

*Monday,  
8th June, 1908*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XLVII**

**April 1908 - March 1909**

ABSTRACT OF PROCEEDING  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

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VOLUME XLVII



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The Council met at Viceregal Lodge, Simla, on Monday, the 8th June, 1908.

PRESENT:

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 Louis William Dane, K.C.I.E., C.S.I., Lieutenant-Governor of the Punjab.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., G.C.I.E., Commander-in-Chief in India.

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

The Hon'ble Mr. E. N. Baker, C.S.I.

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 Mr. W. L. Harvey, C.I.E.

The Hon'ble Munshi Madho Lal.

The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

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

INDIAN SALT-DUTIES BILL.

The Hon'ble MR. BAKER moved for leave to introduce a Bill to make special provision for the payment of duty on salt in certain cases. He said:—  
“ My Lord, under an arrangement which is at present confined to the Madras and Bombay Presidencies, merchants who buy salt from Government sources are allowed credit for payment of the duty ; they deposit adequate security, and their accounts are cleared every six months, or at shorter intervals if so arranged. The system has worked well and smoothly ; it tends to cheapen salt to the consumer and to facilitate its distribution. The Bill now presented is intended to allow of the extension of the same system to other parts of India.”

The motion was put and agreed to.

2 *SALT-DUTIES; LOCAL AUTHORITIES, LOANS; EXPLOSIVE  
SUBSTANCES.*

[*Mr. Baker; Sir Harvey Adamson.*]

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The Hon'ble MR. BAKER introduced the Bill.

The Hon'ble MR. BAKER moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The motion was put and agreed to.

LOCAL AUTHORITIES' LOAN (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved for leave to introduce a Bill to amend the Local Authorities' Loan Act, 1904. He said:—"My Lord, that Act was passed to enable certain local authorities to borrow money by means of the issue of short-term bills. In practice it has been found that in some cases the documents on which the loans are sought to be raised are promissory notes in form, rather than bills in the ordinary banking and commercial sense. Doubts have been expressed whether the word 'bills' is strictly sufficient to include promissory notes; and though no practical difficulty has arisen, it seems expedient to amend the Act so as to place the matter beyond doubt."

The motion was put and agreed to.

The Hon'ble MR. BAKER introduced the Bill.

The Hon'ble MR. BAKER moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in English in the Gazette of India and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette.

The motion was put and agreed to.

EXPLOSIVE SUBSTANCES BILL.

The Hon'ble SIR HARVEY ADAMSON moved for leave to introduce a Bill further to amend the law relating to explosive substances. He said:—"My Lord, I do not think that I need explain to the Council at any length the reasons why the Government of India have thought it necessary to introduce a Bill to deal with explosive substances.

"The nature of the danger which we have to meet has been revealed in the recent attempts to derail by explosive bombs the train of the Lieutenant-Governor of Bengal, in the attempt on the life of the Maire of Chandernagore, in the terrible murders of two ladies at Muzaffarpur, in the discovery of a bomb factory

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in Calcutta, in the subsequent attempt to destroy a tramway car, and in the deposit of a bomb of great power in the precincts of a church, and last but not least in the revelations as to the objects of certain newspapers whose aim is to incite to assassination. The nature of the dangers which we have to meet is known to everybody in and out of this Council. The present Bill deals with the danger in respect of explosive substances. I propose subsequently to introduce a Bill dealing with dangerous newspapers. We have to cope with an organised band consisting unhappily not of the men of the lower criminal classes, but educated men who are banded together against all the interests that keep society alive, men who like pirates are the enemies of the human race. Knowing the danger before us—a danger which in India is new—we must meet it by new remedies, not in the spirit of panic, but in a cool and resolute spirit and with a determination to strangle those plans and put down the authors of them. The first line of defence we have against these dangers is to be found in the police, and I desire in the first place to pay my tribute to the splendid services which the police of Bengal have within the last few weeks rendered to the cause of society. The next line of defence which we have is to be found in the penalties of the law. First we have the Explosives Act of 1884. But that Act is not directed against persons possessing explosives with a criminal object. It is intended to defend life and property against the reckless or careless use of a dangerous commodity. The highest penalty in the Act is a fine of three thousand rupees. Next we have the Arms Act of 1878. The penalties in it are directed against the unlicensed manufacture or possession of arms, ammunition or military stores, and the maximum punishment is imprisonment for three years, except where the criminal act is done in such a manner as to indicate an intention that such act may not be known to a public servant, in which case the maximum punishment is imprisonment for seven years. These punishments are obviously insufficient for the making or possession of explosives with the intent to endanger life or to cause serious injury to property, even if the act itself could always be brought within the provisions of the Arms Act. Finally, we have the Indian Penal Code which provides only for the actual committing of hurt or mischief by an explosive substance, and in which the punishment has various ranges up to transportation for life, dependent on the extent of hurt or damage which it is intended to commit. Here again the remedy is inoperative, because no offence has been committed until an attempt has been made to commit hurt or mischief, and in that attempt some overt act has been done. It must therefore be perfectly obvious to any one that the existing law is not sufficient to meet the new emergency which has arisen, and I think it unnecessary to enlarge on

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this aspect of the case. The defects of the existing law it is the object of this Bill to amend, and I think I shall best do what is useful by simply going through the Bill. Where an explosion takes place which leads to the loss of life, that is not dealt with in the Bill. It is not necessary to do so because if a man produces an explosion by which life is lost he is guilty of murder, and would be dealt with for murder without the Bill. The third clause of the Bill deals with an explosion which has not caused loss of life, but with the case where an explosion has actually taken place. It is wide enough to include any serious explosion, because no explosion of a serious character could fail to be described as one likely to endanger life or to cause serious injury to property. It provides a penalty which may extend to transportation for life or to imprisonment for ten years, and I am sure that no one will think that this is a penalty which is too severe for the offence. The fourth clause of the Bill deals with the case where there has not been an explosion, but where there has been an intent and an attempt to cause an explosion. It also includes the making or possession of explosives with intent to endanger life or property. That is a degree lower because the explosion has not actually taken place. In either case the intent has to be proved, and when such an intent has been proved, no one will say that the maximum penalty, which is transportation for twenty years or imprisonment for seven years, is too high. The fifth clause relates to the making or possession of explosives under suspicious circumstances. I will read it—

‘Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable.’

“In the first place, the prosecution must raise a reasonable suspicion as to the conduct of the man who makes an explosive or has it in his possession: and having raised that suspicion, then it is thrown on the prisoner to show that he made or had it in his possession for a lawful object. It is perfectly justifiable when reasonable suspicion has been shown to exist with reference to the conduct of people who cannot or else will not give any account of themselves, or why they are in possession of a commodity which even by mere carelessness may be destructive of thousands of lives and of an unlimited amount of property, that they should be called upon to show the reason why they are possessed of these things. This legislation is not of an unexampled character. It is part of the permanent law of this country. In the presidency-towns, if a man is found in the night armed with a dangerous and offensive weapon or having in his possession without lawful excuse—

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proof of which excuse lies upon him—any implement of house-breaking, then he shall be convicted. If a man may be called upon to show the reason why he has a picklock in his possession, I think he may be called upon to show also by what right he possesses a hundred weight of nitro-glycerine, and therefore I say this legislation is founded on exactly the same principle as that of our existing and permanent law, and no objection whatever can be taken to this clause on that ground. In consideration of the fact that the onus of proof is thrown on the accused we have followed the English law and put a lower penalty upon the offence in this clause, the maximum being transportation for 14 years or imprisonment for five years.

“The sixth clause is one which is perhaps partly covered by the permanent law of abetment. But it is desirable that public attention should be called to the fact that it is not only the man who makes an explosive or the man who places it where an explosion takes place, who is guilty of a crime, but that every man who supplies money or solicits money for the purpose or in any way procures, counsels, aids, abets or is accessory to the commission of an offence under this Act is liable to suffer exactly the same penalty as if he had been guilty as a principal.

“I now come to clause 7 where there is a protection against innocent people being vexed under this Bill, and that is, that no Court shall proceed to trial of any offender without the sanction of the Local Government, and therefore if through the police or otherwise an innocent man is arrested and gives an account of himself, the whole matter will if necessary go before the Local Government and the proceedings will come to an end.

“There remains the definition clause, which is a clause of great importance. The expression ‘explosive substance’ applies not merely to explosives themselves, but, what is absolutely essential, it applies to all their materials. If you do not do that, you do nothing. If you allow a man to have in one room sulphuric acid, in another room nitric acid, and in another room glycerine, and you are to await till he combines the three, he will defy your law. It is absolutely necessary that all the materials which may be used in the composition of explosives should be brought within the scope of the law. I am well aware that there are many materials of explosives, like saltpetre or sawdust, which may be perfectly innocent in themselves; but no man will be punished unless he has those materials in his possession in such a way as to raise a suspicion that they are intended to be used for an improper purpose. And it is necessary also not only to deal with the materials for making any explosive

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substance but also with the apparatus and machinery that are intended to set the explosive materials at work. The definition therefore makes mention of—

“ any apparatus, machine, implement or material used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance, also any part of such apparatus, machine or implement.”

“ That will deal with detonators, with chlorate of potash, with sulphuric acid, and with all the means employed for exploding the commodity.

“ I think I have called attention to all the material parts of the Bill, and now for a word as to the haste with which we propose to pass it. It is not my business to increase excitement, it is rather to allay than to excite panic. But I cannot conceal from the Council my conviction that the danger is great and imminent, and that it ought to be dealt with at once and with a strong hand. A new crime has arisen in India, a crime of a terrible nature, and the existing law is absolutely insufficient to cope with it. I will not say more than that. But I may tell you what occurred in England when the same danger first showed its face. Early on the morning of the 5th April 1883 a man was arrested in a house in London and found to be in possession of a box which contained  $1\frac{3}{4}$  cwt. of nitro-glycerine. There was also discovered a manufactory on a large scale of explosive matter. This was communicated to the House of Commons on the same evening by Sir William Harcourt in answer to a question. He also said that he was not satisfied with the state of the law on the subject and that it required early amendment. On 6th April Sir William Harcourt gave notice that on Monday next, the 9th April, he would ask leave to introduce a Bill to amend the law with reference to the possession of explosives, and that in order to expedite the passing of the measure he would move that the orders of the day be postponed. On the 9th April the Explosive Substances Bill was introduced. The Bill was read a first and second time, considered in Committee and read a third time. It was sent to the House of Lords on the same day, where it was read a first, second and third time and passed by 11-30 P.M. There is the same necessity for haste here as there was in England. I may add that the present Bill is almost identical in terms with the English Explosive Substances Act, and that in explaining its provisions I have indented largely on Parliamentary reports.”

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON introduced the Bill.



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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.

His Excellency THE PRESIDENT declared the Rules suspended.

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

The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB BAHADUR said:—  
“ My Lord, I deeply regret the dire necessity which has induced the Government of India to convene this meeting of the Council. The terrible tragedy at Muzaffarpur has brought home a sense of shame and humiliation to every loyal and patriotic Indian. It is with a universal feeling of horror and indignation that the news of the barbarous outrage carrying off two innocent English ladies was received throughout India by men of all classes, creeds and communities. To the bereaved husband and father, Mr. Kennedy, who has suffered simultaneously two of the greatest of domestic misfortunes, spontaneous sympathy and sorrow have gone forth from innumerable hearts in the country. The disclosures which have subsequently been made at Calcutta reveal the existence of a dangerous and widespread organisation for promoting anarchism whose ends are, as is well known, the destruction of all property, law and government. The birth of this monster in the present political and social conditions of the country has filled all thinking men with genuine alarm and anguish. I may be permitted to assure Your Excellency that popular forces and popular opinion will unreservedly co-operate with the Government in weeding out this noxious growth. It is an evil which is quite alien to the ancient civilisation of this land, which is in violent contrast with the religious beliefs and traditions of the various peoples inhabiting this country. It is the common interest of every intelligent citizen to see that the evil is not allowed to grow and that it is stamped out of the country before it develops into dangerous proportions. I have no doubt that the heart of the people is with the Government at the present trying time in their efforts to overcome the forces of anarchy and disorder. I have also every confidence that the Government in successfully stemming the elements of disorder and violence in the country will give no heed to the counsels of reaction, of panic and of ignorance of the actual conditions. The British Government has always been noted for its humanity and justice. Its moral purpose and power have always been higher than its material strength. At

[*Nawab Saiyid Muhammad; Tikka Sahib of Nabha; Sir Harvey Adamson.*] [8TH JUNE, 1908.]

the present juncture wise statesmanship requires that Your Excellency's Government should act with decision, justice and lenity, which will be in accordance with the best traditions of the British rule."

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH of Nabha said :—" My Lord, the events of the past few weeks—events which every sensible and right-thinking man will condemn—have naturally compelled the Government to take some sort of action. The recent bomb outrages are most deplorable, and I may remark that this sort of crime was unknown in this country till recently. It is every day happening in European countries, because, for good or evil, 'democracy' is in the air, and India could not have escaped the infection. Under rule 20 of the rules of the conduct of the business in this Council, Members are entitled to have a copy of a Bill which is to be taken into consideration, at least seven days beforehand, but I got my copy only last evening, so I have not had sufficient time to fully think over the matter. Things done in haste are not often well done; and in this connection I would beg to point out that the Bill which is now before the Council seems to be vaguely drafted. For instance, it does not mention two very important matters, *viz.*, the grade of Judicial officer who will have jurisdiction to try offences under this Act, and to whom an appeal will lie from his orders. I therefore beg to suggest to Your Excellency that these and other such defects should be remedied before the Bill is passed.

" It seems a pity that the Hon'ble the Maharaja of Darbhanga, who was reported in the papers a few days ago to have said, at a meeting recently held, that he as a Member of Your Excellency's Council would support any measure brought forward by the Government in this connection, is not here today among us to take part in these deliberations ! "

The Hon'ble MUNSHI MADHO LAL said :—" My Lord, I think no sensible loyal subject of Government will hesitate to support this important Bill. I do not think the objection raised by my Hon'ble friend the Tikka Sahib is applicable at the present time. The situation is very serious and much mischief may arise, and the sooner we deal with it the better. I do not think there is any necessity to declare in the Bill the grades of the officers who are to take action under the provisions of the Bill; it depends upon the Local Governments to take action if they think necessary. This small detail is of minor importance."

The Hon'ble SIR HARVEY ADAMSON said :—" I have only one word to say with reference to the statement made by the Hon'ble the Tikka Sahib of

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Nabha that the Bill does not provide for the grade of the Judicial officer, and for the tribunal of appeal. It was not necessary to insert any provisions of this kind in the Bill because they are already provided for by the Code of Criminal Procedure, the procedure of which applies not only to offences under the Indian Penal Code but also to offences under other laws."

His Excellency THE PRESIDENT said :—" I intend to reserve any remarks which I wish to make till after we have considered the Newspaper Bill. I will now put the motion to the Council."

The motion was put and agreed to.

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

The motion was put and agreed to.

NEWSPAPERS (INCITEMENTS TO OFFENCES) BILL.

The Hon'ble SIR HARVEY ADAMSON moved for leave to introduce a Bill for the prevention of incitements to murder and other offences in newspapers. He said :—" My Lord, the Bill which I ask for leave to introduce is a sequel to the Explosive Substances Bill and is intended to meet the same emergency. There are two factors in this emergency, neither of which it is possible to ignore if the evil is to be adequately dealt with. The first is the actual making and using of bombs, which has been met by the Bill which has just been passed into law. The second is the public incitement to murder and acts of violence carried on through the medium of an infamous section of the Press. These two factors are as inseparable as cause and effect. If you legislate for the effect without legislating for the cause, you do nothing. The present Bill is therefore as urgent as the one with which we have just been dealing. In the opinion of the Government of India it is absolutely necessary for the public safety that it should be passed into law with the utmost possible despatch. The circumstances which have led to this legislation are fresh in the minds of all of us.

"It is therefore not necessary for me to give a history of the events of the bomb outrages, and I am the more disinclined to do so because certain persons accused in connection with these transactions are still under trial. There is one point and only one in connection with the proceedings that I am compelled to mention in order to support and justify the legislation in which we are engaged. It is the close connection between the Manicktollah conspirators and a

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certain section of the Press. Barendra Kumar Ghose, who declares himself to be the leader of the conspirators, is the man who created the *Yugantar* newspaper. Many of those who are under arrest and have confessed to participation in the crimes have been connected with the *Yugantar*. Some have been connected with another newspaper which it is not necessary for me to name. Some have confessed that they drew their inspiration from newspaper writings. Among others the young man who threw the bomb at Muzaffarpur has admitted that he was incited by writings in the *Yugantar*. I will make no further comments on events which are now *subjudice*. What I have stated is taken from proceedings in Courts of Justice and is already public property.

“ Now turning to the class of newspaper against which this Bill is directed, I find that the *Yugantar* has been on five occasions during the past year the subject of prosecution for the offence of sedition. On four occasions the printer and publisher has been convicted and one case is still pending. The authors of the offending articles have never come forth into the light. So far from being deterred by prosecution, a fresh printer and publisher has been registered on each occasion of conviction, and the tone of the newspaper has continued unimproved. In spite of five prosecutions the *Yugantar* still exists and is as violent as ever. The type of sedition has been incitement to subversion of British rule by deeds of violence. The policy of the newspaper has been to court prosecution in order to create pseudo-martyrs and thus to enlist sympathy on the side of anarchy, and it may be presumed that a further inducement was to increase the circulation of the newspaper by pandering to the tastes of the depraved. I quote the following extract from the official translation of an article in the *Yugantar* which appeared a few days after the attempt on an officer's life in Muzaffarpur resulted in the terrible death of two ladies :—

‘ Hard-heartedness is necessary to trample the enemy under foot. An independent-spirited youth, arrested in connection with the Calcutta incident, is said to have said: “ The work of the revolutionists, though progressing slowly, was very satisfactory; but two innocent women having met with violent death, all their attempts have been foiled by a curse of God.” If any youth aspiring to freedom has really said so, then he has not yet become fit to obtain freedom. Hard-heartedness is necessary to trample the enemy under foot. When during the *Treta Yugu* the *Rakshasas* were perpetrating frightful oppression in the Dandaka forest, Rama extirpated the whole race of the *Rakshasas*. Laksman Thakur cut off the nose and the ears of Surpanakha, the beautiful sister of Ravana, and then let her go. It is not necessary to give illustrations. If in the attempt to destroy the enemy a woman is accidentally killed, then God can have no cause of displeasure like the English. Many a female demon must be killed in the course of time, in order to extirpate the race of Asuras from the breast of the earth. There is no sin in this—no mercy, no affection.’

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“ Two days ago I saw a telegram from Calcutta stating that the *Yugantar* which usually appears on Saturday had unexpectedly appeared on Friday, that thousands of copies had been struck, and that they were selling at a rupee a copy. The telegram gave some description of the contents, which in violence outvied any previous issue. I have not yet received the full translations.

“ I have up to this point confined myself to the *Yugantar* because it has already obtained so great notoriety that nothing that I can say can make it more notorious. But writings of a similar type abound in other newspapers, not only in Calcutta but throughout India. I will not give any of these disreputable papers an advertisement by mentioning their names. I will content myself with stating the substance of articles which I have culled from them. One article referring to the partition of Bengal states that the ruthless knife of the butcher has severed in twain the throbbing body of the motherland, and makes frantic appeals to all sons of the soil to combine and avenge the atrocity. Another makes insidious attempts to propagate the cult of Ramdas who instigated Shivaji to revolt against Moslem rule. Another instigates Indians to sacrifice their lives and to teach the rulers a bitter lesson. Another urges the Bengalis and the Gurkhas to join hands and rebel against the oppression of the bureaucracy. Another advises the Bengalis to resort to red as the colour of revenge and to sing the hymn of retaliation: ‘ A hundred heads for one head to avenge the murder of the motherland.’ Another states that a huge sacrificial fire should be lit up and fed not with ghee, but with blood. Another advocates that Indians should make use of blacksmith’s tools, *lathies* and slings and stones to overmatch the enemies of their country. Another says that if by resorting to boycott we can gain our desires we can only be said to postpone for the present our resolve to shed blood. Another says that if we desire independence we should be ready to be massacred by our rulers so that their sword may become blunt. Another exhorts to die after killing, as therein the glory of dying will be enhanced. Another urges the sacrifice of life for liberty, for is it not a fact that Kali will not be propitiated without blood. Another advocates the methods of nihilists and the use of bombs. I might go on for hours in quoting such types as these. To an Englishman, who knows not India, they would appear to be little more than ridiculous bombast. But to impressionable and immature minds in the East they present an entirely different significance. We have already seen the terrible effect that they produce on the youthful student, and they must be judged by Eastern and not by Western standards. We have striking examples of how they have converted the timid Bengali into the fanatical

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*ghazis*, and they are not to be ignored. The difference between the East and the West in this respect is the difference between dropping a lighted match on a stone floor and dropping it in a powder magazine.

“ Now, my Lord, I have quoted some of the dangerous incitements that are published by unscrupulous newspapers. I have given facts showing the effects which such writings have produced on misguided young men, and I have shown that prosecution has been tried and tried again and has completely failed to put a stop to this incitement to outrage. Under these circumstances what is the duty of a responsible Government? Its bounden duty surely is not only to make adequate provisions to punish the perpetrators of outrages that actually occur, but also to close the fountain head, and to insure that colleges of anarchy, assassination, rebellion and violence are not openly maintained under the guise of newspapers circulated among the public.

“ I will now explain the legislation which we are undertaking for this purpose. The first and most important point that I desire to impress is that this Bill is not a general Press law directed against sedition as defined in section 124A of the Indian Penal Code. Sedition means an attempt to bring into hatred or contempt or to excite disaffection towards the Government established by law in India. I have no sympathy with sedition and do not in any way palliate that serious offence. But this Bill is not directed against sedition. In respect of sedition we leave the existing criminal law to take its course. The present Bill is confined entirely to the emergency which is now facing us. It is intended to provide a more effective way than prosecution for attempts through newspapers to incite to murder and acts of violence. It is not meant as a substitute for but as a supplement to prosecution. It is directed against newspapers which persistently defy the law, which court prosecution, which set up dummies for punishment while the real authors lie concealed, and which establish themselves as schools of anarchy and outrage with the object of debauching young and immature minds, and inciting men to murder, armed revolt, and secret and diabolical schemes of general assassination. The only way to deal with such newspapers is to put an end to their existence, and this we propose to do in the Bill by giving power to confiscate the printing press and to extinguish the newspaper. This is the object of the present Bill, and these two powers are all the powers that it contains. Next as regards the means for effecting these ends. There are two ways in which they can be effected, by executive action or by judicial action. The former would be more prompt, and there are many who have urged us to adopt it. The latter, however, is more in accordance with the principles of modern administration, and at the sacrifice, it may be, of some efficiency, we have chosen it. The Bill empowers

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the Magistrate on application made on behalf of the Local Government to take action in respect of the printing press concerned, when he is of opinion that a newspaper contains any incitement to murder or to an offence under the Explosive Substances Act or to an act of violence. The first step is a notice to all concerned affixed on the place where the printing press is. The next is the hearing of the case, which will be in the nature of a criminal miscellaneous proceeding. Evidence will be given on behalf of the Local Government, and evidence may be tendered by any one who opposes the action. The Magistrate will then record a finding, and if the finding is that the newspaper contained the incitement alleged, he will proceed to order forfeiture of the printing press. He will have the discretion of keeping the printing-press under attachment during the hearing of the case. Against an order of forfeiture an appeal will lie to the High Court, the period of limitation being fifteen days. A further power is given to the Local Government. When an order of forfeiture has been passed the Local Government may annul the declaration made by the printer and publisher under the Press and Registration of Books Act, the effect of which annulment is that the newspaper will cease to lawfully exist.

“There is one other point that I think I should explain. Action can be taken under this Bill only when a newspaper contains an incitement to murder or to any offence under the Explosives Substances Act, or to any act of violence. It may be thought that the last words ‘any act of violence’ are too wide and that they admit of action being taken on account of a trivial deviation towards censurable journalism. If these words were omitted, if no words of the kind were inserted, the Bill would in practice be inoperative, for it would be easy for any one to write round the clause, to evade its intention, and to publish the most dangerous incitements while keeping within the letter of the law. The position is familiar in criminal law. If you consider every possible particular in which almost any penal clause may be abused, you may throw it out altogether. Take for instance the Indian Penal Code. If you give your neighbour a tap on the shoulder, you may come within the terms of the offence of using criminal force. No Bill could ever be drawn which would prevent extreme cases from arising. It would be impossible to draw any Bill which would stop the offences that are aimed at, if it were insisted that under no conceivable circumstances it could be applied to others than those whose punishment it provides for. If you mean to have a Bill that will effect the purpose that you have in view you must admit these consequences and rely on the safeguards which will prevent injustice from being done. Now the safeguards under this Bill are far greater than those afforded under the ordinary penal

[*Sir Harvey Adamson ; the President ; Nawab Saiyid Muhammad.*] [8TH JUNE, 1908.]

law. A private person can take no action under it. The police can take no action under it. Not even the Magistrate can initiate action. The Bill cannot be applied to extreme cases because no action will be taken except on the initiative of a responsible Local Government. It is inconceivable that a Local Government should take action in an extreme case, or in any case that did not present a serious aspect. There is therefore no danger to be apprehended by the public from the wideness of the clause.

“ In conclusion, I say that this Bill is not directed against the liberty of the Press. If a repressive measure is a measure which curtails the legitimate liberties of the people, this Bill is in no sense a repressive measure. It curtails no liberty that is legitimate. It is strictly confined to incitements to murder, and acts of violence. No newspaper in the civilized world has liberty to make such incitements. It is impossible that the Bill can ever affect any newspaper that is properly and decently conducted. Even when it is applied in respect of a newspaper which has degenerated from liberty into lawless license, its application can only be by means of constitutional judicial methods in which the parties concerned will have the advantage of the complete judicial trial to which they would have been entitled if they had been prosecuted for committing an offence.”

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.

His Excellency THE PRESIDENT declared the Rules suspended.

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

The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB BAHADUR said:—“ My Lord, though I agree with the principle, yet I regret I cannot support all the details of the Bill relating to the Press we have now before us. The object of the Bill is laudable, but whether the provisions of the Bill will attain that object is, I think, open to doubt. I would not plead for a moment that all our newspapers are perfect or near it, but, on the contrary, some of them are run on eccentric lines. The Bill has been hastily got up, and I regret to say we have



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[*Nawab Sa'iyid Muhammad.*]

been afforded no opportunity to consider the measure carefully and express any decided opinion. The Bill appears to me to be too wide in its scope in that it covers not only offences for incitement to murder or offences under the Explosives Act, but any act of violence; this, I am bound to say, is vague and indefinite. Coming to the details of the Bill, some of the sections are open to criticism. The conditional forfeiture provided in section 3, sub-section (1), arms the executive with extensive powers. My Lord, I yield to none in my respect for the executive officers of the service, but after all they are not infallible. I am strongly of opinion that the Magistrate under no circumstances should be allowed to attach a printing press by an *ex parte* order as provided for in section 3, sub-section (3), of the Bill, and I would respectfully ask the Hon'ble Member in charge to show a more judicial attitude in the matter. The right of appeal has been unduly curtailed and the time limit is too short.

“ My Lord, although I think that incitement of every kind should be dealt with severely, legislation of this kind, in my humble opinion, cannot help us in the long run. This is also the view taken by thoughtful men in England. Writing on ‘ The ethics of dynamite ’ in the *Contemporary Review* in 1894, the Hon'ble Auberon Herbert admirably summed up the situation in the following words :—

‘ If the only effect upon us of the presence of the dynamiter in our midst is to make us multiply punishments, invent restrictions, increase the number of our official spies, forbid public meetings, interfere with the Press, put up gratings—as in one country they propose to do—in our House of Commons, scrutinise visitors under official microscopes, request them, as at Vienna, and I think now at Paris also, to be good enough to leave their great-coats in the vestibules—if we are, in a word, to trust to machinery, to harden our hearts, and simply to meet force with force, always irritating, always clumsy, and in the end fruitless, then I venture to prophesy that there lies before us a bitter and an evil time. We may be quite sure that force-users will be force-begetters. The passions of men will rise higher and higher; and the authorised and unauthorised governments—the government of the majority and of written laws, the government of the minority and of dynamite—will enter upon their desperate struggle, of which no living man can read the end. In one way and only one way can the dynamiter be permanently disarmed—by abandoning in almost all directions our force-machinery, and accustoming the people to believe in the blessed weapons of reason, persuasion, and voluntary service.’

“ My Lord, these are words of wisdom which I respectfully submit for the consideration of Your Excellency's Government. As I believe that the Bill when passed into law will have a wholesome effect on those who write at random without themselves knowing what they write about, I support the motion before the Council. ”

[Tikka Sahib of Nabha.]

[8TH JUNE, 1908.]

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH of Nabha said :—“ My Lord, it is rather hard on the Members of this Council to give their opinions off-hand on important subjects without having an opportunity of considering facts and examining references. If it was thought that the present situation demanded immediate action on the part of the Government, the proper thing to do would have been to issue an Ordinance under the exceptional powers given by the Indian Councils Act to meet such emergencies, and to reserve legislation for the next Calcutta session, because additional Members are generally not expected to attend the meetings of the Council at Simla, and many of them are not present here today. I remember that the Hon'ble Sir Harvey Adamson said in this Council last year that the objections to legislation at Simla are not so strong now when there is a railway, as they were many years ago when there were no such facilities of travel; but I apprehend that the Hon'ble Member overlooked another inconvenience when he spoke. If an Hon'ble Member intends to come either from Madras or Burma to Simla, to attend the meeting of the Council in the month of June or July, can the journey be described as a pleasant and 'short railway journey' ? It was perhaps for such reasons that Lord Salisbury, then Secretary of State, wrote to the Government of India many years ago that no important legislation should be undertaken in Simla. Let the Government suppress crime with a strong hand, but at the same time let not its action appear arbitrary or precipitate. If there is any real and general unrest in the country as is alleged, let us try to find out its causes and remove them. Let us also think and decide whether coercion or conciliation would be the better remedy. I have not had sufficient time to give full consideration to the Bill which is now before the Council, because I received a copy of it only last evening. I do not therefore find myself in a position to criticise the Bill in detail, yet I beg to offer a few observations on its provisions. Section 3, sub-section (3), appears to be unnecessary and might be omitted. Section 3, sub-section (5), does not specify the period after which the Magistrate is to make the conditional order absolute, or how long he has to wait for the appearance of the person or persons concerned. This should be made clear and not left to the discretion of the Magistrate. In section 5, which provides for an appeal, thirty days may be substituted for fifteen. Section 6 appears to be superfluous and might be left out. In section 7 the words 'or of any newspaper which is the same in substance as the said newspaper' are ambiguous, and should be either made clearer or struck out of the Bill. These are a few defects which have occurred to me in the hurried reading of the Bill, and there may be some other defects also. The present Bill does not

[8TH JUNE, 1908.] [*Tikka Sahib of Nabha; Munshi Madho Lal; Sir Harvey Adamson.*]

seem to be such an urgent one as that which has just been passed, and moreover it would affect a larger number of people; therefore ample opportunity should be given to discuss its provisions, and it should not be passed in such hot haste today. Apart from this I feel that non-official Members have a right to expect that they should be given sufficient time for consideration before tendering their opinions on such important subjects; therefore I pray Your Excellency to postpone the consideration of the Bill to some future date."

The Hon'ble MUNSHI MADHO LAL said:—"My Lord, the present situation is no doubt very serious. I do not, however, think that the necessity of passing this Bill is as urgent as that of the other Act which has just been passed. A month's consideration would have been sufficient, and I think that by the postponement of a month no harm would have been done. The Bill might have been introduced, a Select Committee appointed and the Bill passed into law in a month. The Bill ought to have gone to the Press and the public, and they might have been given an opportunity of expressing their opinion on its details. As far as I can see at present the whole heart of the country is with the Government to put an end to such writing as may incite to murder and other crimes. I have no patience with writings of this sort, and with those men who employ our sacred literature for their purposes; but still with all that, if we had postponed this legislation for two weeks or a month, no great harm would have been done. It may however be that the Government is in possession of facts necessitating the passing of this Bill at such short notice under a sense of great and heavy responsibility. As regards the present legislation, I agree with the Government and believe that the heart of the people is on their side."

The Hon'ble SIR HARVEY ADAMSON said:—"I sympathize with Hon'ble Members in their complaints that they have had little time to consider the details of the Bill. Copies of the Bill with Statements of the Objects and Reasons for which it was framed were in the hands of Hon'ble Members more than sixteen hours before the Council met. The time is short, I admit, but it is longer than was given to members of the British Houses of Parliament when legislation for a similar crisis was undertaken. I am sorry that Hon'ble Members have been inconvenienced. I should have been glad to have avoided causing inconvenience to Hon'ble Members by passing the Bill through its various stages in the ordinary way; but I hope that Hon'ble Members will accept my statement that such a course was impossible. If ever there was reasonable ground for alarm, the events that are known to us surely furnish that

[Sir Harvey Adamson.]

[8TH JUNE, 1908.]

ground. We are brought face to face with a great and imminent public danger, and it was absolutely necessary to make such haste as the rules of our legislative business allow.

“As regards the suggestion that we should have proceeded first by way of Ordinance, and that, having thus provided for the immediate emergency, we should have proceeded to permanent legislation in a more deliberate way, I admit that the course suggested has some advantages. But it has this disadvantage, that it commits the Governor General to taking legislative action without the advice of his Legislative Council. It is further to be remembered that an Ordinance is an act of the Governor General in person and not of the Governor General in Council. On the whole, we considered that in a matter of such importance, and in a matter in which an entirely new line of legislation is being taken, it was well to call in the aid of the Legislative Council.

“With reference to the Hon'ble the Tikka Sahib's remarks, I am afraid that it is impossible for me to consent to an adjournment. In fact, as events have shaped themselves, the present Bill is much more urgent than the Explosive Substances Bill. I have told Hon'ble Members how the *Yugantar* brought out secretly on Friday an issue reeking with incitements to murder, and how the issue sold for one rupee a copy. In the face of these tactics it would be criminal folly to delay the passing of this Bill by a single day. The evil that one issue of a paper of this kind may do is incalculable, and though I sympathize entirely with the Hon'ble Member in his plea, that there has been but little time for him to consider the substance of the Bill, I feel that it would be impossible, with a due sense of responsibility for the safety of the public, to recommend to the Council the postponement of this legislation for a single day.

“With reference to the Hon'ble Nawab Saiyid Muhammad's objection to the *ex parte* action of the Magistrate, it is in my view quite necessary to give to the Magistrate the power of making an order of attachment *ex parte*. The power is given in cases of emergency or in cases where the application might be defeated by delay. The tactics of the *Yugantar* have shown that it is necessary when once action has been taken to have power to stop further issues of the newspaper. If the Magistrate had not this power a newspaper like the *Yugantar* would employ the whole time between notice and hearing of the case in publishing fresh incitements to assassination, the harm resulting from which might be incalculable. *There is nothing new or foreign to existing law in the provision. The Magistrate has a similar power in the procedure relating to prevention of nuisances which is contained in the Criminal Procedure Code.*”

• The motion was put and agreed to.

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[8TH JUNE, 1908.]

[*Sir Harvey Adamson ; the President.*]

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be passed. He said:—" My Lord, it is a source of much satisfaction to me, and I am sure that it will be the same to Your Excellency and to all the official Members of this Council, that we have received the support of the non-official Members of Council to the two Bills in which we have been engaged today. It is to be regretted that the urgency of our action has rendered it impossible for the other non-official Members of Council to be present. We know from the public utterances of the Hon'ble the Maharaja of Durbhanga that he would have supported us, and I am sanguine enough to believe that if there had been a full attendance of non-official Members we would have had an unanimous vote. I cannot doubt that every non-official Member would have supported the Government in measures directed against the common enemies of mankind, in measures which the Government of India believe to be absolutely necessary for the safety of the public. We have received télégrams and memorials from representative bodies of all races and all religions in India expressing abhorrence of the terrible outrages that have been committed, and offering their support to Government in the crisis. Therefore, I fear not that what we have done in this Council to-day will commend itself to every right-thinking man in India. It often happens in the wise dispensation of Providence that good comes out of evil. May I venture to hope that, united as the Government and the people of India are against a common enemy, these terrible incidents, which we all deplore, may have the effect of drawing together the Government and the people and bringing about a better understanding between Englishmen and Indians."

His Excellency THE PRESIDENT said :—" Before I put the motion I would venture to make a few remarks.

" My Hon'ble Colleague, Sir Harvey Adamson, has clearly and ably explained the nature of the measures we have before us today. He has recapitulated the powers we have hitherto possessed under the law, and has shown how utterly insufficient they have proved to enable us to deal with existing circumstances.

" The lamentable incidents at Muzaffarpur have sent a thrill of horror throughout India, and have too clearly warned us that we must be prepared to deal immediately with an iniquitous conspiracy and with murderous methods hitherto unknown to India.

" I know that my Hon'ble Colleagues will join with me in expressing the sincerest sympathy for Mr. Pringle Kennedy in his terrible bereavement. His attachment to India and his many years of good work have earned him the

[*The President.*]

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respect and affection of English and Indian society alike, in which his wife and daughter very fully shared. There have been other atrocious deeds besides that at Muzaffarpur—one cannot forget the sufferers from the explosion in Grey Street in Calcutta, or the deliberate attempts to assassinate Sir Andrew Fraser, the Maire of Chandernagore and Mr. Kingsford. As to Mr. Kingsford, the public have been told in India and at home that the attempts on his life were due to the infliction by him of sentences of flogging for political offences—an unwarrantable accusation, which I am glad to have this opportunity of denying, against one who has fearlessly and straightforwardly done his duty. In not a single case has Mr. Kingsford awarded flogging as punishment for political offences.

“ My Hon’ble Colleague has dealt so fully with the details of the legislation we propose to pass today that I need only refer to the general position with which we are confronted. It is very necessary that no preconceived prejudice should blind our judgment. It was, I believe, the Duke of Wellington who said that he had spent the best part of his life in trying to know what was going on on the other side of the hill on his front—and for us the *purdah* of the East unfortunately hides much from view. It would be better for us and for the many races of this country if we knew how to lift it—at present we have failed to do so. We cannot but speculate as to much that it conceals, yet it is all-important that our guesswork should not be hasty or unjust.

“ All India has been shocked by a cruel crime. Expressions of abhorrence and condemnation have reached us from public meetings, associations, and Indian gentlemen throughout the country, and the great mass of the people have loyally shared with the British Raj in detestation of its contemptible brutality. What we, the Government of India, have had to consider is the nature of these crimes, the influences which originated them, and the best means for protecting the populations, with whose safety we are charged, against the perpetration of similar outrages.

“ We all know—at least every one who watches the daily story of Indian political life knows—that the lines of Indian thought are changing, and that embryo national aspirations are beginning to take shape, and it will be a bad day for the British Raj and a bad day for the people of this country if we ever allow the belief to spread that the doctrines of murderous anarchy are even indirectly associated with the growth of those ambitions which British education has done so much to encourage. Nothing to my mind has been more unfortunate and despicable than the readiness with which in certain quarters

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[*The President.*]

endeavours have been heedlessly made to further a belief that assassination is merely the effort of a down-trodden people struggling to free itself from a foreign oppressor. The conspiracy with which we have to deal represents nothing of the sort. To the best of my belief it has largely emanated from sources beyond the confines of India. Its anarchical aims and the outrageous doctrines it inculcates are entirely new to this country. But unfortunately the seeds of its wickedness have been sown amongst a strangely impressionable and imitative people—seeds that have been daily nurtured by a system of seditious writing and seditious speaking of unparalleled virulence vociferating to beguiled youth that outrage is the evidence of patriotism and its reward a martyr's crown.

“ I have no desire to minimise the dangers of the present time—they are evident enough. I know well the anxieties that the suspicions of subterranean plots must bring to all loyal men and women of whatever race or creed. No one can say how far the poison has spread. I only ask that the nature of it should not be misunderstood, that the canker we have discovered should be localised, and that we should not jump to the conclusion that it has spread beyond the control of legitimate remedies. What those remedies should be have been for some weeks under the careful consideration of the Government of India. The two Bills which we are about to pass are the results of our deliberations. My Colleagues will support me when I say that we have had no lack of advice. The public has been told that we are weak, that we have failed to maintain order, that the glory of England has departed, that strong measures have been neglected. I am no believer in compliance with hysterical demands in the hour of danger. I maintain that the strength of the British Raj has been built up upon the justice of its administration. Heaven knows it has been no weak rule, but it has been a just one—and it will continue to be so.

“ It has been with a heavy sense of responsibility that the Government of India has recognised that the law of the land has not been strong enough to enable us to cope with the present emergency. We have felt that we must have further powers. We have had two main points before us—How best to deal with bomb outrages and the conspiracies connected with them; and how to annihilate the evil influence which has done so much to inspire them. The machinery we have decided to adopt is before you in the two Bills which the Hon'ble Sir Harvey Adamson has introduced. In them we have, after careful consideration, empowered judicial rather than executive procedure. We have preferred to act by legislation. But another course was open to us—We

[*The President.*]

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might have proceeded by the issue of an Ordinance, we should have saved time by doing so, and the condition of affairs demanded prompt and decided action. And now, if we are asked why, when we decided to proceed by legislation, we did not let that legislation follow the normal course of publication, reference to Select Committee, report and final discussion, I unhesitatingly answer that the urgency of the case would not allow of it. As it is, we have incurred delay, but in doing so we have secured an opportunity of explaining our position, which we should have lost in procedure by Ordinance. It is my firm belief that the Government of India occupies an infinitely stronger position in legislating, as it has done today, in open court, than if it had attempted to act summarily during the first shock of the tragedy of Muzaffarpur.

“ There is one point which during our discussions in Executive Council I have impressed upon my Colleagues and which I will venture to repeat. Sir Harvey Adamson has already alluded to it. I look upon today's legislation as exceptional, as framed to meet dangerous emergencies, and as regards the Newspaper Bill, to give powers to deal with a particular class of criminal printed matter. It is quite possible our Bills may not be strong enough, and in that case we shall not fail to amend them. But the Newspaper Bill in no way takes the place of a general Press Act, and it in no way ties our hands as to the future introduction of such an Act. In my opinion a further general control of the Press in India is imperatively necessary. I believe it would be welcomed by the best Indian newspapers. *The Indian Nation* and *The Indian Mirror* have reviewed the present crisis in a tone which would do credit to the Press of any country. They have recognised the evil of unbridled journalistic freedom under Indian conditions—conditions entirely different from those existing at home, where public opinion based on the teachings of centuries of constitutional government would be ever ready to refuse or to ridicule such unwholesome vapourings as are daily furnished to the people of India. India is not ripe for complete freedom of the Press. It is unfair upon her people that, for daily information, such as it is, they should be dependent upon unscrupulous caterers of literary poison. We are called upon to regulate its sale. No exaggerated respect for principles of English freedom, totally unadapted to Indian surroundings, can justify us in allowing the poison to work its will.

“ By some irony of fate, the outrages for which that poison is already so largely answerable have been sprung upon us almost upon the eve of the introduction of constitutional changes. I am determined that no anarchical crimes



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[*The President.*]

will for an instant deter me from endeavouring to meet as best I can the political aspirations of honest reformers, and I ask the people of India and all who have the future welfare of this country at heart to unite in the support of law and order, and to join in one common effort to eradicate a cowardly conspiracy from our midst."

The motion was put and agreed to.

The Council adjourned to Friday, the 10th July, 1908.

SIMLA ;  
*The 10th June, 1908.* }

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