

THE INDIAN LEGISLATIVE COUNCIL

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PROCEEDINGS

OF

THE INDIAN LEGISLATIVE COUNCIL

ASSEMBLED FOR THE PURPOSE OF MAKING

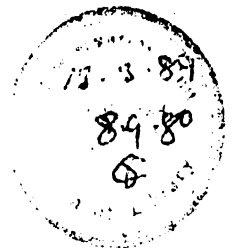
LAWS AND REGULATIONS

From April 1919 to March 1920

WITH INDEX

VOL. LVIII

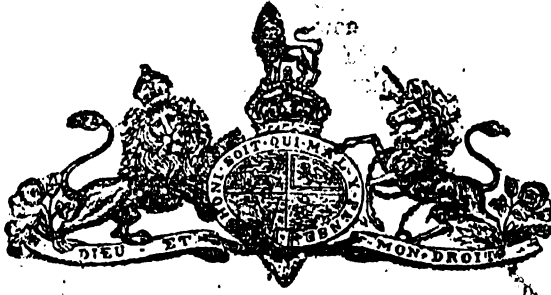
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GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER
THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1915.
(5 & 6 Geo. V, CH. 61.)

The Council met at the Council Chamber, Viceregal Lodge, Simla, on
Thursday, the 18th September, 1919.

PRESENT :

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.I.E., G.C.M.G., G.C.B.E.,
Viceroy and Governor General, *presiding*, and 52 Members, of whom 44
were Additional Members.

**THE IMPORT AND EXPORT OF GOODS (AMENDMENT)
BILL.**

The Hon'ble Sir George Barnes :—" My Lord, I move for leave to introduce a Bill to extend the operation of, and otherwise to amend, the Import and Export of Goods Act, 1916. The Bill proposes to extend the operation of this small Act by two years and six months. Under the Sea Customs Act considerable powers already exist, but further powers are needed in order to continue our rationing of food-stuffs and for other purposes. It is accordingly necessary to continue the Import and Export of Goods Act in force a short time longer. I need not say that it is the policy of your Excellency's Government to put an end to all forms of control as soon as we possibly can."

11-5 A.M.

The motion was put and agreed to.

The Hon'ble Sir George Barnes :—" My Lord, I beg to introduce the Bill, and to move that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English."

The motion was put and agreed to.

[*The President ; Sir William Vincent.*]

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11-7 A.M.

The President :—“ We now come to the introduction of the Indemnity Bill, and on the introduction of the Bill there is an amendment proposed to be moved by Mr. Chanda. I think it will be convenient if I outline the course which I propose to take with regard to the motion to introduce the Bill and with regard to the amendment. I think it will be the sense of the Council that they would prefer one debate only on the amendment and the motion for introduction of the Bill, but I do not, by suggesting this, propose to exclude Mr. Chanda from the right to reply, which the mover of every amendment would have when he moves his amendment ; and therefore I would suggest that we take the motion to introduce the Bill and the amendment as one debate ; otherwise I should be under the necessity of keeping Hon'ble Members strictly to the discussion of Mr. Chanda's amendment. I think some Hon'ble Members might wish to discuss the matter more broadly. But of course if I give them that indulgence and do not keep them strictly to the discussion of Mr. Chanda's amendment, it must be on the understanding that there is only one debate on the motion to introduce the Bill and on Mr. Chanda's amendment. I think Mr. Chanda will probably agree to that.”

THE INDEMNITY BILL.

11-10 A.M.

The Hon'ble Sir William Vincent :—“ My Lord, I move for leave to introduce a Bill to indemnify officers of Government and other persons in respect of certain acts done under martial law, and to provide for other matters in connection therewith. This measure, my Lord, has been the subject of so much discussion both in the Press and by other competent authorities, that I think I ought to set out to the Council in some detail the reasons that have led the Government to introduce the Bill at this moment and to explain *seriatim* the effect of, at any rate, the more important clauses of the Bill ; and I will ask Hon'ble Members to listen to me as carefully as they can, to follow in particular the detailed statement of the effect of the clauses, to view this matter without any kind of bias and to get rid of any misapprehension as to the intentions of Government or as to the meaning of the Act, which may have been created by writings or speeches outside this Council.

“ My Lord, wherever martial law is declared, as it was recently in the Punjab, it inevitably follows that speedy and decisive action has to be taken by the executive officers of Government for the restoration of order. Not only does this responsibility lie directly on the supreme military commander, but also on those who are subordinate to him ; that is, he gives orders which he thinks necessary, and it is their bounden duty to carry out those orders. It follows that frequently action which is just and proper, though not necessarily legal, is taken by these authorities.

“ They cannot possibly wait in such circumstances to examine the law and see whether what they propose to do is strictly legal or not ; delay at such a time is fatal. The authorities and the officers concerned have to act at once. Indeed, the very meaning of martial law is, that it confers powers to maintain order at any cost that may be necessary of life or property. That is the essence, as I understand it, of martial law. Such conduct will in some cases necessarily involve an infringement of the personal rights of individuals, either of their liberty or their rights in regard to property ; and when martial law expires, an Indemnity Act of some character is the inevitable consequence. I think members in this Council will realise that if such an Indemnity Act is not passed, no officer charged with the very irksome and responsible duty of restoring order will ever act with the confidence that is really essential for the effective handling of the situation. If he has to wait, to hesitate, to examine the law, to consult legal authorities here and there, the time for action may be gone, and the

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very mischief he seeks to stop develop to a dangerous degree. That such an Indemnity Act is the normal consequence of any period of martial law is, I believe, accepted by all constitutional writers. I do not wish to weary the Council by citations from a number of these, but I will content myself with one :—

‘ If at a period of national danger a breach of the law is demanded, if not by absolute necessity yet by stress of political expediency, the law breaker whether he be a General or other servant of the Crown who acts *bona fide* solely with a view to public interest may confidently count on protection by an Act of Indemnity’

‘ Statutes of this description have been invariably, or almost invariably, passed after the determination of a period of civil war or disturbance and the very object is to protect officers and others who in the interests of their country have in time of common danger pursued an illegal course of conduct.’

These quotations are from one of the greatest writers on Constitutional Law, Dicey. In fact, we know that whenever there has been an insurrection or civil war, or invasion by a foreign power, Acts of this character have invariably been passed. There was one in England after the insurrection of 1715, again after 1745; we had one in this country after 1857, and more than one instance of such Acts is to be found in the various Colonial Legislatures, including the Legislature of South Africa. Further than this, when a military officer is acting under the stress of such circumstances, in a crisis of great magnitude, it is essential that he must have behind him some sanction to enforce his orders; reference to ordinary Courts in such cases is impracticable. It would involve delay which would be fatal to the very object he has in view. Consequently summary measures, often stern and always of a very speedy character, are necessary if order is to be restored. There are some who think that these summary orders necessarily connote injustice and an undue degree of harshness, but it is not correct to think that this is either the practice or the intention of many commanders. I should like to cite from the Martial Law Regulations passed in Lahore on this point. This is an order by Col. Frank Johnson, a somewhat well-known name.

‘ In order to prevent the occurrence of regrettable incidents it must be clearly understood that the institution of summary law neither necessitates nor justifies the commission of excesses, either in the maintenance of order or in enforcing obedience of martial regulations or the infliction of punishment. It cannot be too clearly impressed upon all ranks that temporary supersession of the ordinary process of civil law by the introduction of summary law does not mean that justice ceases to be administered; on the contrary, the suspension of the usual safeguards make it doubly imperative that all concerned should bear in mind that it is up to them to see that justice and not irresponsible violence is administered.’

“ It is however essential that the military authorities in such cases should have power to come to swift decisions of a most important character; power to take prompt action on all matters affecting the State; power to punish summarily and effectively those who endanger the peace.

“ My Lord, it may be said that martial law was not necessary in the Punjab and that the Government made a mistake in proclaiming it. I do not seek to argue that point now. I believe that any such course would be unfair to those concerned, primarily or indirectly concerned, until the evidence of the facts has been recorded by the Committee of Inquiry. The decision on that matter must rest with the Committee in a great measure and after their report has been received, with other authorities. But, irrespective of this question, the position of our officers must be protected. I do not know if I make myself clear on that point. What I wish to say is this, whether martial law was necessary or not, our officers, our subordinate officers were bound to carry out their duties, and to give effect to the orders given them and they cannot be penalised on that account. I think the case has been very clearly put on this point by a writer in, I think, the ‘ Civil and Military Gazette ’ recently. He called himself ‘ An Indian Student of constitutional law ’ or by some such title. I commend that article to the consideration of Members of this Council.

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It appears to me to put the case for an Indemnifying Act both impartially and fairly.

“ So far I have been dealing with the part of this Bill which deals with indemnifying officers of Government. The second part deals with the validating to a certain extent of a number of sentences which have been passed. I shall explain this in detail later, but it is clear, as I said before, that where military officers are given power to issue certain orders, it is essential that they should also have authority to enforce those orders. There must be some sanction behind them, some power of enforcing order speedily and effectively and in many cases—in fact I believe this is the normal course—summary Courts are appointed to administer justice in such circumstances. They do not deal normally with all criminal cases, but only with cases arising out of a breach of military regulations or cases connected with the disturbances, and I believe I am right, so far as the Punjab is concerned, in saying that the duties of the summary Courts were confined to this class of cases; but I speak subject to correction on this matter. It is sometimes supposed that these summary Courts, however, dealt only with petty offences, such as breaches of military law regulations. That is an entirely incorrect assumption, and if Hon'ble Members will see the Statement that, I think, was laid on the table here recently, if not I will have it so placed, they will see that the summary Courts dealt with many offences of great gravity, such as arson, theft, rioting, breaches of the Railway Act—and they are really very serious—and offences under the Telegraph Act, which really meant the endangering of all communications both between the Local Government and their officers and between the Government of India and the Local Government. Many of these men are now under confinement, and I want to make it clear to the Council that, unless their confinement is now ratified in some manner, then the continued detention of these men in jail is illegal. In fact from the date on which martial law expired our only justification for retaining these men in custody was our intention to introduce an Act of this character at the earliest opportunity.

“ My Lord, I will now, if I may, proceed to explain the Bill clause by clause. I will not deal with clause 1, which is of no great importance, but proceed at once to clause 2. That clause indemnifies any officer of Government, whether civil or military, from any action, civil or criminal, in respect of any matter or thing done for the purpose of maintaining or restoring order. But I want Hon'ble Members to read and fully consider the effect of the proviso to that clause ‘ provided that such officer or person has acted in good faith and in a reasonable belief that his action was necessary for the said purposes.’ Those are really the governing words of the clause. I think I have already said, or at any rate I say now, that this Bill will in no way forestall the inquiry by the Committee, and I will proceed to justify that statement. I do not think that any member of this Council will for a moment suppose that the Committee of Inquiry, which assesses the blame for these disturbances, will recommend any form of punishment for any officer of Government who has acted *bona fide* and in a reasonable belief that what he did was necessary. Further, in any case the report of the Committee is not affected by this Bill. This Bill protects officers against proceedings in the Courts of justice. The report of this Committee, whatever be its value, will in no sense be evidence for the purposes of any such case; that is a matter which can only be decided on evidence in the Courts. The Government of India have decided, for the satisfaction of their own conscience and to meet the public demand, to appoint a Committee to inquire into these disturbances, and their action on the report of that Committee will not be limited or barred by this Act in any way. This Bill simply deals with suits and legal proceedings, and really all that it seeks to do is to protect from legal proceedings *bona fide* action taken with a reasonable belief that it was necessary to suppress disorder, and not any action taken *mala fide* or without good reason. We make no attempt by this Bill at any rate to protect officers who have been guilty of excesses which cannot be justified by the terms of this proviso. Now I myself shall be much surprised and disappointed if the

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Council will not give protection to officers for actions of this character, actions which are morally right though they may be legally wrong, that is, actions for which no strict legal justification can be made out. If this Council says that in a time of this character when the country was in great disorder,—and I put it very mildly,—officers who acting on the understanding that martial law had been proclaimed by an authority which is superior to them, over whose actions they have no control, if officers acting on that assumption and acting *bona fide* and perfectly reasonably are not to be protected by Government, then the future prospects of Government officers is very serious. How can any member of this Council expect an officer to act confidently, firmly and decisively if he knows that this Legislative Council and the Government will repudiate his action at the first opportunity? Is he not entitled to come down here and say ‘I have done what I was told. I have acted perfectly reasonably, I have acted fairly, I have acted *bona fide*; now give me that protection which I am entitled to by all constitutional practice.’ My Lord, in a Resolution published by this Government some time ago, I think during the period of the disturbances, we solemnly promised that we would afford all those charged with the onerous duty of restoring order our full countenance and support, and it is in fulfilment of that promise that I now come to this Council and ask Hon’ble Members to ratify what we then promised, believing that that is a just and honourable course which must commend itself to all Members here. As I said before; I conceive it to be impossible that the Committee should censure any one who is not guilty, who has acted *bona fide* and in a reasonable belief, that his action was necessary, and the report of the Committee will not and cannot affect the liability of officers of Government in the Courts of law. That is the reason, my Lord, why I say that this Bill, which merely seeks to protect those who have done their duty, in no way forestalls the report of inquiry by this Committee.

“I now come on to section 3, and this is a section which, I am afraid, I shall have to explain at some length, because there exists considerable misapprehension about it. Section 3 says :

‘For the purposes of section 2 a certificate of a Secretary to Government that any act was done under the orders of an officer of Government shall be conclusive proof thereof, and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor unless the contrary is proved.’

“Now a certificate of a Secretary to Government only proves, and the Hon’ble the Law Member will bear me out here, that the act was done under the orders of an officer of Government. Many private individuals during these recent disturbances have assisted Government in various ways, many indeed have been of the greatest assistance to the authorities; and all that this portion of the clause says is, that if any man acted under the orders of an officer of Government and can get a certificate to that effect, thus far and no further is that certificate conclusive proof of that fact. The question of *bona fides*, as I understand the Bill, is a matter for the Court entirely. That is, a man will go to the Court and it will be for the Court to say, whether his action was *bona fide* and reasonable, and what fairer proposition could be put to this Council? When a man goes down the Court shall have power to say, ‘yes, you did so and so, whether it was reasonable or not, that shall be judged by one of the Government judges acting in his judicial capacity.’ My Lord, if there is any cause of complaint in this matter, it might well be on the side of Government officers, that the Bill does not go far enough, and if Hon’ble Members will look to the Act of 1860, which was passed after the Mutiny, they will see that the provisions of that Act went very much further than this, and that when a Secretary to Government there ratified the conduct of an officer, this ratification absolved the man altogether from any possibility of a suit; that is the kind of certificate which apparently some Hon’ble Members think that this Bill provides. It does not. If this Bill had come on for consideration after the Commission of Inquiry, after the whole of these matters had been investi-

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gated, it might have been possible to frame it in that way. It is true, however, that this clause does go thus far, that it provides that 'all action taken for the aforesaid purposes,' that is for restoring order, 'shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor unless the contrary is proved.'

"My Lord, is a Government officer to be denied even that protection, that he shall be presumed to have acted in good faith, that he shall be presumed to be innocent until he is proved to be guilty! Is that much to ask from this Council? Is that a reasonable request, or is it not? I believe also that a clause of this kind is a normal condition—I speak again subject to correction—of many Indemnity Bills of this character.

"My Lord, I now pass on to clause 4, which sanctions the retention in custody of persons convicted by summary Courts. I have explained to this Council that many of these men have been convicted of serious offences; that they are in reality dangerous criminals whom it would be most unsafe to release wholesale upon the countryside. I believe—I have been told this by the Punjab Government also—that any such release would not be compatible with the public safety. But I ask Members of Council to read this clause again with clause 6. Clause 4 says: that every person confined under or by virtue of a sentence passed by a Court, or any other officer acting in a judicial capacity shall be deemed to have been lawfully confined and shall continue so until discharged by lawful order or released by order of the Governor General in Council.' Clause 6, however, again limits that and restricts the operation of that clause. First of all it says:—

'Nothing in this Act shall apply to any sentence passed or punishment inflicted by or under the orders of any Commission appointed under the Martial Law Ordinance, 1919.'

"Members of this Council are aware that various persons who have been convicted by the Commissioners appointed under this Ordinance have appealed to the Privy Council. It would obviously be improper for us to attempt in any way by an Act now to invalidate the actions of those Commissioners. The sentences depend for their validity upon Ordinances already passed. I do not propose to discuss the question of these Ordinances here for one moment, nor would it be relevant to this discussion. All I wish to point out is, that this Bill in no way affects sentences by Commissioners appointed under the Ordinances. Then there is a second limitation, that the Bill in no way prejudices the right of any person who thinks he has been dealt with unjustly to appeal to the Privy Council from sentences of these summary Courts. There is no intention, even if there were the power, of which there may be some doubt, of interfering with that right. Any man who has been convicted by one of these summary Courts is at liberty to go and seek for leave to appeal to the Privy Council just as if this Bill had not been passed. I tried to make that clear because it has been suggested that in some way the action of this Government, in introducing this Bill, is intended to prejudice the authority and power of the Judicial Committee. It is quite clear to my mind that it is not so. It has been our deliberate intention to make that abundantly manifest to every reasonable man. At the same time, my Lord, I do admit that there are many men in this country, perfectly loyal citizens, men of weight and authority, who have grave apprehensions and felt great uneasiness as to many of these convictions. We believe that many of those apprehensions are ill-founded, but still there is no getting over the fact that there is this sense of uneasiness as to the correctness of all these convictions. That apprehension has been alleviated to a considerable extent, but not removed, by the admitted clemency of His Honour the Lieutenant-Governor and the debate on the Resolution to appoint a Committee to investigate these occurrences indicated—I think, on the part of many Members of this Council, Members not hostile to this Government, not unreasonably opposed to everything we do, but Members who are ready to co-operate with Government in this matter, in all matters,

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and who really seek to do what is right—uneasiness in the mind of many Members of this Council, and a feeling that some of these sentences had not been examined with sufficient care; and there was further indication of that feeling in the proposal made for revising the terms of reference to the Committee. I think Hon'ble Members will remember the various suggestions. Well, to meet these apprehensions the Government of India have decided to have all these cases examined and revised by two Judges of the High Court, one being an Indian and one being a European, in order that they may recommend to His Excellency the Viceroy or the Governor General in Council, as the case may be, through the Local Government, such action as they think fit, either in the direction of remitting or commuting sentences, or any other course they may think desirable, having regard to the circumstances of the case. My Lord, it is the desire of the Government of India that full justice should be done in this matter. They are as anxious as any Member of this Council that innocent men should not be detained in jail. One point, however, I have not made clear, and that is, that our intention is that only the cases of those men who remain under sentence should normally be inquired into by these Judges, though they will also deal with any other cases which may specifically be referred to them by His Excellency or the Government of India.

"Now, I do hope that this will meet the approval of Council and indicate the desire of Government to prevent injustice. I believe that such a Tribunal as we propose, being composed of judicial officers, will be far more effective for the purpose of seeing that justice is done than any Committee of Inquiry which may be appointed to investigate the general occurrences. For, not only will the officers have the advantage of judicial experience, but, by reason of their being on the spot, they can be not to work immediately and directly. So that I hope the matter will be dealt with with reasonable expedition.

"There is only one other clause in the Bill, clause 5, to which I need draw attention, and that provides for the payment of compensation where the property of any person has been commandeered by the military authorities. Members of this Council are aware that when martial law is declared and when the military authorities take over control, they frequently have to, and frequently do, commandeer property for their own use, if such action is in the public interests necessary. All that this clause proposes is, that the Government should pay compensation for such commandeering and provides the means by which the compensation may be assessed.

"My Lord, summarising what I have said, I want to make one or two points quite clear. First, this Bill is the inevitable consequence of martial law. Whether martial law was necessary or not, we must at least protect our officers. The Bill will not in any way forestall the decision of the Committee of Inquiry. The indemnity of officers is limited, and reasonably limited, to those who have acted *bona fide*, the question of *bona fides* will be decided by the Courts, and the validating clause, to which I have referred already, does not affect either any case tried by the Commissions or any right of appeal to the Privy Council. Further, in order to prevent any injustice, and, so far as we are able, to enable us to exercise clemency, so far as is compatible with the public safety, we will have the cases of the men convicted by these summary Courts and still in jail revised by two of the best judicial authorities that we can procure. My Lord, I contend that this is a reasonable Bill, a Bill of the most moderate character, and that it only affords such protection as it is essential for us to give to our officers, which they have a right to demand of us and which it is our paramount duty to give them. I may be asked, why the Bill is introduced at this season. Indeed, I promised the Council to explain this, and, having regard to what your Excellency said, if I am only to speak once both on the Bill and the amendment, save for my right of reply, I ought to explain now why the Bill is introduced at the present juncture. The reason is very simple. If it is not passed now, if it is not brought into

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effect now, then our officers, officers who, *ex hypothesi*, have behaved fairly and properly, will be left liable to suits at the instigation of any malicious person. Is that reasonable, is that fair? I may be told that no suits will be brought in the immediate future. My Lord, suits might be brought, might even be decreed against them before any Bill was brought forward in this Council, not against men who have acted *mala fide*, but against those who have merely done their duty with the greatest care and in the most reasonable manner. I say to this Council that that is a position to which no reasonable man here can ask us to submit our officers. Many of the men against whom suits might be brought, against whom action might be taken, may have gone from this country. Should they be left with this sword of Damocles hanging over them although they have done nothing to deserve it? Is that fair? Then, there is another point. If this Council does not validate the detention in jail of these criminals, to whom I referred just now, then we shall have at once to release the whole number of these dangerous offenders on the world. I have told you that we have consulted the Punjab Government on this matter, and they were definitely of opinion that such a release was not compatible with the public safety. The men are not convicted of minor petty offences at all; they are men who were engaged in the burning and looting of stations, in the attacks on railway lines and in the cutting of telegraph wires, guilty of theft and very many of them of arson. They are a class of men who cannot be released with safety at present, and I submit that this Council will be well advised if they do not ask us to release them. My Lord, looking round the Council here, I see many members, who have large vested interests in the country. I should like to know how long they would retain their property, their wealth or even their lives if the forces of disorder were once to break loose in this country. I ask the Members of this Council to look at the question in that light. Is it not their bounden duty to afford protection to those who have undertaken terrible responsibilities in times of difficulty and done their duty *bona fide* and honestly? That is the question that I put to each Member here. I want them to visualise what the position of an officer of Government in such circumstances is. Take the case of a young military officer. He does not know whether martial law has been rightly or wrongly proclaimed. His one object is to perform his duty, to do it fairly and honestly. He is told that the country is in disorder and that his duty is to suppress it. He tries in a reasonable and fair way to carry out what he believes to be his duty, and then, when he comes to this Council for protection, my Lord, are we to say, 'No, we cannot give it to you until an inquiry has taken place', or 'Postpone it till some other day.' I do hope and trust that this Council will not endorse any such monstrous proposition. It is often assumed that it is only Europeans and Government that are interested in the maintenance of order. Hon'ble Members know that that is not so. Once rioting breaks out, who are the people who suffer? At least some Hon'ble Members of this Council know that they would be the first—their whole existence depends on the maintenance of law and order in this country. And how can they expect, how can any Member of this Council expect, military officers of Government to do their duty unless they receive reasonable support? A military officer is in a position of peculiar difficulty. If he does not suppress disorders, he is liable to censure, blame and punishment at the hands of his superior officers. If he does not take adequate measures, he may be removed from his office. Why, even civil officers in England have been held to blame for action of that kind. Take the case of the Mayor of Bristol. After the Bristol riots he was accused of failing to do his duty in not having taken adequate measures to quell the disorders and he was prosecuted. But, apart from his personal responsibility, every officer of Government in this country is responsible under the system of administration for the lives and property of many hundreds and thousands living under his charge. Let each Member visualise to himself what his position would be faced with these difficulties, often with insufficient forces at his disposal to cope with disorders, doing what he thinks to be his duty,

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acting according as God gives him to see the right, and then being penalised and held liable to prosecution and persecution afterwards for no reason whatsoever.

“ My Lord, I have spoken with some heat because I want to make it plain that I conceive that refusal to grant the limited protection which we ask for our officers would be a gross injustice to those whom we have solemnly undertaken to protect.

“ My Lord, I have attempted throughout my speech to say nothing that can in any way prejudice the result of the inquiry by the Commission. I have dealt solely with principles, not with particular actions. Whether any particular action was reprehensible, whether it was right or whether it was wrong, is not a matter which comes within the scope of this Bill. That is a matter either for the Committee of Inquiry and subsequent action by Government or for decision by the Courts. I have endeavoured throughout my speech to avoid saying anything which may prejudice the inquiry. I have also endeavoured, and I hope successfully, to avoid saying anything which might promote racial ill-feeling, and I would ask Hon'ble Members who follow me, so far as they are able, to follow the same course, remembering always how far the deliberate promotion of racial feeling—no, I will cancel that word ‘deliberate,’ for I do not wish to excite any bitterness myself—I will say ill-feeling has been responsible for the deplorable loss of life, and for the terrible happenings in this country. I would ask each Member of this Council, in speaking to this motion, to realise that any intemperate language of his which may revive or promote such ill-feeling is a great danger, and to remember that the man who uses it is rendering a real disservice to this country and is pursuing a course of conduct the dangers of which, in present circumstances, it is difficult to overestimate.”

The Hon'ble Mr. Kamini Kumar Chanda :—“ My Lord, may I respectfully inquire of the Hon'ble the Home Member if this committee of judges will go into the question of conviction also and not only of the sentences ? ”

The President :—“ I certainly did not catch what the Hon'ble Member was saying.”

The Hon'ble Mr. Kamini Kumar Chanda :—“ I beg to inquire, my Lord, whether this committee

The President :—“ More slowly, please.”

The Hon'ble Mr. Kamini Kumar Chanda :—“ Whether this committee of judges will go into the question of convictions or only of sentences ? ”

The Hon'ble Sir William Vincent :—“ If it will make any difference to the Hon'ble Member's amendment, I shall be very glad to give this information.”

The Hon'ble Mr. Kamini Kumar Chanda :—“ My Lord, I beg to move this amendment which stands in my name and it reads as follows :—

‘ That the consideration of the motion do stand over till after the submission of the report of the Committee of Inquiry into the Punjab affairs.’

“ My Lord, I wish at the outset to assure your Excellency and the Council that I have not taken upon myself to move this amendment with a light heart. I have listened to the very impressive and very weighty utterance of the Hon'ble the Home Member, and I am aware that your Excellency's Government

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is convinced of the imperative necessity, according to their information, of this legislation; and if I move this amendment, not to oppose the passing of this Bill, but for the purpose of postponing its consideration now, I can assure the Council that it is due to an impelling sense of duty. I have given the matter my most serious and, I may add, anxious consideration, and I felt it to be my duty to place this amendment before the Council. In doing so, regard being had to the considerations which the Hon'ble the Home Member has so impressively and eloquently pleaded for, in proposing my amendment in view of the circumstances, I propose to avoid, as far as possible, all debatable matters. Of course a certain amount of controversy and dispute is inevitable; I shall try to minimise it. There are so many matters to speak about and there is no time limit, and there might be a temptation to go on for a long time, but, my Lord, I shall try to be very brief; and for this purpose I do not propose to go into any individual cases about which it is charged that the administration of martial law has been guilty of excesses. There is one other remark which I wish to submit before I go into my motion. My Lord, it is a matter of great regret to us, I consider it almost as an irony of fate, that this painful episode in the administration of the Punjab Government should have to be discussed after His Honour Sir Edward Maclagan has assumed charge of the province. We know that in the short time he has been in charge of the province he has endeared himself not only to the province but to the country as a whole. It is well-known that every one heaved a sigh of relief when His Honour was able to take charge of the province. I am sure His Honour will understand that in bringing this matter at this stage, after His Honour has been in charge of the province, it is only from a painful sense of duty that we do so.

“ Now, coming to the amendment, I may say at once that I agree to the general proposition which has been stated by the Hon'ble the Home Member, and which is also mentioned in the Statement of Objects and Reasons of the Bill, namely, that after a period of martial law such legislation is inevitable. In fact, I think the Hon'ble Member might go further and say with Professor Dicey whom he has quoted that in England such legislation is undertaken before the suspension of the Habeas Corpus Acts runs out. That is so in England; but, my Lord, my submission is this that the cases are not really analogous; the conditions obtaining in England are not the same as in this country. In England, it is well-known that it is the British Parliament with whom rests the question of the suspension of the Habeas Corpus Acts. Here under the Statute, it is your Excellency in Council who have to declare martial law. Therefore, the necessity which might exist in England for an Act of this kind does not necessarily exist in this country. Now, that apart, if we inquire as to why it is usual that in England suspensions of the Habeas Corpus Acts are always as a matter of course followed by a Validating Act, we shall see that that is because there has been up to now no case where the question of the necessity of the suspension of the Habeas Corpus Acts has been raised. It has always been accepted that there was clear necessity. Where there is undisputed necessity for the declaration of martial law or suspension of the Habeas Corpus Acts, of course the Validating or Indemnity Bill will follow as a matter of course. But, my Lord, here the case is different. Here it has been denied, it has been disputed that there was any necessity for this declaration of martial law. The public have complained that martial law was declared on insufficient, inadequate grounds; that there are grave doubts whether under the existing conditions it could be legally done, and that there have been excesses under that declaration. In view of all this that differentiates the case of India from that of England, I say, my Lord, that the question as to why while I do admit that a validating or indemnity Bill follows as a matter of course the declaration of martial law or suspension of the Habeas Corpus Acts, I oppose this motion or rather move that this motion do stand over does not arise. If the question can arise, my Lord, I submit the answer has been given to this by the Government themselves. I do not think there

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has been any case anywhere where there has been an inquiry about the necessity of martial law. I do not think there has been any case in India where a Committee of Inquiry was appointed to discuss and to investigate the necessity or legality of a declaration of martial law, but here the question was raised and the Government of India accepted straightaway the challenge as it were, and appointed a Committee of Inquiry to go into these matters. I submit, my Lord, that that has made all the difference. No doubt the composition of the Committee and the terms of reference do not fully satisfy the public demand; but that is another matter. Now, my Lord, what are the scope and the functions of this Committee of Inquiry? We learned from your Excellency's speech on the 3rd that the Committee of Inquiry was to inquire into and report about, among other things, the measures taken to cope with the disorders in the Punjab. What were the measures that were adopted in the Punjab? It is no other than the declaration of martial law. The question that arises is, whether there was any necessity for that declaration, whether it was proper to declare martial law, whether under the conditions obtaining at the time there was legal power to declare martial law, and whether it has been carried out properly. These are questions, my Lord, that this Committee will have to decide. Now what is the reason, the justice, the necessity for this Bill? If we look to the Preamble of the Bill we see it is stated:—

'Whereas owing to the recent disorders in certain districts in the Punjab and in other parts of India, it has been necessary for the purpose of maintaining or restoring order to resort to martial law'

'Resort to martial law.' These, my Lord, are the very matters which this Committee of Inquiry will have to go into and report on; that is the basis of this Bill. I submit that that can hardly be fair. I submit that having referred this matter for inquiry by this Committee, the Government of India have divested themselves for the moment of the power of going into this matter. If you go on with this Bill then what is there remaining for the Committee to go into? What will remain, if you now assume that there was necessity for martial law, what would remain for the Committee to inquire into? Whether there was any necessity for martial law? But we are told by the passing of this Bill that there was a necessity, for the declaration of martial law. This is surely prejudging the question, it is tying the hands of the Committee, it is not fair. My submission is that on this ground you are prejudging the question. The Committee are in possession of the seizin as lawyers call it of this matter. This Council has no jurisdiction to go into the matter at this stage. Of course as the matter has been referred to the Committee, it would not be right for the Council now to go into the question, as to whether the declaration was necessary or legal, or whether it was properly carried out. My submission is this that, in view of this and in view of the complaint that martial law was improperly and illegally declared, I think we ought to state the case on which this demand is made. My Lord, what is the law under which this martial law has been declared? It is the Bengal State Offences Regulation, X of 1804. What are the conditions under which this Regulation can be enforced? The Preamble says that there are two conditions, in the first place, it must appear that the British Government is at war with any other power, or that there was a state of open rebellion in the country. These are the two conditions which give jurisdiction to the Government to enforce this Regulation in any place it wishes. Nobody will contend for a moment that at the time this declaration was made the British Government was at war with any other power. Then we have to fall back upon the second condition, namely, that there was a state of open rebellion in the country. On what is this condition based? What is the proof that there was open rebellion in the country at the time? My Lord, it is well known that after the Rowlatt Bill was passed in the teeth of opposition from the Indian members of this Council and the country, Mr. Gandhi, as a last resort, declared Satyagraha or passive resistance. We need not go into the question whether it was wise or not; it is a fact that he did so and the 6th of April was appointed as the Satyagraha day

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to be observed in the country as a day of humiliation and prayer on which all business was to be suspended. We know that that was done in the country and that there was no disturbance anywhere. Now what about the Punjab? Was there any response in the Punjab to this appeal of Mr. Gandhi's? Now before going into the question I may tell the Council that on the 7th April His Honour the Lieutenant-Governor, Sir Michael O'Dwyer, held a Durbar and delivered a speech in the course of which he said 'From the Prince's palace down to the peasant's hut I find I can meet Punjabis of whatever class or condition without any suspicion or mischief'. That was on the 7th April. Surely this language could not have been used by the ruler of the Province if there was anything like rebellion there. It is inconceivable that such language could have been employed if there was anything indicating in the remotest degree that there was rebellion in the province, not only at that time but even a week after when martial law was declared. But what happened when this appeal of Mr. Gandhi was published, how was it received in the province? There is an account published in the 'Civil and Military Gazette', a newspaper which is not as a rule friendly to Indian aspirations and public movements. It is there stated that between 1 and 2 P.M., crowds had collected in the city and moved towards the Town hall where a meeting took place to protest against the Rowlatt Bills. This meeting was held between 5 and 6 P.M., the proceedings were orderly and no disturbances occurred in the city or outside the hall. Then what took place at Lahore on the 6th of April?

"We find, moreover, my Lord, that it was not only at Lahore, but at Ferozepore, Gurdaspore, Hissar, Jullundur, Mooltan, Muzzaferpore, Rohtak, Sialkot and Simla, demonstrations and *hartals* were observed but there were no disturbances. Is that the sign of open rebellion which somebody seems to have discovered in the Punjab? I think, my Lord, in a sense it might be said to be rebellion. We know that Sir Michael O'Dwyer was in the habit, both in season and out of season, somewhat aggressively, of priding himself that his province was the quietest, the most loyal and the most well-behaved of all the provinces in India and from which he was able to drive out the disease known as political agitation. Now these demonstrations in their intensity and widespread character must have shocked His Honour, awakened to a grim and unpalatable reality and forced the realisation to him most unwelcome, that his province was going to be infected, converted to the evil ways of the other and vicious provinces. We get an insight, we get some glimpse into his inner thoughts, if we turn to the speech of His Honour which he delivered at the Durbar the following morning when he said this: 'that the British Government which has crushed foreign foes and quelled internal rebellion could afford to despise political agitators.' Now what was the occasion for this remark, my Lord? I say that explains the psychology of the subsequent orders and proceedings. Well, I might point out that there were not only these demonstrations in utter defiance of his wishes, almost as a challenge to him, but what is more, the horror of horrors, there was at the time going to grow up what is called the Hindu-Moslem fraternisation. We read in the 'Civil and Military Gazette' on the 9th April: 'At Lahore there was a procession held accompanied by extraordinary scenes of Hindu-Moslem fraternisation. In Amritsar, the procession showed similar scenes of Hindu-Moslem fraternisation, speeches were delivered and votes of sympathy were passed with the 'Delhi martyrs.' It is exceedingly significant that that was placed as a piece of evidence in a case before the Martial Law Courts as evidence of rebellion. My Lord, this state of things, these demonstrations and *hartals*, and these scenes of Hindu-Moslem fraternization certainly were very uncomfortable, and it was felt that something must be done, some steps should be taken to nip in the bud the incipient rebellion in the Province, and we find that the first overt act in this campaign against political agitation was that on that very night Mr. Gandhi who was then on his way to Delhi on a peaceful

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mission was obstructed under the orders of His Honour the Lieutenant Governor at a small station called Kosi, which is in the Punjab territory, and turned back and was escorted to Mr. Gandhi's province, Bombay. Well, that was wired all over the country as the arrest of Mr. Gandhi. What was the result? We know there have been very unfortunate happenings throughout the country. Now, my Lord, it is usual for the Anglo-Indian papers to put down these happenings to agitation against the Rowlatt Act. My submission is, my Lord, that the Rowlatt Act can no more be held responsible for these happenings than the action of Sir Michael O'Dwyer, which was described by Mr. Kali Nath Roy as an act of blazing indiscretion for which he was sent to jail for three years. Well, my Lord, let us see what happened in the Punjab. I say the news of the arrest of Mr. Gandhi was received at Lahore on the afternoon of the 10th. Let us see what happened there. But there is a difficulty here to find out what happened. On the following morning, the 11th, Sir Michael O'Dwyer acting under the Defence of India Rules, passed an order muzzling the Indian press, prohibiting the publication of any account that took place on the previous day. Now why this anxiety to keep the outside world in the dark as to the happenings at Lahore on the 10th? Therefore, the public outside Lahore, we had to rely on the Government Communiques and the accounts given in the Anglo-Indian press, for the events that took place at Lahore and other places on the 10th. Of course the Anglo-Indian press were evidently able to be above the orders of Government with regard to the publication of accounts of any events. The Government Communique is this: This is dated the 12th April:

'Lahore. The shops in the city and its vicinity were closed and a noisy crowd endeavoured to force its way towards the Civil Lines. This crowd was met with a small police detachment near the High Court, and on its refusal to abandon its progress was dispersed, under the orders of the District Magistrate by musket fire. At a later hour in the evening, the police were again compelled to fire on a disorderly crowd which attacked them with missiles in the vicinity of the Lahori Gate. Two persons were killed in the day's firing and about four others wounded.'

These are the words of the Government Communique, and the account that was published in the 'Civil and Military Gazette' was this:—

'A crowd collected in the bazaar which rapidly grew and started coming down Anarkali. Then the mob which had assumed a very threatening attitude proceeded down the Mall. By this time the police were out in force, and a party of them stopped the mob. The Deputy Commissioner then arrived, and seeing the seriousness of the situation and the impossibility of stopping the mob by any other means, gave the order to fire. This produced some result, for the crowd went back and were forced up Anarkali Bazaar. Then they formed at the top of the Bazaar where they had to be dispersed again by fire. . . . The arrangements throughout were in the hands of the civil authorities as, thanks to their immediate and effective action, the necessity did not arise to ask the military to take charge.'

"But the 'Pioneer' went one better and in its account on the 13th it says:—

'The European residents, already disturbed by the news from Amritsar, had to face a serious situation created by an infuriated mob which was bent on mischief. Large forces of military and the police promptly dealt with the outbreak, and on more than one occasion had to fire on the mobs. Strong action resulted in the restoration of order and the city is now being patrolled. . . . Buckshot cartridges were used.'

"But on the following day it says:—

'Buckshot was supplied to the police, except for 5 rounds of ball issued by mistake.'

"On the 20th there was another Government Communique to contradict what appeared in the 'Leader' about this, and this is what it said:—

'The facts are that despite orders previously promulgated forbidding processions, a large crowd, probably of some thousands, marched from the city up the Mall, forcing back a small body of police which tried to bar their progress. The crowd consisted of city rif-raff and students,

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but the latter were grown up and not boys. The crowd was making its way to the civil station and would undoubtedly have committed excesses such as marked the Amritsar occurrences, had it been allowed access to the European quarters.'

"These are all the accounts published by Government and the Anglo-Indian papers of the occurrences in Lahore on the 10th. What do they say? Never mind for the present that there are serious contradictions. Take the account substantially as it stands. I ought to mention, my Lord, that there is another fact. The 'Civil and Military Gazette' on the 16th of May stated that the Deputy Superintendent of Police was struck on his head which had to be bandaged. Now it is remarkable that this incident is not mentioned in the Government Communiques nor in the Associated Press telegram. As a matter of fact, this police officer was struck, his head was broken, there was a split. How is it that this incident does not find a place in the Government Communiques? The fact of the matter is that, as was discovered by the 'Civil and Military Gazette' later, it was 'caused by a policeman by mistake' and not by the mob, that is why it was not mentioned by the Government Communique. Now take the accounts as they stand, what do we find? That a mob, unarmed, it must be remembered, unarmed, 'of city rif-raff and students,' to quote the words of the Government Communique, were making their way from the city towards the Mall. What happened? It does not appear that any serious attempt was made to persuade the mob to go back, that civil force was attempted. But from a sense of panic the order to fire was given and there were casualties. What did they do? It is not stated anywhere that they did any injury to any one or destroyed any property on their journey from the city to the Mall. It was asserted in the latest Government Communique that they would have done mischief, but why is this assumed, it is not stated that up to then anything was done by that mob. Well, what were the objectives of the mob? Was an inquiry made to find out why this mob was proceeding towards the Mall? It was unarmed it must be remembered. Well if the object was to do any wrong, to break the law, is it conceivable that 'this rif-raff and students' would go unarmed, or would refrain from doing anything in the city or in their journey up the Mall? No inquiry was made as to why they were journeying to the Civil lines. If an inquiry had been made it would have been found that their object was nothing more than to interview His Honour himself and to intercede with him and ask him to withdraw that order against Mr. Gandhi. But what happened? This march of the unarmed mob of city riff-raffs and students was the first overt act of rebellion. Anyhow, my Lord, whatever happened then, it was put down in the course of an hour if it was a rebellion, it was quieted in an hour's time. We read in the Government Communique 'that by 8 P.M., the city was quiet; after that time no further disturbance occurred.' This in an hour's time this rebellion was put down.

"Then what happened on the following day, on the 11th? We find again from the Government Communique that on the 11th everything was quiet. Well, is that a sign, my Lord, of any rebellion at Lahore at the time? The solitary instance mentioned is that a mob of some three or four hundred people, unarmed, 'city rif-raff and students', were proceeding towards the Mall, and assuming that they were rioters, they met with their deserts because they were fired on by the armed police and there were some casualties, but after that everything was quiet and there was nothing on the following day. Then, on the 12th, what happened? On the 12th the Government Communique says:—

'On the morning of the 12th troops passed through Lahore city and occupied certain commanding points. At one point only the crowd obstructed the passage of the troops and brickbats were thrown. The police accompanying the march, under the orders of the District Magistrate, dispersed the crowd, two being killed and as many were wounded.'

"And the 'Civil and Military Gazette' on the 13th says:—

'The rendezvous for the march of troops and police through the Lahore city was the cross road's outside the railway station at 9-15 A.M. The crowd in front of the fort in Minto Park

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had to be forced back and the cavalry dispersed it without using their lances. The crowd, however, came in again behind in rear of the cavalry and the Deputy Commissioner ordered a detachment of police to get behind the cavalry and fire.'

"And there was an Associated Press telegram which says that 'more than a dozen had been wounded, some of them having received serious wounds. One of them who received 9 wounds on the chest died this afternoon. Nearly 10,000 people attended his funeral. The deceased was a student of the 4th year class and had come here to sit for the University examination.'

"Now, my Lord, as to the assumption that brickbats were thrown at the military, as stated in this Communiqué, it will be seen, neither the 'Civil and Military Gazette' nor the Associated Press telegram corroborates this. However, assuming that this was done, would that constitute rebellion, or would that make it a clear sign or proof that there was rebellion in the city so that you would have to declare martial law? Has it been inquired into by whom and under what circumstances these brickbats were thrown? There is a discrepancy again. One account says the cavalry were obstructed in front and brickbats were thrown, whereas another account says that when they passed through the city the mob came behind and threw brickbats? However, leave that alone. Does that alone constitute a state of rebellion in the city?

"My Lord, I have tried my best to see if there was any other case of rowdysm. I said there was no account published in the Indian papers or any other information than the Government Communiqués and the accounts in the Anglo-Indian papers and there is no allegation of any of this unlawful act anywhere.

"My Lord, beyond these two incidents, one on the 10th and one on the 12th, I have not come across anything mentioned in the papers as having taken place in Lahore. Well, I should feel grateful if the Hon'ble the Home Member will inform the Council if there was any other occurrence in Lahore, which justified the Government in declaring martial law. After this, my Lord, on the 14th, martial law was declared. We do not find on what grounds this order was based. Of course, attempts were made by interpellations in this Council to find out the grounds in justification of martial law, but they have not been answered. Martial law came into force at midnight between the 15th and 16th. Several days later, by another Ordinance, No. IV, this martial law was given retrospective effect so as to cover everything that was done from the 30th of March. My Lord, it is a serious question as to whether this can be done under the law. The matter has been placed before the Privy Council in the appeals which have been admitted, and we shall know the decision of their Lordships. Another question, my Lord, in this connection is, whether this could legally be done. We find, my Lord, that Lord Wellesley, in whose time this State Offences Regulation of 1804 was passed, issued instructions for the guidance of the Local Governments and therein it was stated (Circular of the Marquis of Wellesley, dated the 11th April 1805) 'Even if a person or persons charged with any overt acts of rebellion specified in Regulation X of 1804 shall be apprehended by any military officer, when not in the actual commission of offences of that description, they are to be delivered by the military to the civil power.' That was laid down in the Instrument of Instructions regarding this Regulation, and the Regulation itself shows that only charges against persons caught in *flagrante delicto*, that is red-handed, could be tried by martial law, and that was expressly declared in the Instrument of Instructions. Furthermore, my Lord, it appears that the Government of Bengal consulted the Advocate General, Mr. Spankie, at the time, and his opinion was to the same effect. Now, my Lord, this question becomes a serious one as to whether retrospective effect could be given to this Regulation by Ordinance No. IV. My submission is that here also the matter is before the Privy Council which has got seisin of the matter, and if you ask this Council now to decide, it would be wrong; you cannot go in on this before their Lordships have decided the question as to whether martial law was rightly or lawfully given retrospective

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effect to by Ordinance No. IV. And this Bill is based upon the assumption that the order was legal, because it is stated in the Bill that anything done between the 30th of March and the date of the passing of this Bill will be protected. Therefore, my Lord, taking all these questions into account, it would not be right to ask this Council to pass this Bill at this time. We must wait for the finding of the Committee, we must wait for the decision of the Privy Council on the questions raised as to the legality of the promulgation of martial law and the giving of retrospective effect to it. Well, let this Committee have a free hand to go into the matter, sift out facts, find out what was done, and then it will be time enough to go into the question of protecting the officers of Government who had carried out the instructions under martial law. The Hon'ble the Home Member has raised the point that, even assuming that martial law was not properly or legally promulgated, the question of protecting the officers of Government remains because it is no fault of theirs that they were called upon to carry out these orders. Now, my Lord, everything depends upon what the orders were and how they were carried out. You cannot say beforehand that you will pass a general law that every officer is protected for anything he did under any order given. Well, so far as that matter goes, that is already provided for under the existing law. Under the Penal Code if a public servant carries out an order given by a superior, whether legal or illegal, how far he is bound to carry it out is provided for in the general law. If the Committee finds out any specific instances not covered by the existing law, then it will be time enough to consider how far that law has to be supplemented. My submission is that at present we have got a general law. Then, my Lord, even in England instances have occurred where officers commanding the military have had to undergo prosecution for excess of zeal in discharging their duty when their services were requisitioned. In connection with the riots in County Clare in Ireland in 1852, a jury brought in a verdict of guilty of murder against the soldiers who had fired on a mob, but for which they would have lost their own lives. So, I submit, my Lord, that it is premature now to consider this point. The whole thing will depend upon what orders were given, how those orders were carried out. At present all that we need consider is provided for in the general law.

"Then, the other point raised by the Hon'ble Sir William Vincent is that, if you are to wait, there will be actions brought against Government officers and they may be decreed. My submission on this is that it is purely imaginary. If any action is to be brought by any man for damages against any officer of Government for anything done during the time martial law was in force, we know that probably at first notice will be given to Government or the Government officer concerned, and after the expiry of the statutory period only can a suit be filed. Then, assuming that no notice is given but suit filed, the mere fact that a suit is filed need not frighten us. Civil suits, it is well known, are not disposed of as expeditiously as criminal cases. Well, a plaint is filed, then a date will be fixed for the defendant to enter appearance and file his written statement. I do not know what the practice in the Punjab is, but I know in Bengal and Assam no date is fixed earlier than three weeks' time. Well, my Lord, if the defendant has to enter appearance before the Council meets the next time, surely the Courts concerned would be bound to grant postponement for filing written statements in such contingencies. Usually, you find in civil cases, two or four months, or even one year has been given for filing written statements in complicated cases. And in a case of this kind no Court will refuse to grant time for adjournment till the next Session of this Council at any rate. From now till the Delhi Session there is only time. First notice will have to be given two months before any suit is filed, and even after the suit is filed, you will get ample time to have the case adjourned till the meeting of the Delhi

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session of this Council. Even if that is not enough you can easily provide for it in various other ways. You can pass the Bill in the Delhi Session and give it a retrospective effect so that it will cover any suit or action that may have been filed already. You can do more; you can have some provision suspending all these actions in the meantime, till the Council meets at Delhi. Apart from the questions arising from the fact that a Committee of Inquiry has been appointed, I think we should consider that public discussions of the happenings in the Punjab are bound to create some bad blood and should, if possible, be avoided, and that can be avoided if the Council does not rush through with this Bill now. Let the Committee inquire, find out the facts, sift out the facts, and then we can see how far officers ought to be protected, and how far there ought to be an Indemnifying Act. These are my submissions on which I respectfully venture to think that this Bill ought not to be passed at this stage. I spoke only of Lahore, but the same considerations apply as regards other places. With these remarks I place the amendment before the Council."

The Hon'ble Sardar Sundar Singh Majithia:—"My Lord,^{12-48 P.M.}

I must confess that some of us, non-official Members, who are not well versed in legal technicalities—being laymen so far as law is concerned—are placed in a very awkward position when they are required to assent to a measure like the one we are discussing to-day and for the introduction of which leave has been asked by the Hon'ble the Home Member. Persons like myself feel the weight of responsibility very heavy; I cannot say for others but for myself I have felt very keenly. We have, as dutiful subjects of the King-Emperor, a duty to His Majesty the King-Emperor and to the Government established under law in this country; but, on the other hand, being representatives on this Council of the people we owe a duty to our fellow subjects which we have to discharge to the best of our abilities. I can assure your Lordship that I have been feeling this responsibility very keenly and the tension on my feelings for the past few days has been very very great. Under such circumstances one could only bow before the All Omnipotent for light being granted for guidance in the path which may be the right path.

"When I first heard of the Indemnity Bill I was under the impression that we were to be asked to indemnify all actions of Government officers, whether they were done in good faith or not. Till I had seen the Bill, I was under this impression and as such I felt that I could not give support to such a measure, knowing as I do some of the inconveniences and indignities that some of my countrymen have suffered during the currency of the martial law in my province. I have not the remotest inclination to defend those who have broken the law, and I have no hesitation in saying that no Government can afford to let such actions go unpunished. No man who loves peace and order could possibly side with such people who break law and commit atrocities which cause feelings of horror and contempt in the minds of right-thinking and law-abiding persons. But, on the other hand, one cannot shut one's eyes to some of the doings in my province. My Lord, this, however, is not the place to talk of those things. So I would not touch that point at all, as I believe and as I think that they are to be sifted into by the Committee of Inquiry that has been appointed by your Excellency. On the other hand, I would not withhold protection to those officers of Government who have done their duty during these trying times conscientiously, and whose actions have been taken in good faith and in a reasonable belief that they were necessary for the maintenance of law and order in the country. I understand that after martial law an indemnifying measure has always been enacted. Such a measure was passed in 1860 in India. I am not a lawyer, but I am told that that measure was of a more severe nature and went much further than the one introduced to-day. I am also told that indemnifying measures have been passed in other countries also, such as South Africa and nearer home at Ceylon. I would therefore be prepared to give my assent to the measure before us to-day ;

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but I want to be assured fully that Government has no intention to afford protection to those who have acted against the strictest sense of justice and against good faith. Though personally I have no doubt on this point and I am sanguine that Government have no intention of that sort, but an assurance of this nature will satisfy public opinion in the country. One thing more, before I give my assent to the measure before the Council. I would like Government to agree and concede that all cases tried under martial law will further be examined and that wherever injustice is found to have been done, those who are detained in jails will be given their liberty. I am glad that the point has been conceded and that two High Court Judges will revise these judgments and I thank Government for this. I have no wish to ask any clemency for those who have committed atrocities; but on the report of the Committee of Inquiry I would suggest that amnesty be granted, as I think that many of these unfortunate persons have in the heat of the roused feelings been led astray from paths of righteousness and of their duty as law-abiding citizens of the Empire. With this assurance that the Act does not white-wash all actions done in bad faith as against good faith and with the promise of a further reconsideration of the cases tried by martial law courts, I would give my assent to the measure before the Council. I have avoided making any mention of the unfortunate happenings in my province as this Council Chamber is not now the right place for these to be ventilated. They are in a way sub-judice and till the report of the Committee of Inquiry is published, we must suspend our judgments. The other day I asked for an assurance for the protection of persons who come to tender evidence before this Committee of Inquiry. I understand that the Home Member is willing to give that assurance and that steps will be taken to duly proclaim this to the people. I would, therefore, beg my Hon'ble friends and colleagues to refrain from bringing in matters which are now in the province of the Committee of Inquiry to inquire into and sift."

12-50 P.M.

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, the measure which the Hon'ble the Home Member has asked for leave to introduce is one of the most important measures which have ever been proposed by the British Government in this country, and it calls for very careful consideration. My Lord, the Hon'ble the Home Member has said that where there is disorder and it has been found necessary to proclaim martial law, certain acts have had to be done which may not be strictly justified in law, but may be morally defensible, and that an Indemnity Act almost as a natural consequence followed. Now, my Lord, the Hon'ble Member having raised the question, as it was necessary for him to raise, under what circumstances martial law should be introduced and under what circumstances an Indemnifying Bill or Act is permissible or justifiable, it is necessary for us to go somewhat into this question. I am not going far into the earlier Acts; I shall start with the period mentioned by the Hon'ble the Home Member, the year 1715. Members of this Council will remember that that was the year in which James the Pretender came over to England, and wanted to wrest the throne of England. 6,000 Highlanders from Scotland joined his forces and there was a regular invasion, an invasion in which there was regular warfare, there were not merely riots and tumults, but actual war waged against the Crown of England. The Pretender was defeated and it was necessary to justify the acts which had been committed in the suppression of that rebellion; it was in these circumstances that Parliament passed an enactment, like this, Chapter 39 of George I, says :—

'An Act to indemnify such persons who have acted in defence of his Majesty's person and Government and for the preservation of the public peace of this Kingdom in and about the time of the late unnatural rebellion from vexatious suits and prosecutions. ~~And~~ Whereas in the year of our Lord 1715 as well as in the time of, as before the unnatural rebellion, which began in or about the months of September or October in the same year. And whereas

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divers Lord Lieutenants, Deputy Lieutenants, Justices of the Peace, Mayors, Bailiffs of Corporations, Constables and other officers and persons well affected to His Majesty and his Government in order to preserve our present happy establishment and the peace of this Kingdom and to suppress and to put an end to the said rebellion apprehended and put into custody and imprisoned several criminals and several persons who they suspected might disturb the publick peace or foment or promote riots, tumults, rebellions or evil designs against the Government; and also seized and used several horses, arms and other things and also pressed divers, horses, carts and carriages for the services of the publick; and did for the purposes aforesaid enter into the houses and possessions of several persons and did quarter and cause to be quartered divers soldiers and others in the houses of divers persons; and did divers acts which could not be justified by the strict forms of law *and yet were necessary and so much for the service of the publick that they ought to be justified by* Act of Parliament and the persons by whom they were transacted ought to be indemnified.

‘Be it therefore enacted,’ etc.

“Now my Lord, your Lordship will see and the Council will see that the essential point of this enactment is that there was a rebellion which had to be suppressed and put an end to. Secondly, that Parliament expresses itself satisfied that the acts which had been done and which could not be justified by the strict forms of law were yet necessary and that they ought to be justified by an Act of Parliament, and that the persons who committed them ought to be indemnified. That establishes the cardinal principle which underlies legislation of the character which is now before the Council. It is a principle which was re-enacted in 1745. There was a second Pretender, the late Pretender’s son, Charles Edward. He tried to invade England—that was in 1745. This time again 6,000 Highlanders joined his forces and later on the number rose to 9,000. There were regular pitched battles fought. Several members of the Scottish peerage and others joined the rebellion. There was regular war and the King’s loyal subjects fought against the enemies of the King and defeated them. That was in 1745. It was necessary after the rebellion had been suppressed to introduce an Act of Indemnity. This Act, Chapter 20 of George II, ran as follows:—

‘An Act to indemnify persons who have acted in defence of His Majesty’s person and Government and for the preservation of the publick peace during the time of the late unnatural rebellion and sheriffs and others who have suffered escapes occasioned thereby from vexatious suits and prosecutions.

‘Whereas during the unnatural rebellion which began in or about the months of July or August in 1745 and still continues, divers Lieutenants, deputy lieutenants, justices of the peace, mayors, bailiffs of corporations, constables, and other officers and persons well affected to His Majesty and his Government in order to preserve our present happy establishment and the peace of this Kingdom and to suppress and to put an end to the said rebellion apprehended and put in custody and imprisoned or caused to be apprehended, put into custody and imprisoned several criminals and several persons who they suspected might disturb the publick peace or foment or promote riots, tumults rebellions or evil designs against the Government and also seized and used several horses, arms and other things and also pressed divers horses, carts and carriages for the services of the publick and did for the purposes aforesaid enter into the houses and possessions of several persons and did quarter and cause to be quartered divers soldiers and others in the houses of divers persons and did divers acts which could not be justified by the strict forms of law *and yet were necessary and so much for the service of the publick* that they ought to be justified by Act of Parliament and the persons by whom they were transacted and ought to be indemnified.

‘And whereas divers sheriffs, gaolers and other persons may be or are in danger of being sued, indicted prosecuted or proceeded against by reason of escapes of prisoners let out or discharged by the persons engaged in the said rebellion.

‘Be it therefore enacted.’

“Here again the Council will note that the essential point in the preamble is that it was necessary to suppress and put an end to the rebellion and Parliament

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was satisfied that acts had been performed that were not strictly according to law acts which were not only necessary but it was necessary that the servants of the public ought to be justified by an Act of Parliament. Now, my Lord, the third time that the English Parliament passed an Indemnity Act was in 1780; that was in connection with the Lord George Gordon riots. This was not a rebellion against the King by enemies of Great Britain, but this time the Catholic Relief Bill having been passed a certain section of Protestants in England could not bear the idea that it should be on the Statute-book, and they constituted a strong party and presented a petition to Parliament signed by 120,000 persons asking for the repeal of the Act. They went and invaded the Houses of Parliament. Sixty thousand persons were there, and the riot had to be suppressed. After the riot had been suppressed, Lord George Gordon escaped, but others got the punishment which the law considered fit for them, but after the riots had been suppressed an Act of Indemnity was passed. That was in the year 1780. The Act ran as follows:—

‘Chap. LXIII, Geo. III. An Act to indemnify such persons as have acted in the suppression of the late Riots and Tumults in and about the Cities of London and Westminster, and Borough of Southwark and for the Preservation of the public peace.’

“ Now the preamble recited:—

‘Whereas on the second day of June, in the year one thousand seven hundred and eighty a great number of disorderly persons assembled themselves together, in a riotous and tumultuous manner, near to both Houses of Parliament, and possessed themselves of the Avenues leading to the same, the said Houses being then sitting, and there committed great Acts of Outrage and Violence to many of His Majesty’s subjects; and afterwards proceeded to attack the Houses of some of the Publick Ministers, of Foreign Princes and States, residing at His Majesty’s Court, and to break into the Chapels belonging to such Publick Ministers, and to set Fire thereto, and continued riotously and tumultuously assembled for several Days and Nights; and during that Time attacked and set Fire to the Gaol of Newgate, the King’s Bench Prison, the Prison of the Fleet, and set at liberty the prisoners therein respectively confined, and broke other Gaols and Prisons, and set at liberty the prisoners confined therein, and set fire to, and pulled down, the Dwelling houses of divers of His Majesty’s peaceable subjects, in several Parts in and about the Cities of London and Westminster, and Borough of Southwark, and burnt and consumed the Materials and Furniture of the same, and did other Acts of Outrage and Violence; and whereas divers Magistrates and others have exerted themselves for the suppression of the said riots and Tumults, and for putting an End to the said Outrages, and for restoring and preserving the Publick Peace, and on the Occasions, and for the Purposes aforesaid, have done divers Acts which cannot be justified by the strict Forms of Law, and yet, were necessary, and so much for the Preservation of the Lives and Properties of His Majesty’s Subjects, and the Publick Safety and peace, that they ought to be justified by Act of Parliament, and the Persons by whom they were transacted ought to be indemnified; be it therefore enacted . . .’

“ Now, my Lord, these enactments clearly lay down that the legislative body which is to give its sanction to the acts which were performed during a time of trouble were necessary for the suppression of a rebellion or riot which amounted to rebellion and that they were so very necessary that the legislative body ought to justify them and indemnify those who had taken part in them. It is not every ordinary riot which would come in the category of the riots mentioned there. It must be a riot which, as Lord Halsbury points out in his article on the Laws of England, must be a riot or rebellion amounting to war. This is what he says in Volume VI of the Laws of England:—

‘As the source and fountain of justice, the Crown may issue such Commissions to administer the law as are warranted by the common or statute law. But it may not, without authority, establish Courts to administer any but the common law, and it may not, it is said, grant the right to hold a court of equity. The Crown may not issue Commissions in time of peace to try civilians by martial law; but when a state of actual war, or of insurrection, riot or rebellion amounting to war exists, the Crown and its officers may use the amount of force necessary in the circumstances to restore order, and this use of force is sometimes termed martial law. When once this state of actual war exists, the Civil Courts have no authority to call in question the actions of the military authorities, but the powers of the military authorities cease and those of the Civil Courts are resumed *ipso facto* with the termination of the disorder.’

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“ My Lord, the point on which I wish to lay stress is that there must be either a rebellion or insurrection or a riot amounting to war to justify resort to martial law. These are the general principles which the laws of England have laid down. So far as India is concerned, the matter rests on a more definite footing. The Government of India had empowered under Regulation X of 1804 to establish martial law in certain circumstances. Now it is essential to draw attention to the language of that Regulation, because your Lordship professedly acted under that Regulation in declaring martial law in the Punjab. My Lord, that Regulation was passed in 1810, and it ought to be remembered that it was passed at a time when the British Government was trying to establish its power in this country, when there were many small States trying to prevent its establishment or power in this country. That was the period during which this Regulation was passed. Little did I think, my Lord, I venture to say, that the authors of this Regulation had imagined that this Regulation would be resorted to in the Year of Grace 1919 after the great war had been won. However, the Regulation is as follows :—

‘ WHEREAS during wars in which the British Government has been engaged against certain of the native powers of India certain persons owing allegiance to the British Government have borne arms in open hostility to the authority of the same and have abetted and aided the enemy and have committed acts of violence and outrage against the lives and properties of the subjects of the said Government; and whereas it may be expedient that during the existence of any war in which the British Government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the Government in any part of the British territories subject to the Government of the presidency of Fort William, the Governor General in Council shall declare and establish Martial Law within any part of the territories aforesaid for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof by the immediate punishment of persons owing allegiance to the British Government who may be taken in arms in open hostility to the said Government or the actual commission of any overt act or rebellion against the authority of the same or in the act of openly aiding or abetting the enemies of the British Government within any part of the territories specified above, the following Regulation has been enacted by the Governor General in Council to be in force throughout the British territories immediately subject to the Government of the presidency of Fort William from the date of its proclamation.’

“ Now, my Lord, it is clear that this Regulation can only be justly put into force when there is either a war or open rebellion against the authority of the Government. Your Lordship in establishing martial law by the notification, dated Simla, the 14th April 1919, consequently said that :—

‘ Whereas the Governor General is satisfied that a state of open rebellion against the authority of the Government exists in certain parts of the province of the Punjab; now, therefore, in exercise of the power conferred on him he is pleased to make and promulgate the following Ordinance.’

“ Now, my Lord, section 2 of the Bengal State Regulation provided that where the Governor General was so satisfied it was open to him to establish martial law, and that section also repeated that it was during the existence of open rebellion against the authority of the Government, or who may have borne arms in open hostility to Government that martial law should be established. In the notification dated the 14th April 1919 your Lordship was satisfied that a state of open rebellion against the authority of the Government existed in certain parts of the province of the Punjab. Now, my Lord, the public have not been told what were the circumstances which constituted a state of open rebellion in Lahore. I gave notice of certain questions and I wanted to find out what it was that constituted a state of open rebellion. But unfortunately the Government told me that the questions could not be answered in view of the fact that an inquiry had been ordered and that it would not be in the interests of the public that these questions should be answered. Now, my Lord, I submit that it was essential, and it is still essential,

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first to inform the Council, when the Executive Government have come to the Legislative Council to ask for their support to ratify acts which are done under an Ordinance promulgated by the Governor General or the Governor General in Council, what were the circumstances under which martial law was proclaimed. I asked whether the Government would be pleased to lay on the table the correspondence which passed between them and the Punjab Government leading to the declaration of martial law in the Punjab. I also asked whether the Government would be pleased to state the facts and circumstances which, in its opinion, constituted a state of open rebellion against the authority of the Government in certain parts of the Province of the Punjab within the meaning of Regulation X of 1804 between the date on which the Ordinance was promulgated by the Governor General and the date on which open rebellion was declared to exist in the part of the Punjab to which the Ordinance had been applied. I am sure your Excellency will recognise that these questions sought to do nothing except what was right in the circumstances. I had heard that the 'Pioneer' had proclaimed that an Indemnifying Bill was going to be introduced in this Council, and I gave notice of a question an answer to which it would be necessary to have in order that I should be able

The Hon'ble Sir William Vincent :—"My Lord, may I rise to a point of order? Is it in accordance with the practice in this Council for an Hon'ble Member to refer in public to a question which has been disallowed? Is it not a fact that the Hon'ble Member has been reprimanded for doing this on a previous occasion?"

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I do not know of a reprimand and I do not recognise any such reprimand. I am entitled on a Bill before the Council to draw attention to every fact in the Council. I was perfectly right, I submit, to do what I did.

"Now, my Lord, I asked for information, and, as I said before, in answer to my question I was informed that the Government could not answer these questions and numerous other questions of which I had given notice, as a Committee of Inquiry had been constituted or was going to be constituted and these matters would be dealt with by it. Now, my Lord, I would not complain of these questions not being answered if the Government also recognised the fairness, the wisdom of staying its hand until these facts had been placed before the Committee of Inquiry, and until the public had come to know of them. Your Lordship will kindly remember that since this unfortunate declaration of open rebellion in the Punjab, which among other evils contributed to the Afghan war, since the declaration of this open rebellion and the establishment of martial law in the Punjab, the Punjab Government shut the rest of India and the world out from all knowledge of the events which were happening in the Punjab. My Lord, not only were individuals not permitted to go in and expose the events that were taking place there to the light of day, but even the representatives of many respectable well-established leading papers in the country, and a man, himself a man of peace and of humanity, Mr. C. F. Andrews, when he asked permission—I hear a little laughter. My Lord, I do not know what the laughter is about. If it is to say that Mr. Andrews is not a man of peace and humanity, I am sorry for those who think so. Now, my Lord, I say a man of Mr. Hume's antecedents and character, devoted to the service of his fellow men, who goes to different parts of the world in order to serve his fellow men, who was appointed as the representative of several leading papers, who sought permission to go to the Punjab, even after he had paid a visit to Simla and was on his way to Lahore, was stopped at Amritsar and disgracefully dealt with and turned back from the Punjab. Now, my Lord, other papers were not allowed to send their representatives to the Province and other public men were not allowed to go there. The result was that we did not know what had

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happened. From the information that we had, the All-India Congress Committee met and sent a long cablegram to His Majesty's Secretary of State in which they drew attention to the seriousness of the situation.

"Now, my Lord, in that cablegram the All-India Congress Committee, which met on the 20th and 21st of April at Bombay, passed among others the following resolutions:—

'Resolved that the All-India Congress Committee deplores and condemns all acts of violence against person and property, which were recently committed at Amritsar, Ahmedabad, Virangam and other places and appeals to the people to maintain law and order and to help in the restoration of public tranquillity; and it urges upon the Government to deal with the situation in a sympathetic and conciliatory manner immediately reversing the present policy of repression.

'Resolved that the All-India Congress Committee places on record its strong condemnation of orders passed under the Defence of India Act by the Government of the Punjab, Administrator of Delhi and by the Government of India against a person of such well known noble character and antecedents as Mr. M. K. Gandhi. The Committee cannot help feeling that, if these orders had not been passed, some of the regrettable events which followed them, may not have happened. The Committee requests the Government of India to withdraw its own order and to ask the Local Governments in question to do the same.'

"Then, my Lord, there was a cablegram which I sent to His Majesty's Premier and to the Secretary of State for India. I will read it as it stands without articles, etc.

'All-India Congress Committee desire most earnestly to represent to His Majesty's Government intense gravity of present situation in India, real causes and need for change of policy pursued at present. While deploring and condemning popular excesses which have occurred in some parts of country and which popular leaders have everywhere used their influence not unsuccessfully to restrain, Committee urge impartial consideration of circumstances which have so aggravated and embittered feelings of people throughout country as to make such outbreaks possible. Resolution of Government of India, dated 14th instant, describing present situation as arising out of Rowlatt Act agitation makes only partial statement of case. Undoubtedly intense universal bitterness of opposition to Rowlatt Act forced through legislature by official votes against unanimous protest of all non official Indian members and in face of unparalleled opposition throughout country was immediate cause of recent popular peaceful demonstrations but subsequent excesses were provoked by needless and unjustifiable action of Government of India, and Punjab and Delhi Governments against so revered a personality as that of Mr. Gandhi and against other popular leaders. For complete understanding, however, of present discontent and its causes other important factors must be considered.'

"Then, my Lord, after dealing with the causes which included India's services during the war, and the attitude of European and Anglo-Indian officials towards the Reforms and the fate of Turkey and the Rowlatt Bills, the Committee went on to say:—

'In such circumstances the two Rowlatt Bills were introduced and the principal one forced through Council in spite of unanimous opposition of non-official Indian Members, appeal for postponements and reconsideration and warnings of agitation that would inevitably follow throughout country which was stirred by this measure and uncompromising attitude of Government in degree unparalleled in history of country. Committee here cannot enter in detail as to justifiable apprehensions caused by passing into law of this Act.

'They are content to represent that it is total distortion of facts that an agitation against a measure placed on Statute-book in time of peace depriving subjects under any circumstances of sacred right of free and open trial and otherwise restricting fundamental liberties and depriving accused persons of normal and essential safeguards designed for protection of innocent persons should be regarded as an unreal agitation engineered by political agitators for their own ends. Committee have no authority to discuss merits of passive resistance movement led by Mr. Gandhi but would emphasise that nothing but feeling of high-souled patriotism and intense realisation of injustice involved in passing of this measure could have actuated man of his saintly character and noble record. Committee submit that so far as facts are publicly known no violence had anywhere been committed by the people until after the arbitrary restrictions placed on Gandhi's movements leading to his arrest and forcible deportation without any announcement about his destination while he was on his way to Delhi with object of pacifying people after unfortunate episode there on March 30th. Grave allegations were made

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that authorities in Delhi unjustifiably fired on crowds killing and wounding several. Government of India have ignored demands for inquiry into this and have published *ex parte* statement of Local Government exonerating local authorities on unconvincing statements. Had Gandhi been allowed to proceed Delhi Committee believe he would have restored normal conditions. Government on contrary by his arrest and deportation provoked outbreaks in Ahmedabad and Viramgaum. Outbreak had become imminent in Bombay also, but it was averted by wise action of authorities in restraining police and Military and efforts of Gandhi and other leaders pacified people and restored quiet.

Committee invite attention to the contrast between the rapidity with which tranquillity was restored in Ahmedabad by presence of Gandhi, his co-operation along with that of other leaders with authorities and continuance of disorders in Punjab where reckless and horrible methods of repression under Martial Law such as public flogging of citizens in streets, dropping of bombs from aeroplanes, wholesale firing on people assembled in streets, have been resorted to. These methods of repression have created horror and resentment throughout country.

Committee recognise need for strong measures to deal with popular violence where occurring and popular leaders and bodies and all public men are ready to co-operate with Government in putting down popular excesses and violent movements against authority, but use of such methods as have been in force in Punjab antagonise feeling of people towards Government and sow seeds of bitterness and distrust.

Committee most earnestly urge His Majesty's Government to intervene and put an end to these methods, and to order the appointment of commission of officials and non-officials to investigate causes of discontent and allegations of excesses by authorities in repressing popular outbreaks.

"My Lord, that was submitted on the 28th of April this year and it prayed that the Government should appoint an early Commission.

Committee strongly urge His Majesty's Government to consider that popular discontent has been provoked by causes set forth above. At Amritsar disturbances followed immediately on Sir Michael O'Dwyer's action in arresting and deporting Dr Kitchlew and Dr Satyapal. Committee most earnestly represent that situation cannot be dealt with alone by repression and attitude of sternness towards people displayed in Resolution of Indian Government of 14th instant which gives free hand to Local Governments to employ every weapon in armoury of repression and is sadly lacking in spirit of conciliation. Situation calls for highest statesmanship which will deal with it in spirit which animated British Government and Indian people in their recent struggle for maintenance of liberty and freedom of peoples from despotic domination and not in a mood of ruthless repression.

All-India Congress Committee feel that they can appeal with confidence to His Majesty's Ministers to consider this representation with sympathy and to take definite steps forthwith to reverse the policy of repression and to satisfy Indian feeling with regard to the Muhammadan question, the reforms and repeal of Rowlatt Act. Committee respectfully submit this action alone will secure real peace and contentment in the land.

[At this stage the Council adjourned for Lunch.]

8 P.M.

The Hon'ble Pandit Madan Mohan Malaviya :— "My Lord, the point to which I was drawing attention when the Council rose was whether there was open rebellion in Amritsar and Lahore and certain parts of the Punjab when this notification was published. Because, my Lord, the Bill starts with saying, it assumes, that there was open rebellion and all the acts which took place subsequent to the declaration that there was a state of open rebellion are based upon and flow from it, so to say. Now, my Lord, I have drawn attention to the general situation which existed in the Punjab and the country at about the time when this declaration was made. I have drawn attention to it in order that a birdseye view may be presented of the situation as a whole, and I have shown that the All-India Congress Committee drew the attention of Government to the fact that the disorders which had taken place had their origin not in anything in the attitude of the people so much as in the attitude of the authorities who had to deal with the people. Now, my Lord, I want to enter somewhat in detail into the circumstances which existed then. I consider it essential to do so in order that this cardinal fact,

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this, key-stone of this whole unfortunate edifice, which constituted the establishment of martial law and its results, should be fairly and squarely fixed at its proper place.

“ Now, what happened was, my Lord, that in the last Session of this Council the Rowlatt Bill was introduced. That Bill was opposed practically unanimously by all the Indian Members, and Government was urged to postpone legislation until another Session. The Government did not see fit to yield to that request. Agitation followed in the country and that agitation took one particular shape by the suggestion of Mr. Gandhi. That shape was that the people should express their dissatisfaction with the carrying out of the Rowlatt Act against the wishes of the people by observing a day of humiliation and prayer. My Lord, it is a pity that this action of Mr. Gandhi was not appreciated by all the Local Governments equally well; there were some, I am thankful to say, which appreciated it at its proper estimate and allowed the people to express their injured feelings in the way Mr. Gandhi had suggested. As a result of that suggestion on the 30th March last a *hartal* was observed, that is, a general closing of the shops was observed at certain places and also at Delhi. At Delhi somewhat unfortunate events took place. Some people tried to put pressure upon some confectioners at the railway station to persuade them to close their business that day, and a crowd assembled, and what took place there led to firing. I do not want to go into greater detail in regard to this matter, but I want to indicate the general fact that the mob was there and as a consequence of what happened, the firing that took place, people's minds were more embittered. That was the first blunder committed. Then, my Lord, a second time firing took place at Delhi and that also gave cause for more resentment. But notwithstanding this unfortunate firing and the loss of life, and the wounds which it inflicted upon some of the people, it is a fact, which cannot be gainsaid, that the 6th April 1919, which was the great *Satyagraha* day throughout the whole country, was observed throughout the country peacefully. No untoward incident has yet been alleged to have occurred during the observance of that *Satyagraha* day. Now, what, my Lord, was the *Satyagraha* day? Hindus and Mussalmans, and Indian Christians, and generally the whole Indian community agreed unanimously to abstain from doing any business that day, closed all their business shops, undergoing a great deal of loss in order to show the general resentment of the Indian community at the attitude of Government, and as a step which might persuade the Government to reconsider their position. Now, my Lord, that passed off well, as I say, and Local Governments other than the Punjab Government did not find in the demonstrations that took place any occasion for embarking upon a policy of repression. But not so the Government of the Punjab as it was then constituted. On the 3rd and 5th April, the Government of the Punjab issued orders against Dr. Satyapal and Dr. Kitchlew forbidding them from making speeches in public. These two gentlemen submitted to that order and nothing untoward happened in Amritsar in consequence thereof. The 6th of April was observed as a *Satyagraha* day in Amritsar, as well as in other places, and the day passed off peacefully there too. Three days after, there was the *Ram Navami* procession in Amritsar, that is the day on which Rama's birth is celebrated. It is a great day with the Hindus, but this time Muhammadans and Hindus united with each other in celebrating that day. That is to say, Muhammadans came forward to express their full fellow-feeling with the Hindus in observing that day, and there were great processions in Amritsar, and the Deputy Commissioner of Amritsar witnessed these processions from the Allahabad Bank, where he was, I am told, sitting at the time. My Lord, there is absolutely nothing against the Government in that procession. I am told that while the people shouted out ‘Hindu Mussalman-ki-jai’ and ‘Mahatma Gandhi-ki-jai’ they also shouted out ‘King-Emperor-ki-jai’; it was a perfectly loyal demonstration and had absolutely nothing to do with any political feeling.

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“But there was one feeling which is very important and which has its political value, and that was that Hindus and Muhammadans acted towards each other in a friendly way in which they had never done before in the history of Amritsar. Ordinary observances and caste restrictions and rules were put aside and their fraternising was a matter upon which every reasonable man, every God-loving man and man-loving man ought to rejoice. But on the following day at about 10-30 A.M. these two gentlemen, Dr. Satyapal and Dr. Kitchlew, were ordered to be deported from Amritsar. Nothing had happened up to the moment of their deportation which the public is aware of which would justify that order. They had been told to abstain from speaking in public; they had submitted to that order; nothing untoward had happened, there was no agitation which might endanger the public peace in Amritsar; and yet the Punjab Government thought it fit to issue this order of deportation against two men who were at the moment idolised by the people because they were honest and honourable men and the people felt that the orders were unjust orders.

“Now, my Lord, that was the second blunder committed in Amritsar. And what was the attitude that was behind that blunder? While other Local Governments noted the fact that public feeling was incensed against the attitude of the Government in the matter of the Rowlatt Bill, they thought it fit to allow that feeling to have its free and full expression.

“The Lieutenant-Governor of the Punjab, on the other hand, thought he must teach a lesson to those who were agitating. In a speech delivered from his seat in the Legislative Council he threatened action and also expressed his dissatisfaction. He said he would take very severe action and that threat he carried out unfortunately in the order of deportation. What happened? Before news of deportation was received business was going on as usual at Amritsar, banks were open, other public offices were open, in fact business men were transacting business as usual. When the news arrived there was a general feeling of resentment and sorrow. Shops were closed in a short time. At that time Mr. John, the Municipal Engineer, cycled through the city. He found people doing their business as usual, there was nothing to give any indication that trouble was coming, and when he passed through the crowds no one noticed him. He found crowds passing the National Bank, and the Chartered Bank, as also the Town hall and other public buildings. The crowd went in the direction of the Deputy Commissioner's bungalow, as has been stated in the evidence of officials as well as non-officials, their object was to go to the Deputy Commissioner and to request that these men, Doctors Satya Pal and Kitchlew, should be released. Up to then the mob showed no signs of mischief; they passed several public buildings without any thought of injuring them. When they reached the Amritsar foot-bridge they found that a military picket barred their proceeding further in the direction of the civil station. Now, at that place the mob was fired upon; they were at that time unarmed; I am told that they did not even have a stick in their hands; I am told that there was no attitude of defiance or violence, and at that time it is possible that the mob might have been gently pressed back, gently and firmly pressed back. It was then that firing was resorted to, and as a consequence the people became incensed, and that some persons then died and some were wounded. News was taken to the city; this fostered the resentment of the people. Firing was resorted to a second time near this bridge and more persons were killed. The Deputy Commissioner, in his own statement, says that before firing took place the mob did not commit any excesses. I have evidence to show that violence was done before the shops were fired. Now, my Lord, Mr. Miles Irving, the Deputy Commissioner, says that the worst that he expected from the deputation was a disorderly demonstration at his house. It is alleged on the side of the people that if this firing had not been resorted to, and if more restraint had been exercised, all the evils that followed might not have taken place. My Lord, what happened was deplorable.

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Infuriated by having some of the mob killed or wounded, a portion of the mob went back to the city saying 'they have killed some of our men; let us fight them'. Up to that time the evidence proves that no harm was done, the mob then rushed back to where fuel is stacked, I have myself seen the stack of wood, they picked up pieces of wood near the railings and then lost their temper, returned and committed the foul murders that they did. I submit that these are the circumstances which we should bear in mind in considering what happened. I need not of course express my sorrow for the lives lost; every decent man must regret the fact that Mr. Stuart and Mr. Robinson and that other Europeans at the railway station were killed. The whole unfortunate affair was finished in the course of two hours. The report in the 'Civil and Military Gazette' says that at 5-30 p.m. all was quiet. I shall not go into the question whether the firing was justified or not, but I would draw attention to the fact that the first firing having taken place, and the mob having become infuriated, it went into the city to revenge itself by taking the lives of five European fellow-brethren. In a couple of hours all was quiet at Amritsar. There was no trouble on the 11th. The people brought back the corpses, the Hindus and the Moslems decided that they should accompany the corpses in honour of the men and buried or burnt them according to their religion. They finished the whole job before 9 or 10. Thousands of people came out to accompany the bier of the unfortunate men who had been killed, and yet not a single untoward incident occurred in Amritsar. After having buried or burnt the corpses the people came back to the city and all was quiet. On the 12th again all was quiet at Amritsar. On the 13th the Seditious Meetings Act was proclaimed in Amritsar. Up to that time all was quiet. I should like any Member on behalf of the Government to cite one single fact or circumstance which would show that after 5-30 on the 10th April, when these unfortunate deaths took place, at the railway station and banks, that there was a single incident at Amritsar which could by any stretch of imagination be construed into open rebellion. My Lord, what happened on the 13th? It is distressing to think of. On the evening of the 12th a certain number of persons tried to have a meeting held in a certain place in the city, very few people attended, but it was announced at the meeting that a meeting would be held on the following day at Jallianwala Bagh. This is a place which is surrounded on all sides by houses, there are three or four exits to it, the biggest exit is on one side and the smaller exits are not larger than the doors of this hall. I am told that between 10,000 and 20,000 persons assembled there. It was given out that Lala Kanhaya Lal, a very old and esteemed pleader of Amritsar, would preside. Lala Kanhaya Lal told me personally that he never was approached and that he never gave his consent to preside, that this was falsely given out.

"That was a ruse to draw the people to the meeting. Hearing that a man of his position and respectability was going to preside, many people came to attend the meeting. That day also happened to be, my Lord, the *Bysakhi* day.

"The *Bysakhi* day is one of the most important days in Amritsar, and on that day one of the biggest *melas* is held there. People come to Amritsar for the *melas* from long distances, not only from the interior parts of Amritsar, but from long distances, from Rawal Pindi and Poshawar. A number of Sikhs and Jats had come to Amritsar for the *Bysakhi* day. These people not knowing that meetings had been prohibited assembled in the Jallianwala Bagh in large numbers, I am told they numbered about 20,000. The 'Civil and Military Gazette' states in its report that the people numbered about 6,000. But whatever the number may be, the gathering was certainly a very large one. My Lord, when the meeting had assembled, when several thousands of people had assembled, an aeroplane passed over the place where the meeting was to be held, and within half an hour or so of this, came the troops, and while the people were sitting down to hear the lecture which was being delivered by one of the men, the troops came and fired upon the people—and the people say

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without giving them any warning or any time to run away from the meeting. Now, my Lord, it has been stated by the Hon'ble the Home Member, that 'the number of persons who had been killed there has been traced to 300.' But from a letter received this morning by me from a friend, I am informed, that the number of deaths which have been traced already amounts to 530 killed and 190 wounded, and among the 530 killed, he gives me the names of 42 boys whose ages range as follows: 1 from 7 months who was being carried by his father to the place, to 15, 17, 18, 14 and one of 4 years, more than one of 12 years, several of 14 years and several of 15 years. These are the names of the boys who were killed at this meeting. The names of many others might be forthcoming, but even if this list is final as I very much wish and hope it may be, even, then, my Lord, the number is appalling to think of, and it is also horrible to think of the fact that people assembled at a meeting sitting down to hear a lecture should be fired upon by His Majesty's troops, and when they were running for their lives they should still be fired upon, and that so many of them should be killed in a few minutes time. Now, my Lord, I should like the Hon'ble the Home Member with all his reading of history to cite one instance so horrible to think of as the one like the Jallianwala Bagh, and to tell me if any Government has attempted to pass an Indemnifying Bill to justify anything approaching the deeds that were perpetrated in the Jallianwala Bagh.

"My Lord, I will go back to Lahore for a moment. I will come back afterwards to the events that followed at Amritsar. But let me say here that even after this butchery in the Jallianwala Bagh—and the Bagh is now called the bloody Bagh—even after this the people did not show the smallest sign of committing any violence. They submitted to these atrocities, they calmly resigned themselves to it, and there is not one single incident mentioned which would justify anybody to describe the state of things in Amritsar, even after that event and before it was proclaimed, that there was a rebellion in Amritsar, as an act of violence or hostility to Government. This was, my Lord, on the 13th of April. On the same day by a notification, to which I have already referred, it was declared that a state of open rebellion against the authority of the Government existed in certain parts of the Punjab, and by an Ordinance this was extended to Lahore and Amritsar, which were the first which came in for the operation of this declaration. Now, I submit, my Lord, with great respect, there is nothing I know of, and I have taken pains to verify the facts, to justify the declaration that there was a state of open rebellion in Amritsar on the day that your Lordship was advised that there was rebellion. I will go back to Lahore. Lahore observed the 6th of April as a *Satyagraha* day. The day passed off peacefully. Up to the 10th no untoward event happened in Lahore either." On the 10th owing to the news of Dr. Satyapal and Dr. Kitchew having been deported, there was all this trouble in Amritsar. The same day news was received in Lahore that Mr. Gandhi had been arrested, and deported to a place unknown, I mean to say, the place where he was deported was not announced. Now, my Lord, Mr. Gandhi, as is probably known, not only to my Indian friends but to every gentleman in this country or at least ought to be known, is a gentleman who is held in the highest reverence by millions of people. By his saintly character, by his desire not to hurt any fellow-man, by his desire to stand up for truth, justice and humanity, he has established himself in the affections and reverence of the people to an extent which is not enjoyed by any other of my fellow-countrymen. Mr. Gandhi having been responsible for the *Satyagraha* day being observed, he had to issue instructions that the day should be observed without any violence, without causing any hurt to any fellow-men; but certain unhappy events to which I have already referred having taken place at Delhi, public sentiment having been roused by these events, Mr. Gandhi was coming to Delhi to quiet the people and to see that feeling should not be further embittered. While he was on his way to Delhi, the Government of India was advised to issue an order confining him

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to Bombay, and the Government of the Punjab and the Delhi administration issued orders prohibiting him from entering the Punjab and Delhi. My Lord, that was a gratuitous insult offered to Mr. Gandhi. Any Government ought to feel honoured by the presence of a man like Mr. Gandhi within its own jurisdiction, and in asking Mr. Gandhi to keep out from the Punjab and the Delhi province, the administrations of those places showed that they did not take the broadminded view which those at the head of administrations are expected to take in such matters. Well, the result was that as the news was received that Mr. Gandhi had been arrested and deported, the temper of the people was tried. At Lahore, a mob gathered and they were going towards the Government House towards the Upper Mall, in order, I am told, to go up to Government House to make a representation. They passed several European buildings; they passed several European gentlemen without showing the smallest sign of any desire to hurt anybody. The Europeans who have their shops on the Upper Mall did not find any of their shops injured, not even a pane injured. When they were on the Upper Mall at one place the police wanted to prohibit them from going any further and wanted to turn them back. They did not like to be turned back, but eventually they agreed and they did turn back, and their attitude in going back shows that if firing had not been resorted to, there would have been no evil consequence resulting from the presence of the mob at that place for a little while. A little gentle persuasion, a little firmer attitude, if need be, would have succeeded, that is the belief of a lot of people. Now, my Lord, that having happened, when the mob were going back near Anarkali, they were fired upon and certain persons lost their lives. This enraged public feeling, but what happened? I ask your Lordship to note that there is no people on earth that I know of, that I have read of, or heard of, who would have shown their law-abiding character better than did the people of Lahore and Delhi where the firing had been resorted to. They did not do anything, they went back to their homes. It was all quiet at 8 o'clock. Before the people had returned to their homes, Government House had been seized by panic. Messages were sent to the troops to be in readiness and to take up positions. Ladies in the Club and other places were told to hurry back home. Several of them did, but at 8 o'clock all was quiet, and those ladies who had gone to Government House were permitted to go back to their homes. The people did not do anything to justify the panic. The whole thing was over in a short time. Whether the firing was justified or not, leaving that question apart, the whole thing was over within an hour and a half or two hours, and there was quiet in the city, and that same day the Lieutenant-Governor was entertained at a party. That was on the 10th. What happened on the 11th? The people here again asked that they should be allowed to carry their dead in procession, and they performed the ceremonies that they had to, but nothing further happened. On the 12th there was a meeting at the Badshahi Mosque. The people had assembled there to express their regret at what had happened, the shops continued to be closed, but no harm was being done to anybody except the poor men, who were suffering for want of food, and Lala Harkishen Lal, to his honour it may be mentioned, said he would subscribe Rs. 1,000 to help to keep the people from starvation. At that meeting there was a Criminal Investigation Department man who went into the meeting and expressed sentiments which people resented. This man was roughly treated, his pugree was thrown aside, but afterwards the meeting passed off quietly; nothing more happened. When the people were going back they say they passed the troops and they say there was something which led the troops to fire. Again some of the people were injured, some killed. Now, my Lord, what happened afterwards? Even after this unfortunate incident the people kept quiet. There was nothing, not a flower-pot injured in Lahore, not a pane of glass broken by the people—I did not hear what the Hon'ble the Law Member said

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The Hon'ble Sir George Lowndes:—"The Hon'ble Member was not intended to hear."

The Hon'ble Pandit Madan Mohan Malaviya:—"The noise was so great I thought something was said for me."

The President:—"I am sure the Hon'ble the Law Member would have got up in his place if he had wished to put any question; that is the usual course."

The Hon'ble Pandit Madan Mohan Malaviya:—"Now, my Lord, what are the incidents which the Hon'ble the Home Member, or anybody supporting the Bill, would expect as happening between the evening of the 10th and midnight on the 15th which would justify a declaration that there was a state of open rebellion in Lahore? The Law Member has not uttered one word to justify that view. Now I submit that there was nothing; that the people were living quietly; that whatever action had been taken by the Government in the shape of placing the military and police in positions and everything else was done and there was quiet in Lahore. Whether the quiet was due to the action taken by Government or whether it was due to the innate good sense of the people is a matter which I will not go into. Any way the result was there. There was quiet in Lahore, and all the panic which resulted in ladies being frightened into leaving Lahore and being sent up to the hills seems to be utterly unjustifiable. My Lord, up to the 15th then if this was the state of Lahore and Amritsar, how is this Council being asked to assume that there was a state of open rebellion in those places? Why should this sweeping Indemnifying Bill be put before this Council and the Council asked to support it? Let me refer to a few other incidents that happened in the Punjab. It is said that this open rebellion was to be found in other places in a few days. But, my Lord, note the sequence of events. This was up to the 10th of March. I have shown that on the 10th of March what happened at Amritsar was due to the deportation of Dr. Satyapal and Dr. Kitchlew, and after the 10th to the news of the arrest and deportation of Mr. Gandhi and possibly also, though I cannot say, my Lord, to the receipt of the news of what had happened at Amritsar. Now beyond that we have nothing to show that there was a state of rebellion in those places. And what is the next place to which I should invite attention? It is Gujranwalla. Gujranwalla kept quiet. Up to the 13th we did not hear of any untoward incident there. They had held a meeting; they had discussed the *Satyagraha* day; they had shown their opposition to the Rowlatt Act, but nothing further had happened. It was on the 14th, when the news of the Jallianwala Bagh massacre reached Gujranwalla that the people committed some excesses. But let me tell you what they did. There was a complete and spontaneous *hartal* in the whole town; everything went off orderly and everything was perfectly quiet in the town as the judgment in the Pleader's case shows. Then, my Lord, on the 13th as the news of the arrest of Mr. Gandhi had reached the town and the citizens were thinking of observing a *hartal* on the 14th, the matter of holding a meeting in case of the proposed *hartal* was considered at an informal meeting at the house of Diwan Mangal Sen. Please note, my Lord, what happened. Diwan Mangal Sen, one of the most esteemed men in Gujranwalla, who had made his contributions to His Majesty's Government during the war, and considerable contributions too, along with many other respectable men, were hauled up and tried as persons who had waged war against the King. On the 12th when they met to consider the matter, after having decided what they would do, they informed the authorities that the people had decided to close business on the 14th. Mirza Sultan Ahmed, the acting Deputy Commissioner, issued instructions to the Municipal Commissioners asking them to see that everything remained quiet on the 14th. They did not do so in a surreptitious way.

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“ They did all in a fair, frank and open manner and there was nothing wrong which they had to conceal. The proceedings of the meeting of the Municipal Commissioners and the conversations which took place with the Deputy Commissioner are, I understand, on the record.

“ Now the morning of the 14th of April opened well. All was quiet. There was complete spontaneous *hartal* throughout the city on this day. A big *Bysakhi* day was held at Wazirabad which is visited by numerous people from Gujranwala and other places. Hence there was a tremendous rush for Wazirabad in the 7-30 train. Booking was therefore stopped and many people were thus kept back. Out of this arose a general feeling to the effect that either all or none should go to the fair at Wazirabad. The train moved and in the rush the guard was stopped from getting into his compartment. As the guard was left behind, the train stopped at the distant signal. The mob at the station rushed towards the train and succeeded in getting out of the train many of the people. The mob asked the driver to come down and the driver did so. There was thus nobody in charge of the engine. Some of the mischievous hooligans then took some burning charcoal from the engine and set fire to the old rejected sleepers lying near the Gurukula bridge. The happenings were purely accidental being due to the mischief of these very few people and were not at all premeditated. It is worthy of note that no damage at all was done to the bridge and the train passed away safely after some delay. Now, my Lord, as the mob was returning from the Gurukula bridge *via* the Grand Trunk Road, which runs parallel to the railway lines, it was increased by hundreds of other people from the town and the railway station. The news was on every lip that a slaughtered calf was hung up from a girder on the railway bridge on the Lahore side. Hindu and Muhammadan relations were perfectly friendly at the time, and people therefore suspected that this was the work of the C. I. D. This idea gained strength from the fact that there is a large number of Hindu temples in that vicinity. The effect of this idea was most unfortunate on the public. Munshi Din Muhammed, a local pleader and a Muhammadan leader, declared that it could not be the work of Muhammadans and that he would himself remove the carcase. This convinced the public that it was not the work of any Muhammadan acting on his own behalf and that it was the work of some police underlings. The excitement reached a very high pitch when people who had seen a slaughtered pig on the other side of the station gave this news to the mob. The mob had now reached the place where the slaughtered calf was hung up. Mr. Heron, the Superintendent of Police, had also reached the place. Some of the enraged mob caught Mr. Heron and managed to throw him down and snatch away his pistol. This they did because they thought the police underlings had done the mischief to which I have referred. These young men were however calmed down by Mr. Din Muhammed, who persuaded them to leave Mr. Heron alone and to give him back his pistol. When Mr. Heron had thus received his pistol he fired on the mob, particularly on those young men who had given it back to him. Now several persons were wounded—*vide* page 32 ‘Punjab Disturbances,’ published under the authority of Government. Thereupon, the excitement was fanned into a flame. The crowd then returned to the railway station and demanded the blood of Mr. Heron who had so unjustly fired upon them, and one of the men who was so wounded died the following day. The huge crowd faced the police, the municipal commissioners and the magistrates who had all arrived at the railway station, for more than two hours, the Grand Trunk Road alone separating the two. The mob continued to yell, tremendously enraged at the spilling of innocent blood. Mr. Heron wanted to open fire on the mob, although the magistrates and the municipal commissioners were doing their utmost to push the mob back into the town. The latter had just succeeded in persuading some people to go back when a shot was fired,—accidentally or deliberately, I cannot say—by a police constable. This fanned the flame again into a fire.

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The crowd, which had so far been passive and sullen, now got enormously enraged at this. They swelled in number. Mr. Heron gave the order to fire. Fire was consequently opened and many casualties occurred. Thereupon the excited mob resorted to many acts of incendiarism, burning the post office, the dāk bungalow, the tahsildar's and the Honorary Benches' Courts, a block of the district courts, the railway godown, and the church. This again is vouched for in the 'Punjab Disturbances' published under authority

The Hon'ble Mr. J. P. Thompson :—"What authority has the Hon'ble Member for saying that the pamphlet entitled 'The Punjab Disturbances' was published under the authority of the Punjab Government?"

The Hon'ble Pandit Madan Mohan Malaviya :—"Is that not so? It is compiled from the 'Civil and Military Gazette,' second edition. Does my Hon'ble friend say that it is not published by the authority of the Punjab Government?"

The Hon'ble Mr. J. P. Thompson :—"The cover states by whom it was published."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, if Mr. Thompson will not give me a direct answer I am sorry I cannot say more. I was told it was an authoritative publication. If it is not, I am sorry for the statement, but he ought to tell me whether it was or was not. We want facts. It contains many official Communiqués."

"Now, my Lord, the people who were wounded by the firing of Mr. Heron at the Siddhan bridge where the slaughtered calf was hung up were taken through bazaar to Niyān where an open air meeting was all the time being held to keep the public engaged. At this meeting, speeches on Hindu-Muhammadan unity were delivered, and the people were advised to be calm, *vide* instruction given to the Manager of the Islamia School by the acting Deputy Commissioner to deliver a lecture at the meeting. The Manager's statement in the Pleader's case will be quite sufficient for that purpose. The point I am coming to is that this was all the trouble, the regrettable, unfortunate trouble. But it was all over by about 3 P.M. Moreover, there had been no riots in the city proper. The people had kept perfectly quiet in the city, and all these events occurred in the civil station outside the Circular Road. Between 3 and 4 P.M., just about the time when, as was said in the 'Civil and Military Gazette' report, the crowd was dispersing, aeroplanes arrived. Now, my Lord, the crowd had dispersed and the remnants of the crowd were dispersing when the aeroplanes arrived and bombs were dropped from the aeroplanes in several places. I have seen several of the places where these bombs were dropped, and I have learnt on the spot that several lives were lost, five in one place and two in another. When the crowd had dispersed or was going back, I should like the Council to be informed where was the necessity for dropping bombs from aeroplanes upon the town of Gujranwala? It was not in one place that bombs were dropped but in many places, and in places in the centre of the inhabited parts of the city which was all surrounded by houses. One bomb was also dropped in the boarding house of the Khalsa High School, where 160 boys were about the place at the time.

"Bombs were also dropped in the suburbs of Gujranwala where the mob had committed no excesses, and also outside the town of Gujranwala over the house of Lala Amar Nath, pleader, one of the Secretaries of the Home Rule League. A bomb was also dropped in another village close by, where I am told, a woman and child were killed by it. Now, my Lord, I should like anybody to tell me what earthly justification there could be for the dropping of half a dozen or may be more, I cannot say, bombs from aeroplanes over the

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people of Gujranwala when the mob had dispersed or was dispersing. This happened on the 14th. Everything was then quiet in the town, and a bomb was dropped again in Gujranwala on the morning of the 15th. I should like to know what justification can be pleaded for these actions. Now, my Lord, in spite of all this the people kept quiet. There was no rising of the people, there was no violence committed by the people. What little happened near the railway station was under the circumstances which I have mentioned to you. One European gentleman, an engineer, I think, was living about a mile or so away, I cannot give the exact distance, but sufficiently far away from the scene where the mob had committed any excesses. There was no danger to European life and no insult to any European lady. Why then was this bombing resorted to? My Lord, I should like here to know what was there in the state of Gujranwala to justify the declaration, to bring it in the category of places where there was proclaimed to be a state of open rebellion?

“ Now, it is noteworthy, and I wish the Council to note that the events which took place at Kasur, the regrettable murder of two Europeans there and the cutting of telegraph wires in some places, the derailment of trains here and there; these are the events which took place. The papers gave a list of them and you know them. These unfortunate regrettable events took place subsequent to the 10th of April, when a wrong had been done, when as the people believed an unjustifiable wrong had been done to a number of members of the public by the firing that was resorted to at Amritsar. My Lord, you must make allowances, take note, I mean to say, of the circumstances which surround the case, and the fact that these events took place in these places after the deplorable occurrences at Amritsar is a circumstance to be taken into account. I do not want to extenuate the evil that was wrought. I deplore it, but I think it will not be right, it would not be just to exclude from one's consideration the sequence of events in order in judging where how much blame ought to be allotted to one or other party or two certain parties. Now, my Lord, I leave the main incidents so far as they affect the question of a state of open rebellion at that. I would now invite your Lordship's attention to the second important part. What I have said has reference to the statement in the preamble of the Bill that 'owing to recent disorders in certain districts in the Punjab and other parts of India, it has been necessary for the purpose of maintaining and restoring order to resort to martial law.' I respectfully question the correctness, the truth, of this statement, and I submit that if the Council is not placed in possession of facts that may be in the possession of Government, if the Council is not placed in possession of facts which would justify the statement that there was open rebellion in Amritsar, Lahore and other places, this preamble of the Bill ought not to stand where it does.

“ Then, my Lord, the second point to which I would invite attention is, in the preamble also. It says that it was necessary for the purpose of maintaining and restoring order to resort to martial law. Now, my Lord, what are the facts? I have submitted that all was quiet at Amritsar at about 5-30 or so on the afternoon of the regrettable day when several European and Indian lives were lost. On the 11th and 12th there was no violence on the part of the people. On the 13th the violence that took place was on the part of some of the authorities and not of the people. Beyond the 13th nothing took place on the part of the people. How was it necessary, then, for the purpose of maintaining or restoring order to resort to martial law? Order had been restored; the passions, the regrettable passions which had led to certain crimes, had been exhausted, had exhausted themselves. The people felt that there was nothing more to be concerned about. There is one important circumstance to which I will draw attention in this connection. The Hon'ble the Home Member made a fervent appeal to those of my friends who have been blessed with large stakes in the country to reflect what would be their fates and the fates of their property if law and order were not to be preserved. Let me tell the Hon'ble

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Member and all who may wish to know it that the police in Amritsar was practically absent after these disorders and that the people themselves organised parties and kept watch and ward over the city and very few unfortunate events occurred; I believe that none occurred at all, so far as I am told. The people finding that the police were not doing their duty in keeping watch and ward and giving protection, organised themselves into parties and protected their town from any mischief either within or from outside. I submit, therefore, that the statement that it was necessary for the purposes of maintaining or restoring order to resort to martial law is not correct, so far as Amritsar is concerned.

“Now, let me come to Lahore. Is it correct in the case of Lahore? I have submitted that while Lahore had a large European population neither at the time of the trouble on the 10th nor at any other time was any European in danger of his life or of his liberty. It is said, as was pointed out by Mr. Chanda, several days after the events that a European police officer had received a hurt and that his head had to be bandaged, but it was also stated that the hurt had been caused to him by a policeman. That being so, my Lord, I ask every Member of this Council to call for information which would convince him that there was any danger which any reasonable man—men who are overtaken by cowardice or who have a craven fear, an indefinable fear may run into panic—but I should like to know any circumstances which could have led any decent man, European or Indian, to think that his life or honour was in danger in Lahore during the days between the 10th and 15th April, when it was declared that Lahore was in a state of open rebellion. I submit it was not. I submit that it is to the credit of Lahore that though these unfortunate events, shooting of some innocent persons, had occurred, it kept its head cool and it did not give its fellow-citizens, its European fellow-citizens, men or women, any cause to think ill of the people of Lahore. It did not give any fellowmen among Europeans any cause to adopt an attitude of resentment much less of vindictiveness towards any fellowman, and yet, my Lord, it was declared that Lahore was in a state of rebellion. I submit it was not, and that is a cardinal point in dealing with this bill.

“My Lord, what are the orders that were issued under martial law, which even by the wildest stretch of the imagination can be said to have been demanded for maintaining or restoring order? What are the facts which made it necessary to issue the orders for maintaining or restoring order in Lahore? I gave notice, my Lord, I tried to elicit facts by a string of questions; unfortunately as I have said before Government have not thought fit to answer them, and I take it, I am entitled to take it by implication, that they have admitted the truth of it; at any rate until on behalf of Government facts contrary to those implied in my questions are stated, I am entitled in dealing with a matter of such grave importance as this Bill to assume that the truth of those statements cannot be impeached. Now, my Lord, what are the martial law orders that were issued? Before I proceed further I should like to refer to the particular martial law order to which the Hon'ble the Home Member drew attention. If in the light of subsequent events the spirit of that order had been observed, we should not now be discussing this Bill to-day. But unfortunately the acts carried out went far beyond and greatly against the spirit of that order. The first question to which I shall draw attention is that of flogging. How many persons were flogged and for what offences? I have looked into the question and I find that there is a provision that flogging should not be one of the punishments to be inflicted by the Martial Law Commission. If I am right, and I think I am right, then it is regrettable that flogging was resorted to to the extent it was during the continuance of martial law at Lahore, Amritsar and other places. My Lord, can anyone tell me that it was necessary to resort to flogging in order to maintain order or to restore order? With the ample military resources of the

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Empire to which your Lordship referred in your speech on the 3rd instant, did the Government stand in any danger of having their authority upset if they did not resort to this vile form of inflicting punishment on a fellow-man. I should like to know what justification can be pleaded for the flogging that was resorted to in various places. My Lord, leading men were arrested in Amritsar. I will refer to the orders as I find them in order to save time.

“ My Lord, I asked the Government to be pleased to lay on the table copies of orders and proclamations, posters, notifications and notices issued by the administrators of martial law in the Punjab

The President :—“ Order ! Order !! The Hon’ble Member is entirely out of order. He knows perfectly well that this is a question he put forward to me as President to be allowed or disallowed. I disallowed it for reasons which appear on the face of the rules in regard to the asking of questions. The Hon’ble Member knows perfectly well that no discussion in Council can be permitted in respect of any order of the President under rule 7 or rule 8. I cannot allow the Hon’ble Member to proceed with what is really a discussion of my orders in regard to that matter.” 4-7 P.M.

The Hon’ble Pandit Madan Mohan Malaviya :—“ Thank you, my Lord. I did not propose to discuss your Lordship’s order. I wanted information and I was going to explain why I have not got it.”

The President :—“ You proposed to discuss it in another way.”

The Hon’ble Pandit Madan Mohan Malaviya :—“ True, indirectly that would be the result, my Lord.”

The President :—“ Quite so I am glad that the Hon’ble Member has made that admission. That is exactly what he is aiming at, and I do not intend to permit it.”

The Hon’ble Pandit Madan Mohan Malaviya :—“ My Lord, the propriety of your disallowing the question was not the point I had in mind ; what I wished to explain was, that I was not able to refer to proclamations, etc., which had been issued. I hope, my Lord, that you will feel that that is the correct explanation. I am in the unfortunate position that in discussing a Bill of this comprehensive character which deals with martial law I have to refer to martial law notifications, etc., and if I refer to the difficulties in which I am placed, I have not the remotest idea, my Lord, directly or indirectly, of making a reference to the propriety of your disallowing my question. Many martial law orders and notices were issued. I am unfortunately not in a position to place them all before the Council, because I have not got them. I shall try to show that all could not possibly be justified on the ground that they were necessary for the purpose of maintaining or restoring order. That is the point on which I am asking the attention of the Council. Let me refer to one. I am told that in a lane known as the Durga Koti Wali Lane every Indian irrespective of age or position had to pass through crawling on his belly the whole length of the lane. British soldiers were placed there to see that the order was obeyed. I should like to know if this was necessary for the purpose of maintaining law and order ? Then, my Lord, the electric lighting and the water-supply of the whole of the city of Amritsar including the civil lines was cut off for four or five days from the 12th of April last. It is also a fact that a large number of wells in the city of Amritsar had been closed when Mr. King was Deputy Commissioner, because he thought that the water of the wells was not healthy. By the shutting off of electricity and water supply much hardship was inflicted on the people. I should like to know how this was necessary in order to maintain order or to restore order ? Then, my Lord, it is said that a number of people, very respectable people, including bankers, lawyers and doctors, were kept handcuffed in pairs for several days. They were

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kept in an open racket court, where it was very hot in the day, and very cold at night. They were kept handcuffed continuously for 24 hours of the day for several days together and they had to eat, drink, sleep and attend to the calls of nature whilst handcuffed in pairs. I should like to know if it was necessary for the maintenance of law and order to issue such orders or carry out anything of that sort? Further, I am told that when on the 15th April the aeroplanes did their work and frightened the people of Gujranwala as they did, there was not the smallest suggestion that there was any spirit of rebellion or resistance in the town.

“The Deputy Commissioner of Gujranwala, with a strong body of police and European soldiers and with an armoured car marched to the house of Lala Mela Ram, B.A., LL.B., pleader, and arrested and handcuffed him and took him away, without allowing him to dress himself or to speak to his family. The party then met Mr. Labhsingh, M.A. (Cantab), Barrister-at-law, and arrested and handcuffed him and chained him with Lala Mela Ram. They proceeded to the houses of twenty other gentlemen (pleaders, bankers and other respectable citizens) and arrested and handcuffed and chained them all together. The persons so arrested and chained together were marched to the city, two and two, headed by a Hindu and a Mahomedan, to ridicule Hindu and Mahomedan unity as was stated at the time by Colonel O'Brien. Two Municipal Commissioners under the order of Colonel O'Brien walked in front of the procession thus formed and pointing to the aeroplanes hovering overhead kept on shouting to Indian people to make way for the prisoners on pain of being bombed or shot down. After being thus paraded through the principal streets of the town the prisoners were taken to the railway station and put into an open coal truck which was guarded by a number of European soldiers with fixed bayonets and by an armoured engine with a gun directed towards the prisoners. The prisoners were not allowed to leave their places even for the purposes of attending the calls of nature, and some of these gentlemen had to be there and to suffer all the trouble in the condition they were. My Lord, I am further told that on reaching Lahore railway station and before being removed to the jail, the prisoners were kept for about ten hours along with thirty other prisoners in a room which opened by means of an iron barred and panelled door into another room which was used as a latrine. My Lord, I am told that a number of pleaders and other respectable citizens in the town of Shahupura in the District of Gujranwala, were arrested and treated in a manner similar to that adopted at Gujranwala and were subjected to similar inconveniences and indignities when being taken to Lahore. I am told further that almost the entire population of the town of Shahupura above the age of 10 years, irrespective of rank or social position, was summoned by Mr. Bosworth Smith, I.C.S., Joint Deputy Commissioner and one of the Martial Law Officers, and made to sweep a large open piece of ground. I am told, further, my Lord, that a large marriage party of certain Mahomedans of the village of Rajgarh within the Municipal limits of Lahore was arrested and the members thereof were convicted by one of the Martial Law Officers. My Lord, these are some of the allegations which have been made in regard to the unfortunate events at Amritsar and Gujranwala. I should like to know which of these punishments was necessary for the purpose of maintaining or restoring order. Now, my Lord, I will draw the attention of the Council to some more facts, to give them an idea of the indignities perpetrated in other parts. I will draw the attention of the Council to the allegation, among others, that Moulvie Gholam Mohi-ud-din, pleader of Kasur, who had last year been publicly rewarded for his services in connection with the War and Maulvie Abdul Qadir, a senior pleader of Kasur, were arrested and kept in confinement for some weeks in an improvised lock-up near the railway station, and were then

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released without any charge or trial. I am told that several school boys at Kasur were flogged, and I should like to know how that was necessary for the purpose of maintaining law and order. My Lord, it has been stated, and the facts cannot be denied, that Mr. Manoharlal, M.A. (Cantab), Bar-at-Law, formerly Minto Professor of Economics at the University of Calcutta and now a prominent member of the Lahore Bar, and a Syndic of the Punjab University, was arrested and kept in jail for nearly a month, including one week of solitary confinement. Will anybody tell me why it was necessary to put this respectable gentleman to this indignity? Will anybody tell me why this gentleman was arrested? I am told his whole sin was that he happened to be one of the trustees of the *Tribune* paper which had enraged some of the officials, particularly the Head of the Punjab Government. For the crime of being a trustee of a paper which was edited by a gentleman whose name was known and whose articles have been pronounced by most competent and sober Indians to have been written very carefully, this respectable gentleman, a member of the Bar and a Minto Professor, was subjected to this indignity. I should like to know from the Council's own lips how much indignity was inflicted upon him and how much hardship he suffered. I should like to know why this was done? Then Rai Saheb Seth Ram Pershad, a Municipal Commissioner in Lahore, one of the largest house proprietors and bankers of Lahore, was arrested in April last and marched in handcuffs to the Central Jail, a distance of nearly three miles, kept in solitary confinement, and then released without trial after several weeks. Does the Hon'ble the Home Member ask the Council to indemnify these officers who inflicted these indescribable indignities upon their fellowmen as respectable as any Member of this Council? Does the Hon'ble the Home Member mean to ask the Council to indemnify officers against such acts? My Lord, the list is long. I do not wish to take up the time of the Council unnecessarily except to the extent that it may be necessary to impress upon every Member of this Council the necessity of examining carefully the proposals in the Bill and the proposal which is now before the Council before giving its assent. My Lord, there is a case from Amritsar, of Dr. Kedar Nath, a retired Civil Surgeon, aged 60 years, who had been invalided in 1909 on account of heart troubles; he was arrested and handcuffed and marched through the streets with 62 other prisoners to the jail and kept in confinement for a fortnight with two other prisoners in a cell which was meant for one person and then released without trial. Now, martial law notices were posted at the houses and shops of a number of people at Lahore with directions that the occupant must guard the posters, and that if they were damaged, torn or disfigured, the occupants would be severely punished under martial law. My Lord, one of these persons, an English lady, the wife of Pir Taj Din, herself told me that she had to keep a watch to see that the posters stuck to their house were not damaged or torn so that she and her husband might not come in trouble, and all this trouble could not be prevented by the fact of her being an English woman. I should like to know why it was necessary to subject respectable people to all this hardship and indignity?

"My Lord, the manner in which the students were dealt with can be gleaned from another incident to which I will call the attention of the Council. The students of Lahore have been wronged beyond expression, and I should like to know how it was necessary for the maintenance of law and for restoring order to deal with the students in the manner that was done. All the students of the Dayanand Anglo-Vedic College, the Dayal Singh College, Lahore, and the Medical College at Lahore were required to attend roll calls before military officers when they were made to stand in the sun guarded by the military with fixed bayonets and this process was continued for three weeks immediately preceding their University examinations.

"In the case of the King Edward Medical College, the total distance which the students were made to traverse on foot in the summer heat for attending the roll call, amounted to not less than 16 miles a day. Some students actually

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fainted while going to, attending, or returning from, such roll call parades and it was after that that a nearer place was fixed for taking the roll-call. My Lord, the Principals of certain Colleges in Lahore were coerced by the Martial Law Administrator to inflict very severe punishments on a certain percentage of their students without regard to any evidence of their guilt. Some of them were expelled, some were rusticated, some were sent down one year, and I am told that a number of students were fined. I am told that the total number of students who have been subjected to this injustice and wrong is about a thousand. I should like to know how this was necessary to maintain order.

“ My Lord, it has been alleged by some of those who were tried that in the cases tried by some of the officers who were empowered to deal with these cases, especially towards the close of the martial law period, the accused were convicted without the whole defence evidence being heard, even though witnesses were present, on the ground of want of time. For instance, in the case of Lala Gurdasram and Lala Shivaram, pleaders of Hafizabad in the District of Gujranwalla, who were sentenced to two years' rigorous imprisonment each by Mr. Wace, I.C.S. My Lord, a student, Ramlok, son of Daulatram, aged 17 years, was arrested on the 25th April, and having been detained in police custody for three weeks, was released for want of evidence against him. Several days after his release, his father Daulatram appeared as a defence witness for one Ram Ditta and deposed that the police had asked Ram Ditta to turn an approver but he had refused to do so. On this his son Ramlok was re-arrested on the following day and put on his trial for the very same offences for which he had been arrested and released before. The trial of Ramlok was fixed for the 9th and 10th June, but as martial law was going to be withdrawn at midnight on the 9th June, the trial was accelerated to the 5th June without any previous intimation having been given to the accused or to his father. The accused was tried and sentenced to one year and seven months' rigorous imprisonment for offences under sections 147, 426 and 506, Indian Penal Code, by Mr. A. L. Hoyle, I.C.S., officer presiding over summary courts under martial law, without any chance being given to him to produce his defence.

“ And, my Lord, one Bhagwansingh, a meat seller of Lyallpur, was arrested on the 6th June last and placed before the Martial Law Summary Court on the 7th June; on the 8th June part of the evidence was heard, and the case was adjourned; but as martial law was to be withdrawn at midnight on the 9th June, the case was taken up at 11 o'clock that night without any opportunity being given to his counsel to be present, and the accused was sentenced to three months' rigorous imprisonment.

“ My Lord, in some of the cases tried by the Martial Law Commissioner constituted under Ordinance No. 1 of 1919, no record of evidence of witnesses, either for the prosecution or the defence, has at all been made, nor judgments recorded, though heavy sentences have been awarded. For example, the case of Crown *versus* Fazla, son of Gumarci Kakezai, convicted under section 124-A, and sentenced to transportation for life by the Commission presided over by Lieutenant-Colonel Irvine, on the 26th of April 1919, and trials Nos. 20 and 21 of Hansraj and Hariram of Amritsar, before the Commission presided over by the Hon'ble Mr. Justice Leslie Jones, I.C.S., Judge of the High Court of Judicature at Lahore, convicting the aforesaid persons to seven years' rigorous imprisonment each under section 412, Indian Penal Code. Now, my Lord, in several other cases examination of outside witnesses for the defence was refused except by interrogatories. In some, no one would like to believe it, but in some cases even the offence with which a man is charged has not been mentioned. I hold in my hand a copy of an order with findings dated 26th May 1919, passed in the Court of A. L. Hoyle, Esquire, Magistrate, 1st Class, of the Lyallpur district at Lyallpur, in Martial Law Cases held at Lyallpur, for Dijkote Tehsil, Lyallpur.

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It says :—

‘ Finding—All accused guilty.

‘ Penalty or disposal :—

‘ Accused No. 1, Basant Ram, 2 years’ rigorous imprisonment,

‘ Accused No. 2, Charan Dass, 9 months’ rigorous imprisonment,

‘ No. 3, Jawandar Ram, 9 months’ rigorous imprisonment,

‘ No. 4, Bhagat Singh, 6 months’ rigorous imprisonment.

(Sd.) A. L. HOYLE,

Summary Court.

“ My Lord, this is the way in which people have been deprived of their honour and liberty. Is it meant that these cases shall be indemnified ?

“ There is another copy of an order dated 28th May 1919 with finding passed in the Court of the same gentleman, Mr. A. L. Hoyle, Magistrate, 1st Class, at Lyallpur.

‘ Finding.

‘ Accused 1 to 12 each guilty of rioting (section F47, Indian Penal Code) and offence under section 25 of the Telegraph Act, accused 13, 14, 16 guilty under section 147, Indian Penal Code, accused 15, 17, 18 doubtful.

‘ Penalty or disposal.

‘ Accused Sita Ram (1) 2 years’ rigorous imprisonment for each offence, accused Ram Dutt 6 months’ rigorous imprisonment for rioting and 18 months’ rigorous imprisonment for the offence under section 25, Telegraph Act, Amar Nath (2) Kesar Mall, Gyan Chand, Amar Nath (6), Agya Ram, Kaka Ram, Hari Chand, Divan Chand, Girdhari, Sita Ram (12), 6 months’ rigorous imprisonment for rioting and 1 year’s rigorous imprisonment under section 25 Telegraph Act. All sentences consecutive.

‘ Kesar Singh, Teja Singh and Bhag Singh 3 months’ rigorous imprisonment, Nand Singh, Balwant Singh and Jaimal Singh acquitted.

“ Now, my Lord, this is the way in which havoc has been made of the liberty and honour of many fellow-subjects of ours.

“ My Lord, there are other instances to some of which I must invite attention. An order was issued that every Indian who should pass by a European must salaam, and in some places they were told that they must get down from a carriage if they were driving at the time. In several instances unfortunately several Indians were flogged or otherwise punished for not salaaming to Europeans and not carrying out this martial law order. In one case one Gopaldas, son of Deviditta Mal, caste Arora, of Akalgarh, who was a telegraph peon at Lyallpur during the martial law days was arrested for not salaaming a European officer to whom he had gone to deliver a telegram and that he was given five stripes for it in jail, although he protested that he had actually salaamed the officer and was willing to do so again. I should like to know, my Lord, if this was necessary in order to maintain law and order. In some of the districts where martial law was in force orders were issued that every Indian driving in a carriage or riding a horse must get down when he passed by a European, and, further, that Indians carrying open umbrellas must close and lower them when they met a European.

“ My Lord, the evil was not confined to these few places and these few cases to which I have drawn attention. There has been much more injustice done, and I shall draw attention to one of these that occurred in Ramnagar. I am reading from the Judgment at Ramnagar, my Lord. There were 28 persons accused. No un-toward event happened at Ramnagar at any time.

“ When the news of Gandhi’s arrest reached there, I am told that a few boys expressed their mourning for the event and went to bathe in a river in the locality

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The Hon'ble Sir William Vincent:—"May I inquire, my Lord, if this is the Ramnagar where the King's effigy was burnt?"

The Hon'ble Pandit Madan Mohan Malaviya:—"This was alleged but it was an untruth."

The Hon'ble Sir William Vincent:—"I only wanted to know, my Lord."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, my friend thought that he had scored a great point in mentioning that. I have not less respect for His Majesty the King Emperor than the Hon'ble Sir William Vincent has, but I will show to your Lordship and to the Council that an untrue story was concocted and had to be abandoned, and that the facts would not justify the punishment which was inflicted upon the people. Now, my Lord, at Ramnagar, on the 15th instant, a certain number of boys met together and expressed their grief or resentment, whichever you please, at the arrest of Mr. Gandhi and the Rowlatt Act. They went and had a bath in the river which runs through the locality. The event passed off, no notice was taken of it, and it was reported that there was quiet in Ramnagar. A few days afterwards the Deputy Commissioner, Colonel O'Brien I think it was, went there, certain instructions were given and the Revenue Assistant called a meeting of the citizens of Ramnagar and arrested four men. Several days afterwards, I think it was on the 12th of May or the 28th May, I do not exactly remember which, 23 or 24 other persons were got hold of and also *challaned*. Another man was subsequently arrested and so the party was made up to 28. The charge against them was that they had burnt the effigy of the King. I will read the judgment to your Lordship. It says:—

'Bhagwan Dass, Kapur Chand and Barkat Ali are eye witnesses to the fact that a mob of Hindus in whom the 28 accused were included burnt the effigy of King George on the bank of a creek of the Chenab near the town of Ramnagar and then marched back through the town. The leader in this was Hari Singh Giani, Headmaster, who produced a small effigy which he burnt on a funeral pyre on the bank and throughout acted as crier, while others answered as chorus. The cry raised was 'Rowlatt Bill Kala Bill Marya' (and His Majesty's name is brought in and abused) 'The Rowlatt Bill, Black Bill is dead' (and abuse of the King Emperor, 'The ashes were cast into the river by Hari Singh and most people bathed as purification. Other witnesses one Hindu and several Muhamma'dans, give evidence that Hari Singh Giani, Daulat Ram, Balmokand, Karam Chand and Gobind Sahai organised a *hartal* on the afternoon of the 15th and had called all the Hindus to a meeting near the river. On their return they came through the town headed by Hari Singh as crier, shouting out Rowlatt Bill Kala Bill Marya (the Rowlatt Bill, the Black Bill, is dead, and abusing His Majesty—I am translating the words, I do not wish to utter them). 'The crowds are said to have consisted of about 200; but all three principal witnesses united in naming the 28 accused. Some named others but these have been weeded out where not corroborated. The witnesses who saw the crowd return also named the accused though one or two were doubtful in the case of 5 or 6.

* * * * *

'All the accused plead not guilty. Most of them call witnesses for good character or for *alibi* of no value. It is noticeable that witnesses for the defence do their best to prove their own absence during the period of the alleged offence, which suggests that they are not prepared to deny that such a thing took place.

* * * * *

'Of the defence witnesses worth noticing, those for Balmokand tried to prove an *alibi* for him in Gujranwala. He himself claimed to be in Gujranwala up to 1.30 on the 15th.

* * * * *

'Other witnesses speak of having met Balmokand on the road. But they avoid arguments which might agree and be tested on cross examination. On the other hand, it is shown by evidence that Balmokand rode off from Gujranwala and passed Manchor 3 miles from Ramnagar at midday on the 15th.

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'It is indisputable that the affair of burning the King Emperor (he says burning the King Emperor but he evidently means the effigy of the King Emperor) took place. There certainly was a *hartal* and the people went to the river. Although a few witnesses for the defence try to declare that there was no *hartal* ever, this is disproved by the first report when it was known that anything more serious had happened and also by the anxiety of the majority of the defence witnesses to prove their own absence. The evidence that the King Emperor was burnt in effigy by Hari Singh with the plaudits of the mob sitting round him is also ample. Two Hindus and one Muhammadan gave evidence to this, as also to the casting of the ashes into the river and the purification of the Hindus by bathing. Many more witnesses prove the return of the party through the town with Hari Singh chanting in front 'Rowlatt Bill Kala Bill marya, etc.' The case did not come to light for a week and could not be investigated till later, but this was due to the absorption of all officials in the outrages elsewhere and the Sub-Inspector in those of Akalgarh. The story is not one that would have been invented. I find that the case has been well sifted and that the 28 accused are proved by the evidence of the prosecution to have been there * * *

The offence is so gross that the accused are lucky in not having been sent up to a Tribunal. Hence the maximum imprisonment must be inflicted on almost all. Many of the accused are wealthy and heavy fines are very suitable. I sentence them as under :—

1. Daulat Ram,
2. Balmokand,
3. Karam Chand,
4. Gobind Sahai,
5. Hari Singh,

to rigorous imprisonment for two years, of which three months to be in solitary confinement and to pay fines of rupees one thousand each, or in default rigorous imprisonment for six months in addition.

"Now, my Lord, the people say that if there was a fair trial it would be established that this story was entirely untrue, and that they did not burn the effigy of the King Emperor. Now, these people, as the judgment says, were wealthy and respectable, and for that reason they were sentenced to such heavy punishment and such large fines, which, in the case of such people, is a very serious matter. These respectable people had no reason to indulge in such foolish and wicked mischief, but you subject them to trial in a summary court, where their honour is concerned, and you do not give them an opportunity to establish their innocence, and they are sentenced to two years' rigorous imprisonment. These are the cases in which the Bill seeks that the sentences shall be confirmed. I submit, my Lord, that nothing could be a grosser wrong than to ask the Legislative Council to confirm sentences of this nature, where men have not been given an opportunity to have their defence properly put and where they have not been given an opportunity to appeal to a higher tribunal.

"Now, my Lord, I will not deal with any more cases. I think what I have submitted is sufficient to show how great is the need for having the facts of these unfortunate times sifted and well established before an Indemnifying Bill should be dealt with by this Council. As I have submitted before, there are two points essential in asking for an Indemnifying Act. One is, that there should have been either open rebellion or war against the King or riots or insurrection which amounted to war, and, secondly, it should be necessary to show that, even if such a necessity arose and that the acts done were such as in the language of the three Statutes which he quoted were so much to the good of the public, so much for the benefit of the public, that those acts ought to be justified by the Legislature, and that the officers who did them ought to be indemnified. I submit, my Lord, that this has not been shown to be the case. Now, the Hon'ble the Home Member tells us that the question whether martial law was necessary will be discussed and settled by the Committee of Inquiry, but he says 'Go further. Take the fact that martial law was declared. Then I ask you to consider the case, the position, the pitiable position, of those officers

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who were ordered or directed or commended to do certain acts. We promised them in our Resolution of the 14th of April 1919 that we would give them our ample support. We are bound in honour to protect them from the results of actions which they undertook upon that assurance.' My Lord, that is begging the whole question. If you are not right in giving them that assurance, that assurance will not stand them in good stead. You ask that the Council should pass this indemnifying measure, and you say that the question whether martial law was necessary or not shall be determined by the Committee of Inquiry. I submit that this is a preposterous proposition to put forward before this Council. What will be the effect of the decision by the Committee of Inquiry as to whether there was open rebellion in Lahore or Amritsar or not? In the quotation to which I have referred Earl Halsbury has made it clear that the Crown may not issue commissions in times of peace to try civilians by martial law; but when a state of actual war, or of insurrection, riot or rebellion amounting to war exists, the Crown and its officers may use the amount of force necessary in the circumstances to restore order.

"The cardinal point is, whether there were circumstances which justified the declaration of martial law. You cannot go on to deal with this Bill without first dealing with that cardinal point. If you think that you owe it in courtesy to the Inquiry Committee which you have constituted to leave the decision on that important matter to them, I say in fairness to every one concerned, including the Government, stay your hand, do not proceed with this Bill. Wait for the result of that inquiry. Let the facts be sifted out and when the facts have been sifted out, indemnify officers for all acts done in good faith with reasonable care and caution, for restoring order or maintaining it, wherever it might have been necessary. No sensible man would for a moment object to His Majesty's officers or those acting under their instructions being indemnified and protected against the consequences of acts done by them in good faith with reasonable care and caution in circumstances where the existence of martial law would be justified. But where the existence of martial law is not justified, where the very foundation upon which martial law rests is non-existent, I submit, these officers have to take their chance of having their cases adjudged and determined in the light of equity and justice by ordinary Courts in the country.

"Now, my Lord, the Hon'ble the Home Member said he did not want to prejudice the inquiry that the committee is going to make. But I am sorry to say his observations read outside this Council and in England will leave only one impression, though he may never have meant it. His speech could not be better framed if the object was to prejudice the inquiry than it was framed. My Lord, the Hon'ble the Home Member says: 'Well, I do not want to go into the facts—that is a matter for the Committee of Inquiry. But the Committee of Inquiry are not going to censure any man for performing any act in good faith.' What is this, my Lord? Why raise the question now? When you say the Committee of Inquiry is not going to pass any censure upon Government, what, I ask, is the Committee going to be allowed to do? Either state things frankly and fairly and leave the matter to the Committee's decision, or say frankly, as you have the power to say it, that you do not want any inquiry into these dark deeds and that you want to throw a veil over them. Throw it if you can; in this country you can do it, but of course the fear of the English public and Parliament might deter you from doing so. In that case I say stay, wait, do not proceed with this Bill until you have the report of the Committee of Inquiry. The Committee of Inquiry will certainly be prejudiced if they read the speech of the Hon'ble the Home Member. They might well take it as their instructions from the Government, because the Hon'ble the Home Member does represent your Excellency's Government in all these matters, even more perhaps than your Excellency does. Therefore, with this speech before the public, the public at any rate will consider it very remiss on that part of the representative

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of the Government to give expression to the opinions and remarks to which the Hon'ble Member has given expression to-day. The Hon'ble Member also said that he did not want to prejudice and points to a provision in the Bill, particularly guarding against the effect of this Bill upon any judgments which the Privy Council may wish to pronounce. But, my Lord, if you indemnify acts in the manner in which you are doing with the provisions in this present Bill, well may their Lordships of the Privy Council complain that you have done what no ordinary citizen is expected to do, namely, to pronounce judgment on some important aspects of the case before they have had time to deal with them. My Lord, I wish here to make it very clear that I have done all that I could as an individual Member of this Council to postpone the discussion of questions of fact and law relating to the events that have occurred. I gave notice of questions—I do not refer to them now—I am only showing how I gave notice of these questions with a view to elicit facts which might postpone the introduction of the Bill. Many Members of this Council, if not all, were anxious and they expressed their desire to the representatives of Government that the introduction of this Bill might be delayed until the Committee of Inquiry had submitted their Report. My Lord, we are not anxious for any particular verdict. God knows I am not anxious that the fault or guilt shall fall upon any particular individual. I only want the facts to be proved; I only want that the facts being proved whosoever may have been responsible for these facts should stand a trial before the public opinion of this country and the public opinion of the High Court of England. We are only anxious that if you adopt a particular course, if you appoint a Committee of Inquiry to go into those facts, we only think it fair that a discussion upon facts which the committee has to deal with or the law which the committee may have to consider should be avoided. I should have been very glad to avoid such a discussion—it has been forced upon me and I wish this to stand on the record of the proceedings of this Council. But, my Lord, we are driven to this. The dead men of Amritsar and of other places, their souls appeal to us to point out to your Excellency's Government the facts which are cardinal, of vital importance, in a consideration of this affair. The men who have lost their sons, the men who have lost their brothers, the women who have lost their husbands, the mothers who have lost their sons who are mourning the deaths of these persons who have met an untimely end, they call for the most careful consideration of this affair. They call that no decision should be arrived at and that no Act should be passed which would prejudice a proper consideration of their case. The Government cannot say that the delay of a few months will really prejudice their position. If the Hon'ble the Home Member, advised by the Hon'ble the Law Member, felt that if a Bill like this is not passed every moment of detention of numerous persons who have been condemned by the Martial Law Commissions and the Martial Law Summary Courts in jail is an unjustifiable detention of such persons, why did the Government not introduce the Bill earlier? Why did you not call a meeting of the Legislative Council earlier to deal with this matter? If they have allowed so much time to pass, if it is only now that public opinion is forcing attention to those questions, to what has happened in the manner in which it is doing, that they now sit down and consider what they should do, and if they now want to introduce provisions to safeguard them, I say they might well have waited, they might well wait another few months until the Committee have reported.

“ My Lord, there is a provision giving retrospective effect to the Bill; that provision might be of some use to those who want this Bill in order to prevent any evil result which they do not desire in cases which they may institute. I do not know of any case which has been instituted. I believe the Punjab has been frightened out of description; the Punjabis have been terrorised in a manner in which I have not known the people of any other part of the country to have been terrorised. In spite of the presence of Sir Edward Maclagan in the Punjab that terror has not yet entirely been removed from the minds of the

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people. In this state of things they are not anxious, I do not know that many are anxious, to institute any suits. I do not know that any suits have been instituted and that many are anxious to rush forward with cases into the Courts. All that they desire at present is, to know what has happened and to have it established and then to consider what should be done. Indeed, they might well expect the Government to take such action as the Government might think fit. Because you cannot expect that where the number of persons to whom injury has been done is so large and many of them are poor, it is hard to expect that they will be able, that many of them will be able, to seek redress and to obtain it. It is only if the conscience of the Government, to which the Hon'ble the Home Member referred, if the conscience of the Government should be stirred by the recommendations of this Committee of Inquiry, if the Government should think it that they owe it to His Majesty's Government and to the name of Britain and to British justice, to bring certain persons, they may be Indians, they may be Europeans, to bring certain persons to justice, it is only then there would be a chance of justice being done.

“ My Lord, there is no reason why the Government should be in a hurry to proceed with the Bill.

“ Now, having said this much on the general aspect of the Bill, I shall now address myself to some of its provisions and to the remarks which the Hon'ble the Home Member made in regard to it. The Hon'ble the Home Member said that, when martial law is introduced, the officers of Government have no time to wait, to examine things that they must take action, that they may perform acts which are illegal, but so long as they perform acts which are moral and proper they should be protected. From what I have said it will appear that it is very important to find out which acts come under that category, which though not legal are right and proper. Then he said that an Indemnity Bill of some character is the inevitable sequel of the introduction of martial law. I have myself said in the early part of my address that an Indemnity Act of a certain character may be inevitable, but this involves two important questions. What are the circumstances in which an Indemnity Act is passed? and what would be its nature? The Hon'ble the Home Member quoted Dicey, who himself says that the time the Act is passed must be one of national danger. I have shown that there was no national danger. In a few cases individuals lost their reason, were carried away by passion and committed acts, but we cannot say that these constituted national danger. My Lord, in this connection I wish to draw attention to the contrast furnished by a case I shall cite, and to which reference was made in the cablegram of the Indian Congress to which I alluded before in Council. At the time there was trouble at Lahore there was also trouble at Ahmedabad and Viramgam. His Excellency the Governor of Bombay allowed Mr. Gandhi to go to Ahmedabad and see the people and to work freely among them. He was able to satisfy the people and to quiet them, also to censure them for the outrages they had committed. Martial law was gone in a few days. That was all that was needed at places like Amritsar and Lahore at the utmost. I say there was no justification for martial law in Amritsar, because it was stated to be quiet after 5-30. Assuming even that there was justification for martial law on the 10th April, it should have been withdrawn by the 12th or 13th. The action taken in Ahmedabad forms a happy contrast and affords an instructive lesson in the light of what has happened here. The Hon'ble the Home Member says that there must be a period of national danger when martial law is introduced. I agree with him, but I submit that there was not a period of national danger in the Punjab to justify the introduction of martial law. The other point that he referred to in the quotation from Dicey was, that the acts done must be *bona fide* and solely in the public interest. It is only in such cases that the persons can be indemnified. I ask the Council, in view of what I have said, to judge whether a Bill of such a sweeping character should be placed before the Council in the light of events that exist now, at a time of non-ascertainment of facts and of the allegations

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which have been put forward on behalf of the people. Then he referred to various Colonial Legislatures including the South African which have passed Indemnity Acts.

"I may mention here that members of this Council are put to great inconvenience for want of a good library for ourselves. We have at times to borrow books, not only from the library of the Legislative Department which perhaps causes a little inconvenience, but also to get them from distant places in order to carry on our work. I am indebted for a copy of the Cape of Good Hope Act to the Hon'ble the Law Member, who at my request allowed me to refer to it. The absence of such books hampers our work; if we had such books we might be able to save the time of the Council. In the case of this Cape of Good Hope Act the question was considered by a Commission consisting of the Lord Chief Justice, General Ardagh and Judge Bigham of His Majesty's High Court. It consisted of a court of gentlemen of the type I should like to have seen here. It would support some other points to which reference was made in a previous Resolution. Now to come to this Act, VI of 1900. This was passed while the Boer war was going on. It set out the circumstances under which the Act was introduced. It was to punish those persons who had taken up arms against Her Majesty the Queen or otherwise assisted her enemies. It was for the suppression of hostilities and for the maintenance of good order. My Lord, this Act cannot afford any parallel for the legislation which is now under consideration. The Act passed in 1902, No. 4 of 1902, is also important. It was an Act to indemnify the Governor of the Colony and the officer commanding His Majesty's forces in the Colony and all persons acting under their authority and in good faith in regard to acts done or committed during the existence of martial law, to validate certain sentences passed by courts-martial or military courts and to confer certain powers on Commissioners to inquire as to, and reporting on such sentences being still unexpired. And it promised indemnity in respect of certain acts, matters and things whatsoever that were ordered as necessary for the suppression of hostilities or the establishment and maintenance of good order and government in or for the public safety of the Colony between certain dates.

"Now, my Lord, I submit that here again it had reference to the suppression of hostilities or the establishment of good order and government. It has to be shown that this was necessary.

"Secondly, my Lord, this Act which, I think, has been taken as a model for the Bill which is now before the Council points out that it is only acts done or committed during the existence of martial law which can be indemnified. The Bill in the Statement of Objects and Reasons does say that 'the object of the Bill is to indemnify officers of Government and other persons for acts done *bona fide* in the course of martial law during the recent disorders, and to provide for the continuance of the sentences passed by courts established under martial law.' Yet, the Council will see that the provisions of the Bill go far beyond it. Whether this was deliberate or unintentional, I cannot say, but the Council will see that the Bill says in clause 2 'No suit or other legal proceeding whatsoever, whether civil or criminal, shall lie in any court of law against any officer of Government, whether civil or military, or against any other person acting under the orders of any such officer for or on account or in respect of any act, matter or thing ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order in any part of British India on or after the 30th of March 1919 and before the commencement of this Act.'

"Now, my Lord, martial law as we all know was proclaimed in Amritsar, and it came into force in Lahore on the midnight of the 15th or rather at 12 o'clock of the night between the 16th and the 17th. By what justification

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events which took place from the 13th March to the date on which martial law was proclaimed have been included in this draft of the Bill, I am unable to understand. Ordinarily such a Bill should be confined to the period during which martial law prevailed, but this Bill goes beyond that period, and the second terminus which it fixes is the commencement of this Act. I should like to know what justification there is for that either.

“ My Lord, the second point to which I would refer is this. This Bill says that ‘ provided that such acts, matters or things were ordered or done in good faith in a reasonable belief that they were necessary for the said purpose.’ This, my Lord, is very objectionable. All that you ought to provide for is, that action should be done in good faith and were in fact reasonable, necessary or expedient. You cannot say that if a man were to shoot his fellowman he has acted in a reasonable belief or in good faith. Now, is that man to be indemnified? In this matter I would draw attention to a few observations of Mr. Justice Chamberlain in one of the State trials which took place in 1799. It was the case, my Lord, of *Wright vs. Fitzgerald*. Wright brought a suit against Fitzgerald for assault and battery. He had been flogged by the order of Fitzgerald. 50 lashes had been given to him and in addition 50 more. Now, in disposing of that case, Mr. Justice Chamberlain proceeded to charge the jury as follows:— ‘ His Lordship said that the jury were not to imagine that the legislature, by enabling Magistrates to justify under the Indemnity Bill, had released them from the feelings of humanity, or permitted them wantonly to exercise power, even though it were to put down rebellion. No; it expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal; and every act should show a mind intent to discover guilt, not to inflict torture. By examination or trial he did not mean that sort of examination and trial which they have been then engaged in, but such examination and trial, the best the nature of the case, and the existing circumstances would allow of.’ That was what Mr. Justice Chamberlain said. He said that ‘ every man, whether Magistrate or not, was authorised to suppress rebellion, and was to be justified by that law for his acts, it is required, that he should not exceed the necessity which gave him the power; and that he should show in his justification, that he had used every possible means to ascertain the guilt which he had punished; and above all, no deviation from the common principles of humanity should appear in his conduct.’

“ My Lord, the Legislature is asked at this moment

The Hon'ble Sir George Lowndes:—“ Will the Hon'ble Member kindly give me the reference? ”

The Hon'ble Pandit Madan Mohan Malaviya:—“ It is State Trials, Vol. XXVII, 1820. Now, my Lord, I submit that in these remarks of Mr. Justice Chamberlain, we get a great guidance for our work in which the Council is at present asked to engage itself. We are not a Court sitting here to consider whether a person charged for having committed any particular act during the recent disturbances should have a decree passed against him or should be exempted. The Legislature is sitting at present to lay down the principles and the provisions under which the case of such a man should be tried and considered, and, I submit, the remarks of Mr. Justice Chamberlain are therefore of peculiar help and guidance to us here.

“ In the Bill what is provided is that—

‘ It is expedient to indemnify officers of Government and other persons in respect of acts, matters and things ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order, provided that such acts, matters or things were ordered or done in good faith and in a reasonable belief that they were necessary for the said purposes.’

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“Now, my Lord, my particular objection is to the expression ‘in a reasonable belief.’ I submit that would make it impossible for any plaintiff, ordinarily speaking, to succeed in any suit which he might institute against any individual who had wronged him. And that is particularly so when you look at section 2, for it says that no suit shall lie against any officer of Government who may have done certain things, ‘provided that such officer or person has acted in good faith and in a reasonable belief that his action was necessary for the said purposes.’

“Now, my Lord, I submit that the officer must not only show, even apart from the rules of evidence in section 3, to which I shall refer later, that he had not only done the act in good faith, but he should have done it with reasonable and proper care and consideration. In the words of Justice Chamberlain ‘he should not have deviated from the common principles of humanity which should always appear in his conduct.’ Now, I submit, my Lord, that the Bill goes much further than this and gives a protection which is not justified by previous enactments, or by considerations of reason and justice. In that case, my Lord, the charge was that Fitzgerald had been wrongly flogged. In this case we have many cases in which flogging was resorted to rather freely. In that case, in concluding the judgment of the case, Lord Elverton, speaking of the defendant, for whom it had been pleaded that he had done many acts of loyalty, said: ‘he had indeed manifested his loyalty most fully for he had manifested it in blood and written it in blood on the plaintiff’s back’. My Lord, here too the backs of many persons bear evidence of the deeds that have been done, and they should be allowed to ask those who so injured them to prove that they had acted with reasonable care and caution in the interests of public peace and good order, and not deviating from the principles of humanity.

“My Lord, these provisions to which I have drawn attention become much more objectionable when you come to clause 3 which says:—

‘For the purpose of section 2 a certificate of a Secretary to Government that any act was done under the orders of an officer of Government shall be conclusive proof thereof, and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor unless the contrary is proved.’

“My Lord, what is given with one hand is taken away by this clause in section 3 of the proposed Bill, because if a certificate from a Secretary to Government that any act was done under the orders of an officer of Government shall be conclusive proof thereof, and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor, I submit you are shutting out all chances of success for any plaintiff who may wish to have a suit instituted, to have an injury done to him investigated. You say, unless the contrary is proved, an action shall be deemed to have been taken in good faith and a reasonable belief that it was necessary. Let us assume—I may be doing an injustice to the gentleman, but I have him as an illustration—that Mr. Mani Lal, Barrister-at-law, instituted a suit, brings an action for compensation, for damage for the wrong done to him in his being confined in the manner in which he is confined, in a cell and otherwise, why should he be asked to prove that the person who caused him the injury acted without good faith and without a reasonable belief? Why should not the burden of proving that he acted in good faith and reasonable belief be cast upon the defendant? It ought to be sufficient for the purpose of a fair trial of a character like that in any Court that the plaintiff should state before the Court on oath the facts of the case, and if the facts of the case did not show that he was either a criminal or had been condemned, or that he was guilty of any act for which he should be locked up, then it should be for the defendant to establish that the facts were such that he could not but act in the

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manner in which he did, and that therefore he should be excused for having so acted. It is a double wrong, my Lord, a double wrong to plaintiffs, to persons who are subjected to all these humiliations and wrongs, that they should be called upon to prove that those who oppressed them had acted without good faith and without reasonable belief. I submit, my Lord, this clause should be deleted, and it is only possible for anybody to think of having a chance of success if it should be deleted. Then, my Lord, in this connection I may say that to require the plaintiff to prove that he has acted in good faith and reasonable belief is entirely wrong. How can the plaintiff exercise an attribute of omniscience, how can he search into the heart of the defendant and show an intimacy with the motives of a stranger only known to him by his tyranny and oppression, and prove that the injury he received has been the consequence of malicious intention, a thing which it is impossible for him to prove, or that the act has been done in the suppression of rebellion. Motives can only be inferred from actions, and it is for the defendant to show that his motives were such as to justify his actions being excused. It will be entirely difficult for the plaintiff to prove things specially within the knowledge of the defendant. My Lord, I submit therefore that this portion of the Bill is open to grave objection, and that it takes away in one clause what it appears to give in another.

"Now, my Lord, there are other objections to which the Bill is open. I will go back to the preamble:—

'Whereas owing to the recent disorders in certain districts in the Punjab and in other parts of India, it has been necessary for the purpose of maintaining or restoring order to resort to martial law.'

"Now, my Lord, this would bring in other places. I do not know how this wide wording will affect acts done in Delhi, for instance, and in Calcutta. The object of the Bill should be clear and the language that is used should be modified in order to make it clear. I am not sure, as the preamble stands, whether it does not also cover places where no martial law was established.

"Then, my Lord, I come to clause 4, confirmation and continuance of martial law sentences. This Bill provides that:—

'Every person confined under and by virtue of any sentence passed by a court or other authority constituted or appointed under martial law and acting in a judicial capacity, shall be deemed to have been lawfully confined. And, my Lord, it goes on to say: and shall continue liable to confinement until the expiration of such sentence, or until released by the Governor General in Council or otherwise discharged by lawful authority.'

"My Lord, I must say that this provision of the Bill has shocked me most. I think, my Lord, that the statement of the Hon'ble the Home Member made it clear that the Government of India are conscious that, unless an Indemnifying Bill of the nature now before the Council, that is to say, unless a legislative provision of the nature embodied in clause 4 is passed by this Legislative Council, the detention of men who have been sentenced by martial law courts will be illegal. I take it, my Lord, that that is the position. That being so, I submit it is wrong to these people that the help of the Legislature should be invoked, not for remitting or wiping off the convictions or sentences, but for confirming them and continuing them. My Lord, it seems to me that the Bill was not conceived with sufficient care and deliberation; that the various acts and provisions which were necessary were not fully considered at one time; and it seems to me that, if the model of even the Acts of South Africa had been kept fully before the mind of the Government, the Bill might have been drafted, might have been cast, in a different mould, might have consisted of different provisions. The Hon'ble the Home Member, and, I suppose, the Hon'ble the Law Member, perhaps on referring to the South Africa Act, Act IV of 1902 of the Cape of Good Hope, have noticed that there was a provision made for a revision of the sentences of those who had been convicted or sentenced by the martial law authorities. Now, my Lord, perhaps

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to make up for that omission, the Hon'ble the Home Member has to-day announced the decision of the Government of India that two Judges of the High Court will be appointed to revise the sentences passed by summary courts. I welcome that announcement, but it only strengthens my suspicion that the matter was not considered in all its aspects when the Bill was drafted. Now, my Lord, I want to draw attention to the provisions of the Act of the Cape of Good Hope. May I ask the Hon'ble the Law Member for a copy of that Act, Act IV of 1902?"

The Hon'ble Sir George Lowndes :—"It might save the Hon'ble Member trouble if I were to inform him that that was not the Act which we took as a model at all, but the later Act of 1915, of which he does not appear to know."

The Hon'ble Pandit Madan Mohan Malaviya :—"I thank the Hon'ble the Law Member. I did not know of the Act of 1915 or, at any rate, I did not remember it in the midst of the Statutes which were noted by my friends who have been working for me in this matter and helping me. But I am thankful to the Hon'ble the Law Member for informing me of it, and I shall feel thankful to him if he will let me have a copy of that Act also."

The Hon'ble Sir George Lowndes :—"Certainly, after the Hon'ble Member has finished."

The Hon'ble Pandit Madan Mohan Malaviya :—"My friend, the Law Member, need not be so afraid of letting me look at the Act before I finish; I might find some help from it. However, I shall be content for such courtesy as he thinks fit to extend to me."

"Now, my Lord, this Act, Act IV of 1902, contains a very important provision regarding the confirmation of sentences passed by military courts. I beg to draw your Lordship's attention and the attention of the Council to this section, which runs as follows :—

'The several sentences pronounced by Courts-Martial constituted and convened by proper authority, and holden in districts of this Colony in which martial law was proclaimed or imposed, and during the existence thereof, upon persons not ordinarily subject to Military Law tried by such Courts for acts of high treason, murder, or for all or any other crimes or offences whatsoever, or for all or any contraventions of any Regulations expressed or purporting to be issued under martial law and commonly termed Martial Law Regulations are hereby confirmed: and all such persons confined in any prisons or other legal places of confinement within the Colony under or by virtue of such sentences shall be deemed to have been and to be legally confined there, and shall continue to be so confined, there or elsewhere, as the Governor may direct, until the expiration of the sentences respectively passed upon them or until they are discharged by lawful authority, and such sentences shall be deemed to be sentences duly passed by duly and legally constituted Courts of this Colony and shall subject in each and every case to the provisions of the ninth and tenth sections hereof be carried out or otherwise dealt with, in the same manner, and sentences of such Military Courts as aforesaid shall be followed by the same disabilities, if any, as sentences of the Courts of this Colony.'

"The second part of this goes on to say :—

'Each and all of the officers of the prisons or other legal places of confinement mentioned in the preceding sub-section who have, or had at any time in good faith received into, or kept in confinement any of the persons mentioned in the said preceding sub-section shall be deemed for all purposes to have acted legally.'

"And the third part is also important. It went on to say :—

'All persons in this Colony who have been deported without the limits thereof under and by virtue of any of the foregoing sentences referred to in the preceding sub-section shall be deemed to have been and to be legally deported without the limits of this Colony, and such acts or cases of deportation as aforesaid shall be deemed to be among, and shall be included under the acts, matters and things referred to in the second section of this Act.'

"Now, my Lord, the object of this, I submit, was to legalise the sentences which had been passed no doubt, but there was the important fact that there was a war waged against the Queen, I think it was then. Secondly, my Lord, it was to confirm the sentences, particularly in the case of persons not ordinarily subject to military law tried by such courts for acts of treason, murder or

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for other crimes or offences or for any contraventions of any Regulations expressed or purporting to be issued under martial law and commonly termed Martial Law Regulations. Now, my Lord, this provision was made and the object was that the punishments which had been inflicted should be regarded as legal and that a suit should not lie against persons because they had confined these men in imprisonment or deported them. Your Lordship will have noted that in section 2 jailors are indemnified, in part 3 certain acts are validated, and, therefore, I submit, the object was more to legalise the acts which had been done and the punishments which had been suffered and which might be suffered as a matter of necessity until they were remedied later on. And this was accompanied, my Lord, by a very salutary provision, because your Lordship will be pleased to note that while this General Indemnity Act was passed on the 15th September 1902, there was a Commission appointed at the same time, dated the 2nd of August 1902. Edward VII, by the Grace of God of the United Kingdom of Great Britain and Ireland, appointed a Commission. That was in the first schedule of the Bill. It was not an extraneous announcement by the Hon'ble the Home Member that the Government of India would be pleased to appoint two High Court Judges—and here I may say that the public have come, my Lord, not to have the same confidence in High Courts after the troubles in the Punjab—to revise sentences passed by summary Courts. My Lord, this ought to be a part of the Bill so that the public might know that there is sufficient and adequate provision made for a revision of those sentences.

“The first Schedule, my Lord, sets out the Commission passed under the Royal Sign Manual and Signet appointing the Right Hon'ble Baron Alverstone, Sir John Charles Bigham and Major-General Sir John Charles Ardagh, to be Commissioners to inquire into the sentences imposed by the military courts established under martial law in the South African Colonies and Protectorates and appointing Gilbert Mellor, Esq., to be Secretary to the Commission. Your Lordship will see that the Lord Chief Justice of England was the President of the Commission and Justice Bigham ‘one of the justices of our High Court of justice’ was a member and also General Sir John Charles Ardagh, K.C.I.B., was a member. Now, I draw attention to certain provisions of this Schedule. It runs :—

‘WHEREAS in consequence of the war declared by the late governments of the South African Republic and Orange Free State against Her late Majesty Queen Victoria, it became necessary to proclaim martial law in our colonies and protectorates in South Africa; and whereas certain persons have been by military courts established under martial law in the said colonies and protectorates sentenced to terms of penal servitude and of imprisonment and to the payment of fines and are now undergoing the said sentences and have not paid but are liable to pay the said fines;

‘AND WHEREAS the aforesaid war having now ceased it is expedient that inquiry should be made with regard to the aforesaid sentences with a view to ascertaining whether we might properly and without danger to the public safety of our said colonies and protectorates extend our grace and mercy to any of such persons and where such sentences and any and which of them might properly be by us remitted or reduced.

‘Now, know ye that we considering the premises and reposing great trust and confidence in your fidelity and discretion and integrity, do authorise and appoint you the said (three persons) to be our Commissioners to inquire into the said sentences imposed by military courts established under martial law in our said colonies and protectorates and with as little delay as possible to report to us in writing under your hands and seals respectively whether in the case of the said persons and of which of them respectively who shall be at the date of your report then undergoing any such sentence or who shall not have paid but shall then be liable to pay any such fines, it is expedient, having regard to all the circumstances relating thereto, that such sentences of fines should be remitted or reduced.’

“Now, my Lord, your Lordship will please note the expression ‘and to report with as little delay as possible.’ That, my Lord, was incorporated as part of the Bill. I shall feel grateful to the Hon'ble the Law Member if he will kindly give me Act VI of 1900 also

The Hon'ble Sir George Lowndes :—“I was in hopes, my Lord, that I had not got it, but I have.”

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The Hon'ble Pandit Madan Mohan Malaviya :—“ Now, my Lord, there is an important provision in this Act of 1900, to which I invite the attention of Council and the Government. My Lord, the whole attitude of the Government as disclosed in the case of these two enactments and as disclosed by the Bill presented to this Council shows, I am sorry to say, a regrettable difference. Now, my Lord, in the case of this Act of 1900 (VI of 1900), there was a provision to confirm sentences, merely to legalise, as I have pointed out already, what has been done. This is what it says :—

‘ All actions, indictments and legal proceedings whatsoever which might be brought or instituted in any of the courts of this colony against His Excellency the Governor of the Cape of Good Hope or the officer for the time being in command of His Majesty's Forces in this colony or against any person or persons acting under them or either of them respectively, in any command or capacity, civil or military, for or on account or in respect of any acts, matters, and things whatsoever in good faith advised, commanded, ordered, directed or done as necessary for the suppression of hostilities in or the maintenance of good order and government or for the public safety of this colony between the date of the commencement of a state of war between Her Majesty's Government and the Governments of the South African Republic and the Orange Free State and the date of the taking effect of this Act, shall be discharged and become and be made void.’

“ Then, my Lord, it is said in section 5 :—

‘ In all cases of convictions for high treason or other crimes of a political character during the period specified in section 1 of this Act, where such convictions have taken place before courts-martial or military courts constituted, convened and held as in the last preceding section set forth or where they have taken place before the ordinary criminal courts having jurisdiction over them, it shall be lawful for the Governor, should he consider that any such case would, had it been dealt with after the taking effect of this Act, have been a case proper for the consideration of the Commissioners appointed under section 33 hereof, to order that the said sentences imposed upon such persons shall be altered into the sentence laid down in section 50 of this Act. The person affected by any such sentence shall thereupon become liable to suffer the penalty imposed by the said fiftieth section and no other.’

“ That is to say a sentence under section 50 has been substituted for the one already imposed. Section 50 says :—

‘ The said Commissioners shall, after hearing the evidence, if any, for and against the accused, decide whether he is guilty or not of the charge brought against him, and in all cases in which an accused person shall be found guilty, the said Commissioners shall adjudge that he shall be, for the period of five years and no longer, disqualified from being registered as a voter or from voting for the election of members of Parliament, or of a Divisional or Municipal Council, or of a Village Management Board or from being or continuing to be a member of Parliament, or from holding any public office, or continuing upon the Commission of the Peace, or from serving upon a Jury in civil or criminal cases, anything contained in any Law or Act of Parliament to the contrary notwithstanding; and thereupon such person shall be in Law absolutely disqualified, in regard to all the aforementioned matters and his name, if upon any existing voters' list, shall be and is hereby removed therefrom, and the vote of any such person given at any such election shall be null and void and may be struck out in any proceeding in which the result of such election is challenged in any competent court. Save as hereinafter provided the findings or decisions of the said Commissioners shall not be subject to appeal to or review by any Court whatever.’

“ Now, my Lord, you will see what an important difference of outlook and aim these provisions of the indemnifying Acts to which I am referring show as compared with the provisions of this Bill. My Lord, these Commissions were appointed as part of the Bill, and they were given power to wipe off all other sentences and to substitute a municipal disqualification. It was not in ordinary trifling cases, cases of not salaaming a European, but it was in cases of high treason and in all cases of convictions for high treason or for other crimes of a political character during the period specified in section 1 of that Act.

“ The other day, my Lord, I brought forward a Resolution and urged that the Government might consider the advisability of the Committee of Inquiry (or the commission which I suggested) being empowered where they thought fit to recommend to His Majesty's Privy Council that convictions by Martial Law Commissions and Martial Law Summary Courts might be annulled or modified. My Lord, this Act to which I make reference shows further reason in support of my proposition. It is said by the Hon'ble the Home Member that the Government of India are going to appoint two High Court Judges to

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revise these sentences. My Lord, the Government of India cannot constitute a court. The Government of India cannot constitute a regular court. The Governor General can no doubt introduce martial law and constitute certain courts under martial law, but the Government of India cannot constitute a regular court.

"If these two High Court Judges are to revise the sentences that will not be a court. They will only be advisers, very honourable advisers of the Government of India in respect of the cases which the Government of India may deal with. I submit with confidence, notwithstanding what the Hon'ble the Law Member may say to the contrary on this point, that the Government of India cannot by appointing two High Court Judges to revise sentences passed by martial law invest them with the authority of a legal court

The Hon'ble Sir William Vincent:—"I never suggested anything of the kind."

The Hon'ble Pandit Madan Mohan Malaviya:—"I thank the Hon'ble the Home Member for removing my doubts on the point. I should like to know what will be the position of the two Judges. I should feel grateful to the Hon'ble the Home Member if he will make the point clear, it will save time. I do not know if they are merely to advise, whether their opinions will be merely recommendations to be considered by the executive Government, or whether they will have power to deal with sentences, wipe out convictions, reduce sentences or whatever else they would like to do. I should be very grateful if the Hon'ble the Home Member will enlighten me on that point."

At this point the Hon'ble Mr. Malaviya resumed his seat.

The President:—"The Hon'ble Member will proceed with his speech."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I take it, in the absence of any explanation from the Hon'ble the Home Member that the matter is left vague. I submit that in the absence of further information these two Judges will be merely advisers to the Government. I submit that that will not be a satisfactory position. Next, I should like the Government to consider the propriety of including in the terms of reference some direction such as that contained in Act VI of 1902 of the Cape of Good Hope. By this time, in view of what has happened and that has not been contradicted or controverted, it is time for the Government of India to make up its mind to release these persons who are undergoing imprisonment from further humiliations and hardships. I submit that this is a suitable moment for the Government to consider this matter. If the Bill proceeds as it is, then, I submit, the position will be this. We do not know how long these High Court Judges may take to deal with the cases of these men, the procedure has not been indicated, and therefore no one can form any idea of the time and therefore 'every person confined under and by virtue of any sentence passed by a court or other authority constituted or appointed under martial law and acting in a judicial capacity shall be deemed to have been lawfully confined and shall continue liable to confinement under the expiration of such sentence or until released by the Governor General in Council or otherwise discharged by lawful authority.' I submit that that is not a satisfactory position, particularly in view of the remarks which the Hon'ble the Law Member made. He said he had consulted the Government of the Punjab, and it was of opinion that it would be dangerous to let off any of the men who were undergoing imprisonment at present and who were under sentence passed by martial law. I suggest that if it should be pointed out to His Honour the Lieutenant-Governor of the Punjab that if there are persons who are considered dangerous, there are provisions under the existing enactments by which they can be taken up and judicially proceeded against and confined. There are many provisions under the existing enactments which enable the executive Government or any Government to proceed against persons of doubtful character or dangerous and bind them over to keep the peace and to be of good behaviour. It is

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open to the Government to have them tried in the regular courts in the ordinary way. Great complaints have been made that these convictions and sentences are illegal. The Hon'ble the Home Member has practically admitted the truth of this contention and, unless some provision such as I am referring to is enacted, these unhappy men will continue in jail. That being the position I submit that there should be some provision by which these men should at an early date be set free to enjoy the liberty to which they are entitled, and if they are not entitled to that liberty by a reason of any act of wrong doing the ordinary courts of the law should be allowed to deal with them. I need hardly draw attention to the remarks of Lord Halsbury, but it is my duty to refer to certain information which has been printed and reproduced in an excellent volume by Sheikh Nabi Bakhsh, a Vakil of the Punjab High Court. Your Lordship and the Council have noted what Lord Halsbury states in the 'Laws of England' that the powers of the military authorities cease, and those of the civil courts are resumed *ipso facto* on the termination of disorder. Disorder terminated long long ago and martial law was also discontinued partly in May and partly in June, and finally last month. I think it was about the 25th or 26th of August. Therefore the course I am suggesting is the right course to be pursued ; let there be such a provision enacted as that to which I have drawn attention, unless it be a case of murder or arson ; let the men be proceeded against in the ordinary way. They have the right to choose in the matter and some may not choose that course. This question of martial law has been very carefully explained in various places. For instance, Justice Sir James Fitz James Stephen, a Judge of the High Court of the Queen's Bench Division, in his book the History of Criminal Law of England, says. I will read only his summing up to save time. He says, "I will sum up"

The President :—"I understand it is your summing up also."

The Hon'ble Pandit Madan Mohan Malaviya :—"No my Lord, I am reading the summing up of Sir James Fitz James Stephen."

The President :—"All right, proceed."

The Hon'ble Pandit Madan Mohan Malaviya :—"He says :—

"I may sum up my view of martial law in general in the following propositions. Martial law is the assumption by officers of the Crown of absolute power exercised by military force for the suppression of an insurrection and the restoration of order and lawful authority. The Officers of the Crown are justified in any exertion of physical force extending to the destruction of life and property to any extent and in any manner that may be required for the purpose. They are not justified in the use of the cruel and excessive means but are liable civilly or criminally for such excess. They are not justified in inflicting punishment after resistance is suppressed, and after the ordinary courts of justice can be re-opened."

The principle by which their responsibility is measured is well expressed in the case of Wright *versus* Fitzgerald. Wright was a French Master at the schools in Clonmell who after the suppression of the Irish rebellion in 1799 . . .

The President :—"The Hon'ble Member really must not repeat himself. We have already had the case of Wright *versus* Fitzgerald for half an hour."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, I am quoting the summary of Sir James Fitz James Stephen"

The President :—"I am quite aware of that. But we have all heard the case of Wright *versus* Fitzgerald for half an hour this afternoon, and I do not propose that we should hear it again."

The Hon'ble Pandit Madan Mohan Malaviya :—"Very well, my Lord. Then Sir James Fitz James Stephen proceeds to say :—

'The Courts-martial as they are called, by which martial law in this sense of the word is administered, are not properly speaking, Courts-Martial or courts at all. They are merely

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committees formed for the purpose of carrying into execution the discretionary power assumed by the Government. On the one hand, they are not obliged to proceed in the manner pointed out by the Mutiny Act and the Articles of War. On the other hand, if they do so proceed they are not protected by them as the member of a real court-martial might be except so far as such proceedings are evidence of good faith. They are justified in doing, with any forms and in any manner whatever is necessary to suppress insurrection, and to restore peace and the authority of the law. They are personally liable for any acts which they may commit in excess of that power, even if they act in strict accordance with the Mutiny Act and the Articles of War.

“Therefore, my Lord, after the resistance has been suppressed the ordinary courts of justice can be re-opened and cases of persons who cannot be released entirely might well be referred to such courts. I will refer to one other opinion, namely, that of Mr. Justice Spankie. Writing on this subject,—this is a written opinion, dated the 27th April 1818 :—

‘The manifest intention of Government in its legislative capacity was, that none but cases of the simplest and most obviously criminal nature should be the subject of trial by the courts-martial; the fact, whether a person was taken in the actual commission of an overt act of rebellion, or taken in the act of openly aiding and abetting the enemies of the state or taken in open hostility, might safely be tried by such courts; and such a provision for trial was calculated to prevent military severity in the field becoming absolute massacre. But all complex cases depending upon circumstantial proof and requiring either a long examination of facts or a discriminating inference from facts in themselves equivocal were purposely withdrawn from the cognizance of these tribunals. It never was intended that courts-martial should try, as those have done, acts even of criminal nature, in which the prisoner was not taken and unless the acts were open overt acts and of the most material palpable quality.’

In another portion he says ‘that the moment the order is ceased the ordinary jurisdiction of the courts can be resumed’. Now, my Lord, I submit that the provisions of the Bill as they stand are unsatisfactory, and leave should not be given to introduce the Bill in its present form. Now, if the Bill is not introduced, my Lord, in its present form, as I have said before, not much harm will be done, and the Government will be in a position to deal with the matter after the report of the Committee of Inquiry. I wish, my Lord, to point out the grave injustice and disadvantage which is likely to result if the Bill is passed at present. Of course it is in the power of your Excellency’s Government to pass the Bill. We know it. We have had recent experiences to convince us of it. You do command a large official majority in this Council. The representatives of the people are few. But I submit, my Lord, in this matter it would be right and proper that your Excellency’s Government should consider what the public opinion of the country is. Shall we stop now?”

The President :—“Is the Hon’ble Member concluding his speech?”

The Hon’ble Pandit Madan Mohan Malaviya :—“My Lord, I should like to conclude to-morrow.”

The President :—“The Council will now adjourn till 11 o’clock to-morrow. We shall sit from 11 to half-past 1, and we shall sit again from 3 until we finish.”

The Council then adjourned to Friday, the 19th September 1919, at 11 A.M.

SIMLA :

The 30th September, 1919.

H. M. SMITH,

Offg. Secretary to the Government of India,
Legislative Department, Simla.