidence of the people as the regular British Courts have. I do not in the least insinuate that the Judges of the Martial Law Courts were consciously unfair or led by any other motive than the desire to do justice. But the atmosphere at the time was charged with excitement, and the procedure of the Martial Law Courts could not be so elaborately judicial as that of the regular Courts. All punishments are futile when the sentences are not accepted as just by the guilty. On the other hand, they produce resentment and hostility. The Resolution, therefore, has my sincere sympathy. One of the greatest blessings of the British rule in India has been the unimpeachable justice of the British Indian Law Courts. I do not like to see the worst criminal deprived of the benefit of British justice, but I strongly deprecate the idea of raking up the memory of the unhappy incidents of the Punjab disturbances. I would, therefore, plead for mercy, where mercy can be shown, consistently with safety. I do not however want to embarrass the Government. It is after

[ Raja Sir Harnam Singh. ]

all they who are responsible for peace and order in the country, and I should leave the matter entirely to them. But the excellent spirit the Government have shown in the debate in the Legislative Assembly on the Punjab disturbances leads me to hope that they will not fail to show clemency wherever it is consistent with peace and order, in this new era of goodwill.

The HONOURABLE SARDAR JOGENDRA SINGH: Sir, the Honourable  
12 P.M. the Home Member has spoken with his usual finality. It

reminds me of a story that I was reading in Mrs. Asquith's Biography the other day. She went to a French school which was kept by Mlle. de Mennecey, and whenever the girls approached her, she used to say: 'I do not want to discuss things'. One of the girls spilt some ink, and Mrs. Asquith met this girl and asked her: 'Why did you not complain to madame' and the girl replied 'She never listens'. Mlle. de Mennecey was never wrong. Now, I think this habit, which somehow overtakes any one who becomes a Member of the Government of India, this belief in official infallibility is responsible for shaping the policy of the Government which results in a great many mistakes, not only outside but also inside this House itself. You cannot be infallible. Sir William Vincent has told us that they have acted on evidence. I have got all the evidence. I have seen all the papers they have put forward. I do not for a moment doubt it that the Government of India has been very anxious to do these things rightly. But the question is whether the evidence which is before the Government of India is the right evidence on which the Government of India can base its conclusions. This policy of not taking outside opinion into consideration is affecting us in many ways. For instance, I was reading the other day a telegram saying that the Persian Government was making an alliance with Bolsheviks. Well, why should the Persian Government make an alliance with Bolsheviks, when there are the Government of India and the British Government to make an alliance with? It means that our policy has created mischief. This policy is based on their own opinions and does not take into consideration the opinions that exist outside. What you need is a wider view in coming to conclusions and to ascertain what public opinion on a certain question is. I did not move this Resolution merely for the purpose of moving a Resolution. I based it on public opinion as it existed in the Punjab and in the other Provinces. I knew that people were talking about prisoners not being properly tried and convicted. And that is why I come to the Government of India, and why I ask this Council to take into consideration this popular opinion and meet it. Why should you not meet it? It is an opinion asking for justice. Sir William Vincent says that special tribunals have examined these offences. But these are not tribunals which the Government of India created for ordinary times. These tribunals that have examined these offences were created for a special purpose. Sir William Vincent has told us that out of 1,700 cases that have been convicted by these tribunals, only 86 persons are now in jail. For my part, even if a single innocent man is detained in jail, I think this Council is justified in coming to the Government now and saying: 'Release him.'

There is one more point that I wish to draw attention to. I think it is unfair that the good name of the Punjab should be brought under discussion on all occasions. It is said that the Punjab was on the verge of revolution last year . . . .

The HONOURABLE THE PRESIDENT: Order, order. The Honourable Member must resume his seat. I merely wish to say that we are anxious to hear his arguments to the full. But owing to the accoustic properties of this Chamber, it is absolutely impossible for me to hear him and I am sure it is equally impossible for Honourable Members on this side of the House (further away from the Honourable Member) also unless the Honourable Member keeps his voice up.

The HONOURABLE SARDAR JOGENDRA SINGH: Thank you, Sir. I will keep it up. Sir William Vincent has remarked, and it has been remarked before that Punjab last year was on the verge of a revolution . . . .

The HONOURABLE SIR WILLIAM VINCENT: May I rise to a point of order, Sir? I never said anything of the kind.

The HONOURABLE SARDAR JOGENDRA SINGH: I am sorry if I did not properly catch his meaning. He certainly said something about a big conspiracy to overthrow the Government in the Punjab. And I say that for the fair name of the Punjab it rests with the British officers here to assert that the Punjab is one of the loyalest and the best provinces of India. It has given always the largest number of soldiers. I would only remind the Honourable Member that Sir Michael O'Dwyer on the eve of his retirement, in his farewell address, could not withhold the remark that he thought that the Punjab was as faithful and as loyal as ever. Why should the name of the whole of the Punjab be brought into disrepute because some mistakes have been made?

Now, I think my Honourable friend Mr. Sethna raised a very just question. It is this. If these men are convicted of murder, if these men are convicted of arson, if these men are convicted of rioting, certainly they must pay the fullest penalty for their acts. But my point is that the evidence on which these men were convicted is not reliable evidence. It was evidence brought before the tribunals at a special time when the psychology of the place was at fault. At that psychological moment this evidence was collected and on that evidence these men were held guilty. I am not prepared to say how far that evidence is reliable and how far that evidence will stand the test, which is applied to all evidence. If those people have committed murders, they ought to be detained in jail. But on that very same evidence it has been found that 1,700 men could be released. Well, I have not seen the evidence myself. But is it sufficient to convict them? Would the ordinary Courts convict those men and hold them responsible for these murders? One thing more I want to say, and it is this. European life must be held as sacred as ever because the gods have willed that we must work together. They are few and we are many. We must remember the gratitude which we owe to the British people and the assistance we can get from them in future years, to lead us on the path of reform and constitutional development, development of our industries and so on. And in these unrestful days I think every Indian ought to uphold the life of a European sacred, help and guard him. Of the things that have happened, I will say nothing more.

Sir William Vincent asks us to take thought of the danger of the times, and I quite agree with him that the times are very dangerous and anxious. But what are the remedies? The remedies are to remove the causes. What are the causes of this unrest? We must find out the causes. We must see

[ Sardar Jogendra Singh. ]

the psychology of the movement and then remedy the evils. This is what I ask the Council to do here. We want to make the Government strong, healthy and just, and we want to do this by insisting on justice, by insisting on truth, and by giving the Government of India greater strength than they have at present, by taking the exigencies of the time into consideration and by the pursuit of justice. There is no other way of meeting the dangers that are before us. I appeal to Honourable Members to regard the matter as one of British justice. British justice can only be upheld if we have not a single man detained in jail until he has been given a proper trial, and until he has been given his chance of proving his innocence. Why should we deny even these few people—86 in number—the chance of proving their innocence, if we have released 1,700 men on the same kind of evidence? I hope Honourable Members will support this Resolution.

**THE HONOURABLE SIR WILLIAM VINCENT :** Sir, there are only a few points on which I wish to address the Council in reply. There was one statement in particular, which, I think, I ought to correct. It was suggested, seriously suggested, by the Honourable Mover that 1,700 persons had been released because they were found to be innocent. Now, is that a fair way of putting the case? We were asked to exercise the King's clemency on behalf of all those still in jail in the beginning of 1920—(The sentences of many had been reduced and expired and many had already had remissions)—on behalf of all those who could be released irrespective of their innocence or guilt, if we thought that that course could be taken compatibly with the public safety, and it has never been suggested that these 1,700 men were released because they were innocent. Many served short sentences. Many remissions were given out of clemency, and the rest were released in obedience to the mandate of His Majesty that we should exercise clemency to the utmost extent possible, and to suggest that these men were all released because they were innocent is a gross misstatement of the case.

I was then told that I claim infallibility for the Government in the matter. I have no desire to do anything of the kind. We heard criticisms of these convictions and appointed two Judges to examine the records; it was and is in my opinion legally impossible to put these men on their trial again, even if we wanted to; and we did not want to. We therefore took the only course available. We were asked to submit the cases of the men convicted to two judicial officers whose opinions might command confidence, and we did do so. Is that a sign of a claim to infallibility—to ask two High Court Judges to decide what should be done, taking one, an Indian, from another province entirely unconnected with the Punjab? If that is claiming infallibility, we have been guilty of it. Our only intention was to get the best advice possible. When the cases came up to me, I did the best I could. I constantly took the advice of my colleagues, both Indian and European, to see whether we could find any ground for further exercise of clemency, consistently with justice, and the figures I have given speak for themselves. I maintain that the fact that so many men were released in itself shows that we have proceeded with the utmost consideration in this matter. The men now under sentence were, it is true, convicted in connection with the Punjab disorders. They were convicted of serious offences—murder, dacoity, arson and the derailment of trains. I am quite prepared to show the Honourable Mover of this

Resolution the list of cases in which they were convicted. If he can give any case in which he can say 'This is not a serious offence' or 'this particular case is one in which the men deserve to be released', I am quite prepared to re-examine it or submit it to the examination of two of my colleagues, the fullest examination possible. But I do feel that there must be some finality in judicial proceedings. The Honourable Member says, 'Oh, you must yield to public opinion in this matter.' I am quite willing to consider public opinion; the Government of India is always willing to do so. I am not attempting to lay down the law to this Council. What I have done is this that I have sought to convince them—that is a reasonable attitude to take up; even a Member of the Government under present conditions is entitled to try to convince the Council that he is right; even if he cannot secure support for his action he has that privilege of putting his case before the Council and appealing to the justice of the Council; that, even the new Reforms have not denied to us. But in matters of judicial trials, surely it is right that the Government should say—'These matters have been judicially investigated in every way possible and we cannot re-open them.' At a Council meeting in September last, I was asked to appoint two Judges to examine the record and I agreed. I met with a good deal of opposition at the time. We put two Judges on to this work. They investigated nearly all of these cases and we acted on their recommendations. Is there to be no finality in these matters? Why, the Honourable Mover has not read any of the records. He was unable to cite any single case of proved injustice. I noticed that the Honourable Mr. Sethna asked him 'Will you cite me any case in which the Government convicted which was not a serious case?'—I think that was a very pertinent question, and I waited to hear what the Honourable Member's reply would be; but he has not cited a single case of that character. At the same time I am very anxious to meet him in this matter in every possible way. I do not wish to take up an infallible or bigoted attitude. I want to convince the Council that I am right. I will take up any case now which he can produce where he can show the man was unjustly convicted or which is a reasonable case for the exercise of clemency. This Council was told that the accused was not given fair trial. This is what the two Reviewing Judges said on this point:

'The Commissions were presided over by officers of considerable legal experience, and their findings are entitled to considerable respect. No complaints appear to have been made by legal practitioners as to the shortness of time allowed for preparing a defence or as to lack of opportunity of cross-examination. In all cases the accused were defended by counsel and in no case was there any trace of counsel objecting to the Court that sufficient opportunity for cross-examination was not allowed, or that anything material to the interests of an accused person was brought out in evidence and not recorded.'

That was the opinion of the two Judges who went into these cases after the trials were concluded. Do not let me be accused of claiming infallibility in making this statement. I am merely citing the opinion of two Honourable Judges in this matter.

Another point relates to the detention of persons without trial. I put it to the Honourable Member, when I got up to reply, that there were no persons so detained in connection with the disorders. What reply have we had from him? Has any explanation been given to this Council why the Honourable Member thought it necessary to move this part of the Resolution? Did he make any inquiry into the matter before he came here and suggested that the Government were keeping in confinement men connected with

[ Sir William Vincent. ]

these disorders without trial at the present moment, when this is not the fact? In his reply I thought perhaps he would offer some expression of regret for his suggestion. Possibly the Honourable Member forgot the point. In spite of all this, however, I know what the Honourable Mover is really anxious for. I know him quite well, and I know that he is only anxious that justice should be done in this matter, and though I have to oppose his Resolution as framed, I am quite ready to do anything I can in any individual case in which he can show me on reasonable ground that the release of a particular man or particular men—I do not limit him to one or two—is desirable in the interests of justice or in which clemency can safely be exercised.

In view of this assurance, I hope the Honourable Member will not press his Resolution.

The HONOURABLE SARDAR JOGENDRA SINGH : Sir, in view of what the Honourable Sir William Vincent has said, I do not wish to press my Resolution.

The Resolution was, by leave of the Council, withdrawn.

The HONOURABLE THE PRESIDENT : Before I adjourn the Council, I have to inform Honourable Members that it has been brought to my notice that two Resolutions should have been included on the paper for to-day. One is by the Honourable Mr. Khaparde regarding the High Commissioner, and the other by the Honourable Sardar Jogendra Singh regarding certain leave rules. A supplementary list of business will be issued and the Resolutions, if the Honourable Members so desire, will be taken to-morrow.

The HONOURABLE SARDAR JOGENDRA SINGH : I should like to move my Resolution to-morrow.

The HONOURABLE MR. KHAPARDE : I also.

The HONOURABLE THE PRESIDENT : Then they will be placed on the list for to-morrow.

The Council will now adjourn till to-morrow in this Chamber at 11 o'clock.

The Council adjourned till Wednesday, the 9th March, 1921, at 11 A.M.