

*Friday,
11th December, 1908*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLVII

April 1908 - March 1909

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OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at Government House, Calcutta, on Friday, the 11th December 1908.

P R E S E N T :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India, *presiding*.

His Honour Sir Edward Norman Baker, K.C.S.I., Lieutenant-Governor of Bengal.

The Hon'ble Mr. H. Erle Richards, K.C.

The Hon'ble Major-General C. H. Scott, C.B., R.A.

The Hon'ble Sir Harvey Adamson, Kt., C.S.I.

The Hon'ble Mr. J. O. Miller, C.S.I.

The Hon'ble W. L. Harvey, C.I.E.

The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.

The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.

The Hon'ble Mr. A. A. Apcar, C.S.I.

The Hon'ble Nawab Bahadur Khwaja Salimulla of Dacca, C.S.I.

The Hon'ble Maung-Bah-Too, K.S.M.

The Hon'ble Mr. W. R. H. Merk, C.S.I.

The Hon'ble Sir Rameshwara Singh, K.C.I.E., Maharaja Bahadur of Darbhanga.

The Hon'ble Raja Muhammad Ali Muhammad Khan, Khan Bahadur, of Mahmudabad.

The Hon'ble Mr. N. C. Macleod.

The Hon'ble Mr. J. Andrew.

The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.

The Hon'ble Mr. F. A. Slacke, C.S.I.

NEW MEMBERS.

The Hon'ble MAHARAJA BAHADUR OF DARBHANGA, the Hon'ble MR. ANDREW, the Hon'ble MR. DADABHOY, and the Hon'ble MR. SLACKE took their seats as Additional Members of Council.

INDIAN PORTS BILL.

The Hon'ble MR. ERLE RICHARDS presented the Report of the Select Committee on the Bill to consolidate the enactments relating to Ports and Port-charges.

INDIAN EMIGRATION BILL.

The Hon'ble MR. ERLE RICHARDS presented the Report of the Select Committee on the Bill to consolidate the enactments relating to the Emigration of Natives of India.

INDIAN REGISTRATION BILL.

The Hon'ble MR. ERLE RICHARDS presented the Report of the Select Committee on the Bill to consolidate the enactments relating to the Registration of Documents.

INDIAN CRIMINAL LAW (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved for leave to introduce a Bill to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. He said:—"My Lord, copies of the Bill which I am moving for leave to introduce have been circulated to Hon'ble Members together with a Statement of the Objects and Reasons which have led to its being prepared.

"For reasons which I will state presently it will be my duty to ask the Council, in the event of my present motion being adopted, to proceed at once to the consideration of the provisions of the Bill with the view to its being passed at this day's sitting, and I will therefore endeavour to explain, as fully and as clearly as I can, the considerations which have influenced the Government in bringing forward this measure.

"The following are some of the more prominent instances of anarchical crime which have occurred in Bengal and Eastern Bengal during the past year. On the 6th December 1907 an attempt was made to assassinate the Lieutenant-Governor of Bengal by means of a bomb exploded under his train near Midnapore. Two other abortive attempts of a similar nature on Sir Andrew Fraser's life had already been made on the railway line near Chandernagore. On 23rd December 1907 Mr. Allen, the District Magistrate of Dacca, was shot with a revolver at Goalundo. On 4th March 1908 Mr. Hickenbotham of the

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Church Missionary Society was shot near his house at Kushtia. On 11th April an attempt was made to assassinate the Mayor of Chandernagore by a bomb. On the 30th April a bomb intended for Mr. Kingsford who had been Presidency Magistrate at Calcutta was thrown into a carriage at Muzaffarpur and killed Mr. and Miss Kennedy. On 2nd May the Manicktolla bomb conspiracy was brought to light. On 2nd June a serious dacoity was committed near Nawabganj in Dacca District by a large band armed with guns and revolvers, in which two persons were killed. On 21st June a bomb was thrown into a railway carriage at Kankanara and injured an English gentleman, and there have been several similar attempts in the same neighbourhood. On the 31st August an approver in the Manicktolla case, which is under trial at Alipur, was murdered by a revolver. On 17th September a serious dacoity was committed at Serampore. On 20th and 30th October similar dacoities were committed in Malda and Faaidpore districts. Only a few days ago followed a dacoity of the gravest nature in Raita. There is ample reason for believing that all of the dacoities which I have mentioned were committed by young men of the middle classes. On 23rd September a young man was convicted of sending a bomb by post to the Magistrate of Nadia. On the 7th November the fourth attempt was made to assassinate the Lieutenant-Governor of Bengal, on this occasion with a revolver. On 9th November the Native Sub-Inspector of Police, who had arrested one of the Muzaffarpur murderers, was shot dead in the streets of Calcutta. On 13th November the principal witness in a case against the head of an association called the Anusilan Samiti was murdered and decapitated near Dacca.

“ These are examples of the type of anarchical crime that has been prevalent.

“ The list is by no means exhaustive, but it is perhaps sufficient to exemplify the general methods of the wide-reaching conspiracy with which we have to deal. The object of the conspiracy, and there is no attempt to conceal it, is to subvert British rule and to render the administration of justice impossible. The methods are the assassination of officials, English and Indian, indiscriminately, the murder of hostile witnesses, the terrorizing of all who oppose the conspirators, and the organization of dacoity on a large scale for the purpose of defraying the cost of the operations. One of the most lamentable incidents is that young men are made use of to carry out the purposes of the conspirators, mere boys, with no other criminal taint, the sons of respectable parents, who do not belong to and have never associated with the ordinary criminal classes, but who by the incitements of seditious teaching have been imbued with a misguided fanaticism and have been led to the mistaken belief that in

committing crimes of this nature they are working for the good of their country. The Muzaffarpur murderers had hardly emerged from boyhood. The student who a few days ago attempted to assassinate Sir Andrew Fraser was a boy of eighteen.

“ I have sometimes heard the opinion expressed that murderous anarchists are few in number, that they are merely a handful of young men who have been driven to fanatical frenzy by the teachings of sedition. I should be sorry to believe that there are many young men who have lost their senses to the extent of being ready to commit murder. But be they few or many, there can be little doubt that so long as conditions favourable to the creation of anarchy among the young remain in existence, this form of madness will from time to time come into evidence. The confessions of the Muzaffarpur murderer and the statement of the young man who last month attempted to shoot Sir Andrew Fraser leave no doubt as to the influences which are driving the young to homicidal frenzy. Immature minds are perverted by the doctrine of hatred to a foreign Government that is insidiously instilled into them by a section of the community that has assumed the attitude of being irreconcilable. That is the root of the matter and the prime cause of anarchist outrage by the young. It is the bounden duty of a responsible Government to close every avenue that leads to this cause. On two occasions during the past year we have legislated to strike at the origin of the evil. First, we passed the Seditious Meetings Act. It was aimed at preventing seditious orators from stumping the country and inciting students and others to acts of disorder and violence by seditious orations. This Act was, unfortunately I think, surrounded by safeguards which rendered it somewhat difficult to be put in operation on sudden and isolated occasions, but its presence on the Statute-book has exercised a great preventive influence. Since it was passed we have heard little of the campaigns of inflammatory oratory which produced so much harm in the Panjab and elsewhere in 1907. The second was the Newspapers Incitement to Offences Act. It was directed against incitements to murder and violence in newspapers, and I may say that since it came into operation there has been an almost total cessation in newspapers of those incitements to assassination which before the existence of the Act were a matter of daily occurrence in a depraved section of the Press. The preventive effect of the Act has been most marked throughout India, and in the rare cases in which it has been found necessary to resort to its application its provisions have been found to be entirely adequate. For the evil which amounts to sedition but which falls short of incitement to murder or violence we have relied on a systematic use of the ordinary penal law, not with absolute success, for

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we cannot always get at the man who is really responsible, and also a newspaper writer can do much to incite to the subversion of order without rendering himself liable of prosecution for sedition, but with such a measure of success that it can at all events be safely said that the Indian Press is a cleaner Press today than it was a year ago.

“ But of late another incentive to draw the youth of the country into the fold of anarchy has come largely to the front, perhaps a greater incentive than either seditious writing of inflammatory speaking, in the shape of disloyal associations. These associations, known as samitis, and consisting of what are called volunteers, were first formed in 1902, but they did not come much into evidence till 1906. They have developed with the most surprising rapidity. Almost all districts in Eastern Bengal have their volunteer organizations, many of which owe their origin to and are branches of samitis in Calcutta. In the rural parts of Bengal they are developed to a less formidable extent. Many of the members and in some cases even the patrons may be unaware of the objects of the organizers, but the information which we are constantly receiving from districts places it beyond doubt that the majority of these associations are maintained with the object of training youths in the use of arms and fitting them to take part in a general revolution that is hoped for. Outwardly professing to be devoted to such laudable objects as keeping order at meetings and helping pilgrims at festivals, they have been largely used for the forcible boycott of foreign goods and for terrorizing the community. The members often claimed to travel free, and they have not hesitated to assault officers of steamer and Railway Companies who have refused them accommodation. In many cases such officers either from sympathy or from fear have refrained from enforcing payment of fares. They practise drill, engage in sham fights and parades, and encourage a martial spirit with an ultimate object which there is little attempt to conceal. These Samitis have exercised a demoralizing effect on the youth of the Country, causing them to neglect education and to set at naught the authority of parents, until gradually the heads of the samitis have assumed complete control over the boys. An insulting demeanour towards Europeans is constantly paraded and is a cause of common complaint. In many cases the members have been guilty of serious assaults. There is every reason to believe that dacoities have been organised on a large scale by volunteers. These crimes have been accompanied by murder and arson. Every endeavour is made to suppress evidence regarding them and put obstacles in the way of police investigation. Only a few days ago the arrest of a captain of volunteers was

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followed by the murder of the principal person who was to bear witness against him. Some of those who composed the anarchist society discovered at Manicktolla garden were members of volunteer societies both in and outside Calcutta, and there can be little doubt that but for their arrest the pernicious knowledge which they obtained would have been eventually extended to the members of their own associations. In Sylhet three of the Manicktolla conspirators were arrested in their homes in possession of explosives, a fact which indicates that but for the discovery in Calcutta we might have had an equipped body of anarchists in the Eastern province. The total number of volunteers in the Eastern province is now estimated at from ten to fifteen thousand. At first the movement received some support from zamindars and native gentry. Parents did not discourage their sons from joining. But recent indications show that the community are beginning to realize the demoralizing effect that these associations have exercised on the rising generation. In Dacca in several cases parents have appealed to the authorities for help to rescue their sons who have been induced to join associations and have not been permitted to leave them. These and other facts, which for obvious reasons I should not disclose at present, show conclusively that many of the samiti or volunteer associations are in reality associations made for the commission of crime and for the furtherance of the anarchical movement, and that they constitute a dangerous and formidable system of intimidation and terrorism which operates so as to make it almost impossible to obtain evidence for the conviction of criminals. They are in fact nurseries for young anarchists.

“In this connection I will read an extract from a note written by an elderly Indian gentleman whose home is in Eastern Bengal and who has had exceptional opportunities of judging of the conditions prevailing among the people in the mufassal as well as in the district towns. Speaking of these associations he says :

‘They are in fact the terror of the country. They have taken to dacoities, thefts and robberies, they set fire to houses, they kidnap boys, they commit murders, and in fact there is nothing in the list of crimes they would be ashamed of, if thereby they could serve what they call their cause, that is, salvation of India and the destruction of the foreign Feringhee Government. They have their *akras* and public or private meeting places in every town, where they meet to learn playing with *lathis* or daggers. They have secret places where they practise shooting with pistols or revolvers, and they have *chelas* or disciples in almost every

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village in the interior of the country. These are the men who have now become the practical masters of the situation. Village men, rich or poor, submit to their dictum in ninety cases out of a hundred, simply from fear. Shopkeepers act up to their instructions because they know that disobedience will bring upon them disastrous consequences. Even the women of the village, cultured ladies and the illiterate maids and matrons, ask them what cloth to put on, when to fast, when to weep and what to do with their boys. The Government ought to be solemnly assured that the whole country would rejoice and feel a sense of relief if the aforesaid *akrās* and *samitis* are shut up at once. . . . A large portion of the people who are now suspected as seditious are so from fear. They fear the anarchists and their volunteers who are strong in the field. They fear to be attacked at night by dacoits and incendiaries, or to be done to death by the political assassin's dagger. If they find that the Government is strong enough to give them real protection, they will rejoice at heart, and with thanks to God and the Government of the country, cut off all connection with the agitators for good.'

'I now turn to another subject, the means provided by the Criminal Procedure Code for bringing anarchical crimes to trial. These crimes generally involve an element of conspiracy, and their prosecution is a matter of great complexity. The witnesses are numerous, each giving his quota of evidence on, it may be, only one link of the chain that connects the accused with the offence. I will assume that the police have discovered the existence of an anarchical conspiracy, and acting on a reasonable suspicion have arrested the accused. It takes a long time to unravel the web of a conspiracy. This is always a tedious task in India, where the public are disinclined to come forward and give assistance to those who are investigating the offence, and it is a still more tedious task when the offence has a political aspect and the tendencies to suppress evidence and terrorize the witnesses, to which I have already referred, come into play. There must be considerable delay in such cases before the offence is completely investigated and is ready for trial. Then come protracted proceedings in the Committing Magistrate's Court, and delays while applications are being made to the High Court on all sorts of interlocutory matters. Meanwhile the Press are not only reporting the proceedings, but in many cases, owing to the imperfections of the law of contempt, are commenting in leading articles on the features in a manner which

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arising out of an anarchist conspiracy ; (2) to obtain an effective way of dealing with criminal associations. How these objects are met I can perhaps best explain by going through the Bill.

“ The first part of the Bill contains the procedure for bringing cases of the kind to which I have referred before a Bench of the High Court for trial. The Bench will consist of three Judges. The trial will be without jury. It is perfectly obvious that in the conditions which exist while anarchy is in the air, and while public feeling is in a state of high tension, trial by jury of such cases is most unsuitable. Jury trial is still in its infancy in India, and it is only within the original jurisdictions of the High Courts that offences against the State are now triable by jury. Anarchical crimes, whatever section of the Penal Code they may fall under, are in substance offences against the State, I do not think that any argument is required to justify the substitution of three Judges of the High Court for a jury in such cases. In order to obviate the long committal, provision is made for a simpler method of bringing the case to trial. The first stage will be the arrest of an accused person and the bringing of him before a Magistrate. These steps will be taken under the ordinary law. At any time after the Magistrate has taken cognizance the Local Government, with the previous sanction of the Governor General in Council, is empowered to make an order applying this part of the Bill to the case. The next stage is an inquiry by the Magistrate in the absence of the accused in order to ascertain if the evidence is sufficient to put the accused upon his trial. If in his opinion the evidence is insufficient the accused will be discharged. If, on the other hand, the Magistrate finds that the case is established *prima facie*, he will frame charges and furnish the accused person with a copy of the charges and of the evidence against him, and direct that he shall be sent to the High Court for trial. The accused will then be permitted to furnish to the Clerk of the Crown a list of the persons whom he wishes to be summoned to give evidence in his defence. The procedure in fact may be described briefly as differing from the existing committal procedure only in being *ex parte*.

“ The Bill provides further that after the Local Government has directed that the provisions of the Bill shall apply to the case, bail may be refused if there is reasonable ground for further inquiry into the guilt of the prisoner. The question whether there is reasonable ground is one for the Magistrate to decide. The existing law is that a person accused of a non-bailable offence shall not be released on bail if there appear reasonable grounds for believing that he is guilty.

We think that in cases of anarchical crime, where a system of terrorising has been established, it is necessary that during investigation and inquiry the accused should be detained in custody so long as a reasonable ground remains for further inquiry into his guilt.

“ A further provision of this part of the Bill refers to witnesses ; cases have occurred in which the murder of witnesses has prevented their evidence previously recorded from being admissible in subsequent stages of the case. In an ordinary committal, if a witness were examined, and tendered for cross-examination, and then died, his evidence would be admissible at the Sessions trial even although he had not been cross-examined. In the procedure which I have described there can be no opportunity for cross-examination. The Bill provides that when a witness has been examined by the Magistrate, his evidence will be admissible before the High Court if the Judges composing the Bench have reason to believe that his death was caused in the interests of the defence. The object is to remove an incentive for murder. I do not think that this provision requires any special justification. Of course the weight of the evidence recorded without cross-examination is a matter entirely for the High Court to determine.

“ As regards the offences that may be referred for trial to the special tribunal a considerable discretion is left with the Government. One anarchical crime may be a simple case which can properly be tried by the ordinary Courts. Another may be a long and complicated case which there would be advantages in referring to this tribunal. We have included a wide category of offences. It is intended that the power of transfer shall be exercised only in cases which, from their complexity or for other special reasons, cannot conveniently be tried by the ordinary process.

“ For the procedure enacted in this part of the Bill I claim that while giving the accused a fair trial it will greatly shorten the proceedings in complex cases and will at the same time put a stop to the publicity and improper comments which have characterized the Alipur and Midnapur cases and kept the public mind in a condition of tension for so many months. The preliminary inquiry, held *ex parte* and deprived of the accompaniment of lawyers, whose name in these cases is legion, will be greatly curtailed. As the trial will be held before the highest tribunal in the land, the decision will be final. There will in fact be only one public trial instead of three. And last, but not least, the trial will take place in a Court which has the fullest power to deal with contempts, and which will not be compelled to tolerate improper comments on a pending case.

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“Part II of the Bill deals with associations. It defines an association in broad terms. It then defines an unlawful association as an association—

- (1) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or
- (2) which has been declared to be unlawful by the Governor General in Council.

“The next clause gives the Governor General in Council power to declare any association to be unlawful when he is satisfied that it interferes with the administration of law or the maintenance of law and order, or constitutes a danger to the public peace. Then follow the penal clauses, which are two, the first making it punishable up to a term of six months' imprisonment to take part in the meetings of an unlawful association or to contribute or receive or solicit contributions for it or in any other way assist its operations, and the second making it punishable up to a term of three years' imprisonment, to manage or assist in managing or promote the holding of meetings of unlawful associations.

“The effect of these provisions will, we hope, be in great measure preventive. We believe that many of these dangerous associations have a nucleus of organizers, an inner circle, who do the mischief. They entice the young to join them and gradually initiate them into disloyalty and vice. At the same time, by the system of terrorism which they establish, they induce many older persons, who have no real sympathy with their objects, to help them with subscriptions. We believe that the effect of declaring an association unlawful will be to separate from it many of the young and comparatively guiltless, and also to deter older persons from giving it henceforth the assistance, pecuniary and otherwise, which from inclination, thoughtlessness or fear, they have given it in the past. We hope to separate the waverers from the real criminals. Those who continue to be members, or to take part in the operations, or to assist in the management, or to subscribe to the funds after an association has publicly been declared to be unlawful, will know that they are breaking the law, and will only have themselves to thank for the consequences. In the debate on the Seditious Meetings Bill I explained why in India it is necessary to give arbitrary powers for the purpose of prevention. The reason is that the public are disinclined to support the authorities by furnishing the information which is required in order to put the ordinary law in motion. In England it has happened that bomb conspiracies have been brought to light through information

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given to the police by chemists from whom large purchases of acid have been ordered. When have we ever obtained information of this nature from chemists in Bengal? But while prevention is an important aspect, the Bill does more than merely provide for this purpose. We trust that its provisions are strong enough to bring to conviction and punishment the organizers and members of at least the most criminal of these associations without the *locus penitentiae* which is provided by the Executive Government's intervention.

"I have now explained, I hope clearly, the necessity for legislation and the provisions of the Bill. I have only to add that it is to apply in the first instance to the two Bengal provinces, but that power is given to the Governor General in Council to extend it to other provinces.

"And now, my Lord, I will state the reason which has induced the Government to adopt the unusual course of introducing the Bill and recommending that it should be passed through all its stages at a single sitting of the Council. We consider that to have dealt with this question in the manner in which Bills are ordinarily dealt with, would have been inexpedient, because the public mind is in a condition of tension, and we think it most undesirable to take the risk of starting an agitation, during the period which would be occupied in passing the Bill, which might not improbably intensify the evils which the measure is intended to repress."

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON introduced the Bill.

The Hon'ble SIR HARVEY ADAMSON moved His Excellency the President to suspend the Rules of Business to admit of the Bill being taken into consideration.

The PRESIDENT declared the rules suspended.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be taken into consideration.

The Hon'ble MR. DADABHOY said:—"My Lord, I feel I cannot content myself by giving a silent vote on this important measure. The Bill, which it is now proposed to be passed into law, has been in fact anticipated by the general Public during the past few weeks, and I am sure I am not much wide of the mark when I state that it is in consonance with the common wishes of the representative and influential bodies in Calcutta and elsewhere that this measure

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has been undertaken. The general public have been greatly distressed by the seditious movements that have sprung into existence during the past 18 months, and more particularly during the past few months of the present year and have been deeply grieved and alarmed by the cowardly assassinations and attempts at assassination and of the possibility of a repetition of similar crimes in future, and it is therefore no wonder that the discriminating section of the public should loudly call for legislation of a special character which will promptly and vigorously suppress the prevalence of sedition, criminal violence and organised conspiracies in India, and particularly in Bengal.

“ It would be sheer imprudence and want of prescience to underestimate the great danger which is confronting us. We must all realise that the situation is getting more and more critical, and public safety and security are being jeopardised. But fortunately the ulcer of discord and disaffection is only on the surface, and it is a business of the greatest statesmanship to grapple with the situation with firmness and promptitude.

“ My Lord, I am myself most unwilling to see the introduction of any legislative measure that will take away from any person his right to be tried by the settled rules, organised laws and well established procedure of his country, yet notwithstanding that in some quarters serious objection may be taken to the introduction of this measure, I think the continuous disturbances of the public peace which have taken place during the last few months and which have unfortunately prevailed long enough and have kept the public in a state of consternation, is amply sufficient to prove the inefficiency of ordinary criminal procedure in times of stress and emergency, however well it may have suited normal conditions. The immediate suppression of organised crime is a matter of no small political and social importance, which in the opinion of all thoughtful men admits of no delay or vacillation. It is now perfectly evident that for the preservation of the public peace and safety and for the suppression of organised crime and the speedy punishment of its promoters and instigators, effective measures should be adopted as expeditiously as possible, and that object can only be attained by taking up legislation of the kind now before the Council so as to afford to the law-abiding and peaceable general public the protection which they are entitled to from the Government of the country.

“ Your Excellency only the other day, while addressing the Taluqdars of Oudh, very appropriately remarked ‘that the British Raj is determined, as it has ever been, to safeguard the populations committed to its charge. It is determined to shut the door in the face of a ruinous

anarchy, and, for the special difficulties with which it has to deal, it will not hesitate to forge special weapons.' These are words of true statesmanship, and I venture to assure Your Excellency that in carrying out that policy Your Excellency's Government will have the fullest and whole-hearted support of all right-thinking and law-abiding people who have at heart the true interests, welfare, and the prosperity of this country. The question before us is not whether the Government has established any necessity for any change in the procedure that is now followed in criminal trials, but whether the ordinary processes of law subsisting at present are sufficient for dealing expeditiously and with vigour with this new phase of crime which has made its appearance. Any variation in the prescribed methods of procedure will necessarily cause at first some degree of inconvenience and possibly dissatisfaction, but it cannot for a moment be questioned that the existing procedure is entirely powerless to stem the tide of political fanaticism that is a serious menace to the peace of the country. The Alipur trial is one of the many instances of the proof of the unsuitability and inefficiency of our present laws in cases of serious political offences, and it is therefore indispensable that the administration of the law should be so strengthened and fortified by the creation of special tribunals with plenary powers as to deal efficiently, expeditiously, and at the same time justly, with political crime in all its diversified aspects.

"The Bill is simple in its nature and will enable Government to deal effectually with all who are in any way concerned with disseminating the cult of sedition and treason. I believe that there could not be found in the length and breadth of the allied Provinces of Bengal any considerable number of persons who would take exception to the Act. In justice to the Bengali race, I would say that with their keen intelligence they will as a people see nothing in the Act of an arbitrary or objectionable character, and I believe that there is a very general desire among them that conspiracies and sedition should be suppressed even at the cost of some abridgement of the liberty of the people. But the measure in no sense interferes with the liberty of the people, it only aims at suppressing and eradicating the mischief attendant on protracted trials and dispenses with unnecessary publicity which in cases of political trials in this country is proved by experience to be undesirable. The dispensation of trial by jury before a Special Bench need not be regarded as in the nature of any serious hardship, considering that it is counterbalanced by such trials taking place before three Judges of experience and independence; nor does the provision about refusing bail, if here appear to be sufficient grounds for further enquiry seem to be illogical or particularly oppressive. The provision incorporated, in

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section 13 of the Bill is also fully justified by the unfortunate event which took place lately in the Alipur Jail. I allow that exception may be taken to some of the minor details of the Bill, but this is no occasion to cavil with details. We must approach the Bill in a broad-minded spirit of statesmanship.

"The Bill provides also for the suppression of unlawful associations, dangerous to the public peace, and also for the punishment of managers and promoters of such associations. These associations have added to the difficulty of the situation, they are nothing more than organised bodies for the encouragement and promotion of acts of violence and intimidation.

"I am of opinion that these associations or conclaves, where a carnival of sedition is systematically carried on, where revolutionary doctrines are daily preached, where violent and mischievous lies are daily disseminated, where youthful and susceptible minds are led astray and continuously infected with the venom of sedition, distrust and opposition to Government, where ignorant and malicious vilification of Government measures is indiscriminately indulged in, where funds are collected and often extorted under misrepresentations—these associations should no longer be permitted to exist, and the interests of society as well as of good government alike require their immediate and wholesale extinction.

"My Lord, I am not alarmist, but the circumstances now prevailing are of such importance and gravity as to warrant the passing of a law of this nature in the manner Government have adopted. At the present time Your Excellency in Council is doing your best to grapple with a situation of an exceptionally trying nature, and Your Excellency's Government stands in need not only of silent sympathy but of all the assistance that it can obtain. You have to deal, my Lord, not only with an unusual form of political crime, but simultaneously work out a programme of wise, timely and far-seeing reforms that will meet new aspirations and satisfy the new conditions that have of late arisen in this country.

"I am glad that this legislation is in the first instance only made applicable to the disturbed Provinces of Bengal. The other Presidencies are happily free from a state of chronic disturbance. I pray that Government may find no occasion to extend the Act to any other part of the country. But, my Lord, though I support this legislation, I must most distinctly state that I should not like to see it permanently placed on the Statute-book of our country, and I would urge that as soon as a normal state of things is restored in Bengal and Eastern Bengal,—and I trust that may be not far distant,—Your Excellency's

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Government will set itself to repeal this measure. I think it would be advisable and more popularly acceptable if the Hon'ble. mover of the Bill could see his way to insert a provision, limiting the operation of the Act for a stated period only.

"I shall conclude, my Lord, by stating that the value of any particular measure is not always correctly appraised when it is first introduced as when actually applied and put in operation. I have no doubt that time alone will show the wisdom and propriety of this measure and will establish the benevolent intentions of Government."

The Hon'ble RAJA ALI MUHAMMAD KHAN said :—" My Lord, the reasons which have led to the introduction of this Bill are as well known as they are deplorable. I can say only one word in its support, that it comes before us none too soon. There is a notion abroad that the existing law is sufficient to meet all kinds of cases and that harsh and summary measures are not in keeping with constitutional methods of Government. In every age and country political offences have been treated separately from ordinary offences and we can find a parallel for similar legislation in the various forms of enactment for high treason in the history of civilized England. And what are those misguided and irresponsible people guilty of, who from a mistaken sense of devotion to the cause of their country aim at getting a cheap notoriety by committing outrageous assaults on the representatives of Government? They are not only traitors to the Crown, but are the worst enemies of their own country. I believe sincerely that the measures proposed are not of a vindictive nature, and that Your Excellency will not lose sight of the greatest good of the greatest number on account of the evil deeds of a wicked few. While supporting the Bill strongly in substance, I would observe that in my humble opinion the remedy prescribed seems inadequate. However desirable it may be to secure the speedy punishment of offenders, it is not likely to strike at the root of the evil or to prevent further outbursts of anarchism. I would suggest the necessity of continued precautionary measures and of tracking that wild creature, called the anarchist, in his secret haunts. Once the policy of *laissez faire* on the part of Government is changed, the attitude of the people will change accordingly and the united efforts of both may go a great way to lessen, if not to remove, the danger."

The Hon'ble MAHARAJA OF DARBHANGA said :—"Your Excellency, the measure which has just been laid before the Council is one framed to meet excep-

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tional circumstances by exceptional methods. The Bill is to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. The ordinary forms of criminal procedure in the case of persons accused of anarchy, sedition, incitements to murder, inflammatory speeches and writings against the Government, or any of the other offences scheduled in the Bill, having been tried and found wanting, I think your Government is right in asking for the power required to bring all such offenders to a speedy trial. I should have liked to have had more time to examine the clauses of the Bill in detail, but as this has not been found to be practicable, I must necessarily confine my observations to criticism of a more general nature. I give my hearty support to this measure, all the more because I am convinced that the crimes specified are confined within a very limited sphere, and are abhorred by an overwhelming majority of the inhabitants of the two Bengals who are loyal and law-abiding and upholders of all that makes for peace and social order. And here may I put in a word on behalf of a much maligned class, in connection with the recent events of an anarchical order. I mean the students of our colleges. Because a few misguided young men acting under bad advice have been guilty of grave offences against religion and law, it has been assumed in certain quarters that the students as a class are on the side of anarchy and sedition. There never was fouler calumny. There may be of course a few back sheep to be found in all classes. But we do not brand a whole class with the tar-brush because an exceptional few have disgraced themselves by their bad conduct. The students have undoubtedly experienced an awakening through the light of education and the infusion into their minds of Western knowledge, and it is natural that these young men should aspire to higher and more useful political life than has hitherto been their lot, but all their agitation towards that end should be of a healthy order, entirely in conformity with loyalty to the Government and to the peace of the community.

“ My Lord, I give my hearty assent to the measure now before the Council. The second part of the measure I acknowledge to be right, and the absolute power vested in the Governor General in Council to declare certain associations unlawful, and as such liable to the penalties provided under the Act, will I think prove to be the most powerful deterrent to the formation or to the continuance of such unlawful assemblies. I have every confidence in the wisdom of the Governor General in Council that the absolute power thus placed in his hands will be used with great discretion, although there is nothing said in the Bill of the procedure which will be taken in order to bring the existence of unlawful assemblies to the knowledge of the Governor General in Council to

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enable him to wield his power with judgment. I am confident that if Your Excellency or the Hon'ble Member in charge of the Bill would give us some sort of outline of the methods to be employed in finding out whether certain assemblies are lawful or unlawful, it would tend to allay a feeling sure to arise in the community, as to whether law-abiding households might be liable to receive domiciliary visits from the police, either with or without warrant, and at all hours of the day or night. I am sure it is the wish of the Government that no peaceable household should be disturbed, but we would like an indication of the methods to be adopted to find out the existence of unlawful assemblies, while at the same time safeguarding loyal people from police espionage.

“My Lord, the greatest social interest of India at the present day is internal peace and concord. While it is all very well to repress crime with a powerful hand, Your Excellency gladly acknowledges that along with this there must also be the accompanying policy of conciliation and the granting of those reforms which have been demanded by all the leaders of Indian thought who have the best interest of the country at heart. And I am persuaded that if the reforms to be announced next Monday are at all on the general scale—as I believe they will be—a new era will dawn on India of peace and progress and a political climate will be developed, in which loyalty and goodwill will grow from more to more, and in which anarchy and sedition with their kindred disorders will have no room to live. Towards the bringing in of this happier state of things, it is to be hoped that all the races in our land—European, Hindu and Muhammadan alike—will conspire together in promoting the best interests of India along those paths which will lead to her exaltation amongst the nations in all that constitutes the qualities of a great people.

“My Lord, with these few observations I heartily support the measure before the Council, and earnestly trust, that as a latent power in the hands of the Government, very knowledge of its existence will be such a terror to evil-doers, that its provisions will never require to be put into active operation.”

The Hon'ble MAUNG BAG TOO said—“My Lord, all that I have to say is that I think it my duty to support the Government of India in a measure which, after full consideration, they believe to be necessary in order to suppress anarchism. I will vote for the Bill.”

The Hon'ble NAWAB BAHADUR KHWAJA SALIMULLA OF DACCA said :—
“With Your Excellency's permission I beg to say that it is a great pleasure to me to accord my warmest and most hearty support to the Bill

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introduced today by my friend and colleague Sir Harvey Adamson, to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. Two years ago, in my budget speech, I had pleaded in strong terms, in Your Excellency's Council, for some such measures. I had deplored the fact of treason being openly preached in our towns and streets—the masses encouraged to kill, hurt, stone and assault Englishmen and loyally disposed Hindus and Muhammadans for no fault except their steadfast loyalty and unwillingness to countenance any movement against constituted authorities, and had also drawn attention to the fact of loaded pistols being found in the hands of children in the open streets of Calcutta. My Lord, it was for this reason I was anxious to put a question in the Council as to how far Government were cognizant of the miscreants who were doing the kind of mischief of setting class against class; but I was advised not to do so. My Lord, I may be permitted to quote the following from my speech, which runs thus:—'The loyally disposed Hindus and Muhammadans feel that Government must, with a strong hand, put down at once and *once for all* what is going on round about us before a serious conflagration takes place. My Lord, I know that I shall be taken as an alarmist, but, my Lord, "Tis the coming events that cast their shadows before," and I am prepared for all the contumely and odium that will be cast on me if I only succeed in inducing Government to pause in the course of putting unlimited confidence in the lip-loyal sayings and doings of these agitators, and allowing them a free hand so long as they keep outside of the pale of what is defined in the Penal Code as sedition and treason. For I feel with my people that the time has come when we can no longer remain quiet. I, however, openly declare that we do not want, as many Europeans are said to be doing, another mutiny, in order that the growing insolence of the *badmashes* and of these unscrupulous persons may receive their deserts. We only appeal to Government to put down with a firm hand every attempt made to sow the seeds of disaffection and to seduce the people from their faith and belief in Your Excellency's Government.' These remarks, unfortunately, have been almost prophetic in their fulfilment. Had my humble suggestions been accepted by the Government two years ago, the revolutionary tide of anarchism, lawlessness and hooliganism, which has engulfed many a hearth and home in gloom and brought desolation and woe to many innocent persons, would have been at once stemmed. The extraordinary measure of creating a special tribunal which recent events have called forth is, in my humble opinion, yet insufficient and inadequate at the present juncture to meet the extraordinary necessities of the case. In the interests of good government; in the interests of public peace, progress and prosperity; in the

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interests of the youths of our country whose careers are blasted—enmeshed and entangled as they easily are in the snares of designing schemers and conspirators; in the interests of parents and guardians whose fondest hopes are shattered,—I venture to suggest that a stronger measure than that contemplated should be adopted to effectively eradicate this deep-rooted evil with its possible ramifications all over India. My Lord, public peace is disturbed. Dynamite, bombs, revolvers are in the air—the very weapons which, in all ages and in all countries, have been the handmaids, not of the restorers of their country's Liberty, but of the disturbers of their country's Tranquillity. The sympathy of our rulers and the good will of the British people, to which we all owe so much, are in danger of being estranged from us. Do they not pause to think that the very Burke and Mill, and a host of others, by whom they adjure and whose doctrines they have so ill-grasped, belong to the same nation who have opened our eyes and placed before us the dazzling vision of Western liberty and freedom? But 'Liberty', says Mrs. Besant, 'is too holy and divine a goddess to descend upon a country whose people lack in self-control, discipline, order and purity of heart. Responsibility, sense of public duty, study of history and ways of the Free People and the virtues of self-control and self-abnegation are essentially necessary in a people aspiring for freedom.' In short, they should remember the old adage that first of all deserve and then desire. Providence never withholds its blessings from those who are really worthy. England never burst through her bondage in a single day. She required years—nay, centuries—of patient preparation in moulding her national character, in uplifting her commoners, in regenerating her nobles, before she attained her goal and before she could occupy the position she is occupying to-day. *Festina lente* is as true when Æsop wrote his Fables as it is today. And—

'Heaven is not reached at a single bound
 But we build the ladder by which we rise,
 From the lowly earth to the vaulted skies,
 And we mount to a summit round by round.
 Wings are for Angels but feet for men!
 We may borrow the wings to find the way;
 We may hope and resolve and aspire and pray,
 But our feet must rise or we fall again.'

"At the present moment, however, when the whole country is being convulsed by a handful of mischief-makers, what is our duty to our King, to our country and ourselves? Are we to sit still with folded hands and remain passive spectators of what is going on, or are we in duty bound to bestir ourselves, in order to discountenance sedition and to assist the Government

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in its efforts to advance the welfare of our people and maintain the supremacy of law? We all know that the British Raj is built on too solid a foundation to quake at the flash of the assassin's danger, or the fiery vociference of the demagogue, or the scurrilous writings of the seditious publicist. This movement, if any thing, forebodes a Reign of the Terrorist, and as such it is high time that we should devise stronger and more effective means and methods to counteract this evil which is a menace to peace and the true liberty of our country.

“ With these few words, my Lord, I support the Bill.”

The Hon'ble MR. APCAR said :—“ My Lord, on behalf of the Bengal Chamber of Commerce I cordially support this Bill. On referring to the joint letter from the Chamber, the Trades Association and the European and Anglo-Indian Defence Association, there were three points mentioned in it which I am glad to see have been introduced into this Bill and I assure you will meet with the greatest appreciation. The Hon'ble Mover has so thoroughly explained the objects of the Bill and the reasons which have necessitated it that I feel it is not necessary for me to dilate further on them. I accept what he has stated as facts, and I am sure the Bill will meet with the cordial approval and support of the commercial community.”

The Hon'ble DR. RASHBEHARY GHOSE said:—“ My Lord, when the Executive have deliberately come to the conclusion that they should be invested with new powers to maintain law and order, it is, generally speaking, the duty of every member to support the Government; specially at a time like this, when they have to face a great and serious, though not a widespread, evil. I am, therefore, glad to be able to say that I can honestly vote in favour of the Bill. But there is one clause in it, and only one, which I have not been able to bring myself to accept. I mean the clause which gives the Executive power to suppress associations which they may deem to be unlawful.

“ In proposing to take this power today the Government, I venture to think, are following a not very logical process. In denying the necessity for urgency when the Bill which afterwards became the Irish Criminal Law and Procedure Act of 1882, was before the House of Commons, the present Secretary of State for India said—‘ The Government are going to work in an inverted order—they are beginning with a policy which will aggravate the existing evil and will weaken and spoil the operation of whatever future remedies they may be able to propose.’

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“ My Lord, the long promised reforms are now in sight. We shall know them on Wednesday next, when I am confident they would be gladly welcomed by all His Majesty’s subjects in India. Coercive legislation, in my humble judgment, should, if necessary, have followed, not preceded, conciliation. The resources of coercion are, we have been told, inexhaustible. So too, I submit, is the store of healing methods, which are not unfrequently more potent than coercion and to which, except under the gravest necessity, the Liberal party in England have always trusted, even in a country in which conciliation does not always make much impression on the people. And this leads me to remark that the anxiety of the Government to pass this Bill in one sitting may not improbably create unnecessary alarm, not indeed in India but in England, where an ill-informed Press seems to be under the impression that something like a revolution is impending in this country, and that all law and order have ceased to exist.

“ My Lord, we have heard a good deal of the panacea of a firm and resolute Government. But though it has not been a very brilliant success in another country, if I could persuade myself that India or any part of it was in the condition of Ireland not very long ago, I would have assuredly given the Government my humble but steady and unflinching support and voted for the whole Bill with all my heart and soul. But I ask, is there any network of secret societies in this country? Any association like the Irish Land League? Anything like the Reign of Terror, which hung as a dark and ominous cloud over Ireland? I would also ask,—Has the ordinary law been found inadequate to deal with disorder? The Irish Prevention of Crimes Act of 1882 opened with the preamble — ‘Whereas by reason of the action of secret societies and combination for illegal purposes in Ireland the operation of the ordinary law has become insufficient for the repression and prevention of crime.’ This is nothing but the bare truth, for we all know that at that time Ireland was in a state of revolution and society—it is no exaggeration to say—was on the very verge of dissolution. In this country, however, anarchism is only a passing distemper, and it has yet to be shown that the operation of the ordinary law is insufficient for its repression and prevention.

“ My Lord, no Irish Viceroy had to face greater difficulties than Lord Spencer, or was put to a severer trial; and yet he succeeded where Mr. Forster had failed, because he possessed an inexhaustible store of that ‘steady-eyed patience,’ which, we are told on very high authority, is essential in an Irish Viceroy. Your Lordship, if I may say so without impertinence, possesses in an equally large measure all those qualities which enabled Lord Spencer to restore law and order in Ireland without the help of stringent Coercion Act.

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We know also that Your Lordship is not an admirer of resolute Government, and the country cannot be too grateful to you for the nerve and firmness which you have exhibited throughout these anxious days. It is, therefore, peculiarly painful to me to have to oppose any part of this Bill. The responsibility too, which I have ventured to take upon myself, is very, very great. But I owe it to myself, I owe it to Your Lordship, to whom I am indebted for my seat in this Council, I owe it to the party to which I belong—the educated classes as they are generally called—to speak out my mind.

“The educated classes, my Lord, have been taught and taught by their rulers, to whom they owe a debt they can never hope to repay, to regard Government even by the best Executive in the world with distrust. Sir Henry Maine, who according to Lord Morley was too much of a bureaucrat alike by temperament and training, said many years ago : ‘The educated youth of India certainly affect a dislike of many things which they do not care about and pretend to many tastes which they do not really share, but the repugnance which they invariably profess for discretionary Government has always seemed to me genuinely hearty and sincere.’

“My Lord, the educated classes have been long accustomed to sneers and taunts, gibes and calumnies, but I should have thought that they would at least be spared the insinuation that they are disloyal. What ! The educated classes disloyal ? They must be so many lunatics if they are really disloyal. Are hundreds of thousands of men to be branded as disloyal, merely because a few misguided persons, mostly boys, have been betrayed into silly treasonable practices ? We are not Pharisees. We do not, my Lord, wear our loyalty on our sleeves, because our loyalty is, and ought to be, above all suspicion ; because to doubt it is to doubt our sanity. I repeat, our loyalty ought to be above all suspicion, for we know that the continuance of British rule is absolutely essential to our gradual growth as a nation. We cannot, therefore, too strongly condemn anarchism or anything wearing even the appearance of treason, because it would tend to alienate our rulers from us. We condemn anarchism because it would retard all progress, as it is a fatal delusion that concessions can be wrested from the people of England by violence. We condemn anarchism, because its spread would end in the dissolution of all that hold society together. And we condemn anarchism most, because it is opposed to the laws of God as well as of man. It is perhaps never safe in such cases to indulge in predictions, though I may say without boasting that some of my forecasts have proved only too true. But this I may assert without much rashness : that anarchism is bound to die

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out. It will not, I fear, be killed by Coercion Acts. But it will die, it is bound to die, because it is in opposition to the best traditions of our race—traditions which are much older than that gospel of love which was preached eighteen centuries ago—older even than the teaching of Goutama Buddha. Anarchism, I repeat, is bound to die, because it is in opposition to all those precepts of pity and of compassion for the meanest of sentient beings which are our great, our priceless heritage,—precepts which still guide and inspire the life of every true son of India and which will continue to guide and inspire it, till civilised man exchanges all the gentler, purer and higher qualities of humanity, for the tiger instincts of the savage.”

The Hon'ble MR. ERLE RICHARDS said:—“I desire, my Lord, to make a few observations to this Council in supplement of the speech which my Hon'ble colleague addressed to us at an earlier stage of these proceedings. There are legal points arising on this Bill on which, as legal adviser of the Government, I think it proper to offer explanations, and behind them there is a point of general policy on which, as one who has had the honour of being a member of Your Lordship's Council during the past few years, I have to make some remarks.

“And first as to the Bill itself. The main object of Part I is to set up a Special Tribunal in order to insure the more speedy trial of certain offences. It is essential in the interests of the public itself that offences against the State and crimes which from their nature cause widespread alarm among the public should be tried with promptitude. If the accused be guilty, punishment is robbed of its deterrent effect by delay; if he be innocent, the protraction of the trial is a great hardship on him. Moreover, the presence of prisoners under trial for offences of this kind is of itself a source of disquiet and unrest among the public, and should not be permitted to continue longer than is necessary. If proof were needed of the delays which are involved in the present system I would refer the Council to the case which is at this moment under trial in the Sessions Court at Alipore. In that case proceedings were initiated before the Magistrate on the 18th of May; the prisoners were committed for trial on the 16th of September; the trial is still proceeding before the Sessions Judge, and so far as can be judged from the public prints shows no signs of coming to an end; and after it is over there can be an appeal to the High Court, which of itself must involve a lengthy hearing. And the Alipore case does not stand alone. There are unfortunately other conspiracies in existence as my Hon'ble Colleague has told us equally widespread. It is most necessary that there should be some speedier means of disposing of cases of this character. Under the present procedure in such cases as that at Alipore, there are practically three trials:

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the first before the Magistrate, the second before the Sessions Judge, the third before the Court of Appeal. The Bill proposes that there shall be only one trial, that there shall be only such preliminary proceedings as are necessary to ensure that the charge is justified and that the Court which tries the case will have sufficient materials before it to enable it to appreciate the charge and the effect of the Bill is that there will be no appeal from the decision of that Court except such as may now exist on points of law. It follows from the fact that there is to be no appeal, that the Court must be constituted of Judges of the highest authority, and the proposal is that it should be formed of three Judges of the High Court appointed by the Chief Justice and sitting without a jury. The preliminary proceedings take the form of an enquiry by the Magistrate limited to ascertaining whether a *prima facie* case for the prosecution has been made out, a case sufficient to justify the putting of the accused on trial. The functions of the Magistrate will be analogous to that of the Grand Jury in England, which hears no witnesses for the defence, but confines its investigations to the question whether the evidence for the prosecution justifies a trial. The result of these provisions will be that there will be one trial, and one trial only instead of three as in effect there may now be, but that the one trial will be held before a Tribunal of unimpeachable authority and impartiality. It has not been found possible in the Bill to define with exactness the offences which will be referred to the Special Tribunal, but I think I may fairly anticipate that no case which can be promptly disposed of by ordinary process will be taken away from the usual Tribunals unless special reasons exist for doing so. A short time since a prisoner was put on trial charged with attempting to murder the late Lieutenant-Governor of this Province. The facts were not disputed and the whole proceedings were concluded within some two or three weeks. I do not suppose that cases of that kind would ever be referred to the Special Tribunal, but when once it is attempted to draw a line between the cases which are to be referred and the cases which are not to be referred, then difficulties begin. I believe it to be impossible to frame a general definition which would satisfactorily accomplish the purposes of this legislation: it is better, as it seems to us, to limit generally the classes of offences as is done in the Bill and in the Schedule, and to leave the responsibility with the Governor General in Council of putting the procedure in the Bill into operation. I am aware, my Lord, that the result of this procedure may be in some cases to withdraw the right which a prisoner may have under the existing law to a trial by jury. That would not be so in the Alipore case, but in other cases the Bill might have that result. But I would point out that in effect the Tribunal is a jury of three Judges, and I believe it to be a form of jury

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which any innocent man would prefer. The responsibility of taking the case away from a jury will rest with the Government, and it must be left to them to decide; they are amenable to public pressure, and if they use the power unjustly there will be opportunities of calling attention to it. My Hon'ble Colleague has explained the provisions as to the admission of evidence of witnesses who have been murdered, and I have little to add to what he has said. No doubt the admission of this evidence is an alteration of the law, but it is not without precedent in the legislation of the United Kingdom, and the experience of the last few months has shown us that some provision of this kind is necessary. It may be that if it were exercised to its fullest extent it would cause hardship in the case of innocent prisoners on their trial jointly with others, but the weight to be attached to the evidence is a matter for the Tribunal, and we may safely trust the judges to see that no hardship is caused in that way.

"The second part of the Bill gives greater powers in regard to unlawful associations, and that is a matter more for the Department over which my Hon'ble Colleague presides than for myself; but no one can have listened to the crushing indictment which he has presented here this morning without being convinced that these associations are a very serious disturbance to the public tranquillity even if they do not more directly organize crime. The powers taken by the Bill are aimed only at associations which constitute a danger to the public peace, and punishment under them can be inflicted only by the ordinary process of the Courts.

"I do not apprehend, my Lord, that the Bill will be successfully attacked, in the conditions of the present time, on the ground that it goes too far. There may be objection taken to particular provisions in it, but in regard to the objects of it, it will hardly be disputed that some legislation is called for. The necessity for some acceleration of the process of the law has been generally admitted: the necessity for putting a check on associations of the kind to which the Bill applies cannot be denied. I listened to the remarks of the Hon'ble Dr. Rashbehary Ghose in which he dealt with the necessity for this measure, and I could not help admiring, from a professional point of view, the skill with which he skated round the real point without ever brushing against it. The provision for special procedure he did not dissent from, and as to the associations he did not contest but they are a very real danger to the public peace. This is the real point and he did not tackle it; if they are dangerous then the necessity for legislation is established. So far from the Bill going too far, I should rather anticipate the objection that the proposals do not go far enough; and that it will be said in view of the facts which my Hon'ble Colleague and the

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Hon'ble the Nawab of Dacca have put before us this morning, that the time has come for more drastic remedies. It is on that point that I desire to make some observations.

"My Lord, the Government of India have not hesitated to take vigorous action on former occasions both by the exercise of the powers which are at their disposal under the existing law and by asking this Council for special powers to deal with special developements. The Punjab was quieted by action taken under existing powers: the disturbing utterances of extremist newspapers have been checked by prosecutions under the ordinary law. Seditious meetings, at one time a source of grave disturbance to the public peace, have been held but infrequently since this Council passed special legislation to deal with them; the Newspaper Act has given powers of confiscating printing presses, powers which have already been used with effect, the Explosive Substances Act was enacted within a few weeks of the first bomb outrages. The Government of India cannot therefore be accused of inaction; they have shown themselves prompt in every case to deal with evils as they arose. But the pervading note of Your Lordship's policy has hitherto been to refrain from anything like a general suspension of the ordinary law and to rely on the people of India to put an end to the bad feeling from which sedition springs by their own influence. We have removed malignant growths, as they have been discovered, by operations of surgery, but we have trusted the people of India to apply that medicinal treatment which can alone prevent the recurrence of those growths. It is said that the time has now come for abandoning that policy and for embarking on repressive legislation. Beyond doubt repression can be made effective, and beyond doubt it will be made effective if it is forced upon us. It would not be lightly undertaken since it cannot avoid the infliction of hardship on the innocent as well as on the guilty; it cannot but involve the disturbance of the whole community. But if other measures fail to maintain peace, then no alternative remains. The question before us is whether the situation to-day is such as to force upon us this change of policy.

"There is admittedly a new factor to be taken into account. It is the existence of a band of anarchists whose object is to render the enforcement of law impossible, whose methods are assassination and intimidation. A movement such as this, my Lord, is not a danger to the British Raj; that cannot be shaken by the murders of individuals, nor will any of those who have the honour of serving the King-Emperor be deflected a hair's breadth from the path of duty by fears or threats. But it is a danger, and a grave one, not to the British Raj but to the Indian community itself. Once let anarchy spread its evil roots over the

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country and it becomes a growth which cannot easily be checked: and if that ever comes to pass, there will be no one of whatever class or creed in the community who will not be at the mercy of an assassin to satisfy a grudge or gratify an enmity. That, my Lord, is the real danger we have to fear, and it is a danger which must be put an end to at once and completely. That it can be ended is beyond doubt; that it will be ended is as certain as that day follows night. The resources of legislation are not exhausted by this Bill; the resources of force have not yet been brought into play. The question is one only of the means by which it may best be effected.

“ My Lord, if these conspirators represented the bulk of the Indian community of Bengal, if they in any way had behind them the public opinion of these Provinces, then indeed the case for strong repressive legislation would be unanswerable. But the Government of India do not believe that this is the present state of things. They believe that these crimes are as abhorrent to the better classes of the Indian community in these Provinces as they are to every other civilised human being. It is impossible for us to think that the Indian gentlemen of these Provinces, many of whom we are privileged to number among our personal friends, give countenance in any sort of way to these deeds of shame; and we believe that crimes of this kind are equally detestable to the Bengali race as a whole. But the evil has come about because the real opinion of the public has not been declared. An outside observer looking at the events of the past few years might well have inferred that there were no moderate, reasonable men in Bengal: that the nation looked for its guidance to platform agitators: that the politics of the country were dictated by College students. We all know that this inference would be altogether false. The real power lies with the men of position and substance, and with the men of the middle classes who form the backbone of every nation: there are the men who can guide public opinion if they will do so, and with them the present issue lies. The intentions of the vast majority are, as we believe, wholly loyal to the King-Emperor, and we have heard that affirmed in eloquent terms today by the Hon'ble Dr. Rashbehary Ghose. It is true that many of them desire some further measure of self-government: that is a reasonable desire and it is one with which all of us sympathise within certain limits. But they have no desire to render the British Raj impossible or to subvert the constitution of the country. And their interests must be wholly on the side of order. They must know that deeds of anarchy can only defer instead of quickening further grants of self-government; they must know that men who cannot control their own sons cannot justly claim to govern other people; they must know that the departure

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of the British Raj would inevitably be followed by civil war with all its attendant horrors, bloodshed and rapine. Therefore their interests must be as firmly on the side of loyalty as we believe their wills to be.

“It is because the Government are confident that this movement finds no support in the general public opinion of these Provinces that a more drastic Bill has not been introduced today. And it is for the same reason, if I read aright, that it has been determined that these outbreaks of lawlessness shall not interfere with those proposals for further self-government which your Excellency initiated some two years ago and which will be shortly made known to the public. If I may judge from the declared intentions of Your Lordship and from the public utterances of His Majesty’s Secretary of State, the concessions that are to be made will be of a liberal character ; they will be a real step in advance towards the greater control by the Indians of the administration of this country.

“These, my Lord, are the reasons by which the policy of Your Lordship’s Government have been guided on the present occasion, but they are reasons based on anticipation, which the Government confidently entertain, that the present state of things will pass away. If there be no improvement, then those reasons will lose their force. We stand today at the parting of two ways. One road leads to greater self-government under the direction and guidance of the British Raj ; it is the way of peace, of law and of order. The second road can only lead to repression and ultimately to the reign of force, it is a way on which the ordinary law is suspended. It is for the Indian community, and primarily for the Indian community of these two provinces of Bengal, to decide which road we shall travel. The Government of India, and those who know Indians as we do, believe, and confidently believe, that they will choose the first of these two roads and that events will justify the trust which your Lordship has placed in them and the policy which you have pursued. But it lies with them to choose. The time has come for the leaders of the Bengali nation, for the men of influence and of substance in the Indian community, to take the reins into their own hands and to guide the coach of State along the right road. Let them no longer shrink from the responsibility : it is their duty to their nation, to the world and to their King Emperor, to use their power and to use it promptly. My Lord, I invite this Council to vote in favour of the motion which is before it.”

His Honour THE LIEUTENANT-GOVERNOR said :—“ My Lord, I understand that the measure which is now offered for consideration is the outcome of repre-

sentations which have been submitted by the Local Governments of the two Provinces to which it is to be applied in the first instance and of deliberations to which Sir Andrew Fraser was a party. In any event I am well aware that Sir Andrew Fraser was absolutely convinced of the necessity for strengthening the law on some such lines as these.

"I desire to say, in the most public manner, and in the most emphatic words at my disposal, that I am wholly in agreement with him. I have recently spent some three or four months on leave in England, and during that period I have had occasion to discuss the present situation in India with many persons, including not a few who have no direct or personal connection with this country. In all these conversations one feeling was uppermost and conspicuous; those with whom I spoke almost invariably expressed amazement at the inordinate delay which has hitherto occurred in the determination of State trials such as that now pending at Alipore; and they have dwelt on the paramount necessity of bringing them to a conclusion and punishing the guilty with the utmost possible promptitude. It was idle to reply that under the present law such delays are unavoidable, or to point out that the law, framed with reference to normal conditions, contemplates no less than four separate proceedings, *viz.*, (1) the police enquiry, (2) the enquiry before the committing Magistrate, (3) the trial at the sessions and (4) the eventual appeal to the High Court. People invariably rejoined that if the law involves such procrastination the law is in appropriate to present circumstances and should be altered.

"I entertain no doubt that an amendment of the law is urgently necessary. When proceedings in a State trial are inordinately protracted, as they must frequently be under the present procedure, the effect upon public feeling is deplorable; for the sense of shock and shame originally felt at the enormity of the crime fades away in weariness and disgust, long before slow-footed and uncertain punishment has overtaken the offender. The first part of the present Bill deals with this evil in a manner which fairly claims the adhesion and assent of all reasonable men. No stronger, swifter, or more impartial tribunal in all India can be found than a bench of three Judges of the High Court: that it is costly may be admitted, but I venture to think that its cost will be repaid many times over in the public confidence which will attach to its proceedings.

"The second part of the Bill contains the provisions by which it is sought to reach and extirpate those secret societies which are a significant feature of the revolutionary movement and which have done so much evil during the last three years. I will frankly admit that I do not feel the same confidence in regard to

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these new substantive provisions as I have expressed in regard to the special tribunal of the High Court. Dr. Ghose says that the picture drawn of those societies is over-charged. I regret that I hold a very different view. The evidence before me shows that in a number of districts these associations have done and are now doing an enormous amount of mischief. At their best they provide a ready organization for inoculating immature students with the poison of politics, for the dissemination of sedition, and for the terrorising, by methods to which the Hindu social system readily lends itself, of persons who hold unpopular views. At their worst they are active underground agencies for the perpetration of violence and outrage, of dacoity, and of murder. I regard these associations as among the most dangerous as well as the most elusive of the enemies with whom we have to deal. I am unable to feel any strong assurance that the powers with which we are now arming ourselves will suffice to extirpate them as swiftly and certainly as I should desire. I am however prepared to give them a fair trial in Bengal. I shall administer them as vigorously as I may; and if they should be found inadequate I shall not hesitate to apply to Your Excellency to be armed with sharper and less cumbrous weapons.

“It is a matter of much concern to me that my first public pronouncement since assuming charge of my present office, should be in relation to a measure of this character, which I can but admit reflects no credit on the good name of the province to which I belong and to which I am sincerely attached. And this must be my excuse if in this connection I say one word of hope—a hope which I venture to think that Your Excellency will share. It is our duty to stamp out sternly the sparks of incipient anarchy and disorder, and this we seek to do by the Bill which is now before us. But this measure does not represent the whole or even the major part of the policy of Your Excellency's Government in dealing with the present situation. Our greater task is so to adjust the machinery of Government that our Indian fellow-subjects shall be allotted a part which a self-respecting people can fill. And when the constitutional reforms which have been under Your Excellency's consideration are finally announced, as they shortly will be, I hope and believe that this task will be on the road to accomplishment.”

The Hon'ble SIR HARVEY ADAMSON said:—“I am sure that Your Excellency and my Hon'ble Colleagues will join with me in regarding it as a matter for much gratification that this Bill has received so strong a measure of support from the non-official members of the Legislative Council. Nothing could more strongly demonstrate that the sense of the country is with us, that the public mind has revolted against the attempts that have been so assiduously

[*Sir Harvey Adamson.*] [11TH DECEMBER 1908.]

made to plunge the country into disorder, and that all loyal men are convinced that it is the duty of Government to assume such powers as are necessary in order to stamp out anarchy.

“It has been suggested that the Bill would be more acceptable to the public if a provision were inserted limiting its operation to a stated period. We have considered this point and come to the conclusion that it is better to enact the Bill as a permanent measure. If, happily, conditions improve so as to make it apparent that its provisions are no longer wanted, it will be easy to repeal it. But the spirit of anarchy, when it once takes root in a country, is not easily or quickly eradicated, and I confess that I cannot with confidence look forward to a time, one or two years hence, when provisions of the nature of those contained in this Bill will have permanently become unnecessary. For these reasons we have thought it best to refrain from limiting the operation of the Bill to any stated period.

“The only provision to which my Hon'ble friend Dr. Rashbehary Ghose has taken exception is the clause which gives power to the Government to declare an association unlawful when it is satisfied that it interferes with the administration of law or the maintenance of order, or that it constitutes a danger to the public peace. Now this is in my opinion a very salutary provision, and I may add that it is a very merciful provision. Its object is preventive. It is intended to save from the penalties of prosecution a great number of the young and thoughtless who have been induced to join these associations, probably knowing little of their criminal objects. I have already referred to the success which has followed the legislative measures which we some time ago adopted. That success is due in much greater measure to prevention than to punishment. I have confidence that similar success will accompany this preventive measure, and surely, if what must be done can be done by prevention instead of by punishment, it is better to employ the less severe method.

“Objection has been taken to the hurried manner in which the Bill is being passed through the Legislative Council. I fully admit that Hon'ble Members have some reason to complain. The Bill has, however, been in the hands of Hon'ble Members for thirty-six hours. I wish that it could have been possible to give a longer time for their deliberations. But we reluctantly came to the conclusion that this is a matter in which the convenience of Hon'ble Members must be subordinated to expediency. In the present excited condition of public feeling, it is imperative that if a measure of this kind is to be enacted, it must be enacted quickly.

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“ In conclusion I must say that my task in taking charge of this Bill is a painful one. I am sure that my Hon'ble Colleagues will share with me the intense reluctance I entertain to perform this duty. But I never was more clear in my life as to the necessity of what we are doing. Some persons may say that we have waited a long time before fulfilling this duty, but after all there does require to be shown the existence of an extreme evil, unmistakable as to its extent, before legislation of this nature can be initiated. I may be permitted to express the great consolation I have in knowing that during the past year we have also been engaged in a duty of a more congenial kind, and I hope that in the statement which Lord Morley will make in a day or two, it will be seen that if the Government of India have been strong in repressing crimes, they have also been generous in granting reforms.”

The motion was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE moved that in clause 17, sub-clause (1), of the Bill, after the word “ Whoever ” the word “ knowingly ” be inserted. He said :—“ That clause now runs thus :—

‘ Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contributions for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.’

“ It is one of the elementary principles of criminal law, it is also common-sense, that a guilty mind is an essential element in constituting a crime. This well known principle is recognised in section 9 of the Act of 1882 [Prevention of Crimes Act I(Ireland)], which says :—

‘ Every person who knowingly is a member of an unlawful association as defined by this Act, or takes part in the operations of an unlawful association as defined by this Act or of any meeting thereof, shall be guilty of an offence against this Act.’

“ Similarly, the Criminal Law and Procedure (Ireland) Act of 1887, section 7, says—I am going to read only the relevant parts and not the whole of it :—

‘ Every person calling together a meeting of such association in the specified district, or of any members thereof as such members, or knowingly taking part in any such meeting or publishing with a view to promoting the objects of such association.’

“ I do not think it is the intention of the Government to make this Act more stringent than the Irish Acts of 1882 and 1887. They were both very drastic measures and I was under the impression that it was impossible to improve upon them ; but I see that the draftsman has been able to achieve that feat, because

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as the Bill now stands, a man, however innocent of any guilty knowledge or intention, may be sent to prison for six months under this law."

The Hon'ble SIR HARVEY ADAMSON said :—" I regret that I cannot accept this amendment. It would mean that it would be the duty of the prosecution to prove that the person who is accused of taking part in the operations or contributing to the funds of an unlawful association knows that the association is unlawful. Now this is a fact which in almost every case it would be impossible for the prosecution to prove. The clause would be ineffective if the burden of proof in this point did not rest with the accused. A person who takes part in the operations of, or contributes to, an unlawful association, in ignorance that it is unlawful, is protected by section 79 of the Indian Penal Code, which provides that nothing is an offence which is done by any person who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it. But in this as in the rest of the general exceptions under the Indian Penal Code the burden of proof rests on the accused, and to alter this provision in the manner proposed would be simply to render the penal clause quite inoperative. For these reasons I regret that I cannot accept the amendment."

The Hon'ble DR. RASHBEHARY GHOSE said :—" I would like to point out that although the word ' knowingly ' occur in both the Irish Acts, the Government did not find that the Acts were inoperative. Mr. Balfour certainly did not find it so in 1887."

The motion was put and negatived.

The Hon'ble DR. RASHBEHARY GHOSE moved that in clause 17, sub-clause (1), of the Bill, before the word " contributes" the word " knowingly " be added. He said : " It may be that a member of an unlawful association cannot take part in a meeting of such association without knowing the true character of the association. But can you say the same thing of a person who merely pays a subscription say to a cricket club the members of which may be secretly engaged in prompting crime? I submit this is a very modest amendment to which no reasonable exception can be taken."

The Hon'ble SIR HARVEY ADAMSON said :—" My answer is the same in this as in the previous amendment that was proposed. If a person is accused of contributing to the funds of an unlawful association and has contributed in ignorance that the association was unlawful, he has only to prove that to the Court, and under the provisions of the Indian Penal Code, which I have just read, he will be exempt from punishment. The objection to the amendment now pro-

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posed is just as strong as the amendment last proposed. I regret therefore that I am unable to accept it."

The motion was put and negatived.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be passed.

His Excellency THE PRESIDENT said:—"My Hon'ble Colleague, Sir Harvey Adamson, has described so fully the chain of incidents which have led up to the present position that there is no need for me to recapitulate them. We should, however, bear in mind the true interpretation of the story he has told us. We should remember that for years the vapourings of a seditious Press have been disseminating the seeds which are now bearing fruit, and that following in the wake of inflammatory newspaper articles we have had the speeches of revolutionary agitators, and the consequent deplorable misguidance of the youth of the country culminating in the commission of senseless outrages and brutal crimes.

"No one has hoped more sincerely than I have that the existing laws of the land might have proved sufficient to deal with the difficulties which have surrounded us; but it has not been so, and the exceptional legislation we have already passed, though productive of good results, was not framed to meet the danger which now confronts us. The Manicktolla Garden discoveries, followed by the attempt on the life of Sir Andrew Fraser, and the murder of the Police Inspector, have opened a new chapter in the history of sedition. They have taken us far beyond treasonable pamphlets and revolutionary speeches, they have shown us the results of those preachings and are laying bare before us the workings of a murderous conspiracy—a widespread conspiracy—recruited from the ranks of emotional young men saturated with grotesque ideas of political freedom. Horrible as it all is, I confess to some feeling of commiseration for these infatuated boys—for many of them are little more than that—blindly ruining their own future and the happiness of their home surroundings.

"But there it is. The Government of India have this conspiracy to deal with. We know its acknowledged aims, the systematic assassination of Government officials which is to discredit our administration, and expel the British *Raj* from India, and notwithstanding the wicked absurdity of such schemes, we cannot disregard the fact that personal and public security are dangerously threatened, and that we are imperatively called upon to protect the public safety, and to subdue the indications of an increasing lawlessness.

"My Hon'ble Colleague, Dr. Rashbehary Ghose, has taken exception to certain clauses in the Bill and to our procedure in attempting to pass it in a single sitting. I am always very ready to treat the opinion of my Hon'ble Colleague with respect; indeed I look to his sage advice and to his influence with his fellow-countrymen to assist us largely in the solution of the political problems

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of the future. But when I am told that the position is not one of such emergency as to justify a departure from recognized routine in the introduction of new legislation, and that further opportunity should be given for constitutional discussion, and for the expressions of public opinion, I must refuse to agree. Public opinion, European and Indian, [has spoken out freely from every part of the country, and officially and privately declared to me that the existing insecurity can no longer be tolerated, and that the Government of India must be more efficiently armed. With that opinion I am in entire accord. This is not a time to ponder further over the details of legislative machinery. There is nothing to justify a demand for further deliberations as to the action which the Government of India is now called upon to take.

“There are other reasons, too, for which I have been anxious that the Bill which we are about to pass should immediately become law. We are on the eve of the announcement by the Secretary of State of reforms which have long been foreshadowed, and I should be sorry to see that announcement immediately followed by exceptional criminal legislation such as that with which we have to-day been dealing. I cannot agree with my Hon'ble Colleague, Dr. Ghose, that we should first promulgate our reforms, and then proceed to deal with anarchical crime. I should prefer to feel that the stern measures which the unfortunate necessities of the moment have forced upon us have been completed before any announcement of reforms is made, and that, having done our best for the maintenance of law and order, we can proceed with a free hand to discuss the development of the future. The success of that future must be based not only upon the united efforts and co-operation of British and Indian administrators, but on the good sense of Indian community. Upon its active assistance at the present moment much depends; and I would earnestly ask the members of every race, of every caste and of every creed to unite in one common effort to put an end to the dark plots and apprehensions of hidden danger which are crippling the daily life of the people. I would ask them to assist the Government of India in removing the causes which have so unfortunately necessitated to-day's legislation.”

The motion was put and agreed to.

The Council adjourned to Friday, the 18th December 1908.

J. M. MACPHERSON,
Secretary to the Government of India,
Legislative Department.

CALCUTTA; }
The 11th December 1908. }