

THE INDIAN LEGISLATIVE COUNCIL

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**PROCEEDINGS
OF
*THE INDIAN LEGISLATIVE COUNCIL***

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

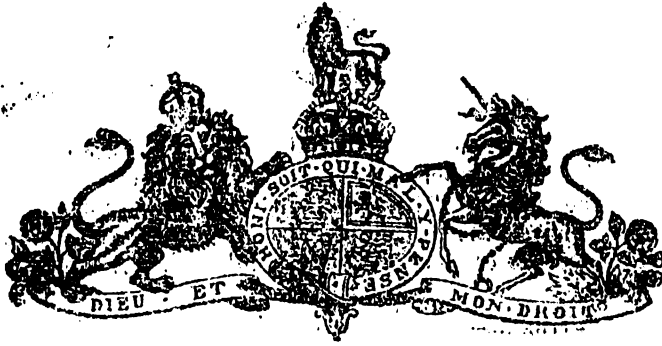
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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER
THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1916.
(S. & S. Sec. 7, Ch. 61.)

The Council met at the Council Chamber, Viceregal Lodge, Simla, on
Wednesday, the 24th September, 1919.

PRESENT :

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.L.E., G.O.M.G., G.C.B.E.,
Viceroy and Governor General, *presiding*, and 45 Members, of whom
37 were Additional Members.

QUESTIONS AND ANSWERS.

The Hon'ble Mr. Sachchidananda Sinha asked :—

11 A.M.

1. (a) Has the attention of the Government been drawn to a contributed article in the *Indian Social Reformer* of Bombay of August 17th last, headed 'The Epidemic of Increased Salaries' and to an editorial note thereon in the same issue of that paper headed 'Economy in Public Expenditure' in the course of which it is stated that 'in our opinion the prospects of the success of the Reform Scheme are gravely imperilled by these measures' (increase of salaries)?

Article in
the *Indian
Social
Reformer*
and there
is increase
of salaries.

(b) Has the attention of the Government been drawn to the following observations on the same subject in the *Times of India* in its issue of November 1918 :

'Unless there are radical changes, one effect of this scheme (of Reforms) will be largely to increase the expense of the administration at the top, when any reasoned survey of the Indian administration must show that it is already too expensive at the top and not expensive enough at the bottom. It would not be unfair to describe the Indian administration as one where very large

[Mr. Sachchidananda Sinha ; Sir William Vincent.]

[24TH SEPTEMBER, 1919.]

salaries, with very costly additions like migrations to the hills and other heavy expenses are provided for those at the top, whilst in very few cases are those at the bottom paid a living wage. None can study this question without being convinced that the greatest need of the day is economy at the top and greater expenditure at the bottom; unless there is a radical change in our ideas, these inequalities will be perpetuated and extended.

(c) Will Government be pleased to state the names of the various services, the scale of salaries of the members of which has been increased since the publication of the Report of the Public Services Commission, the amount of increase in each grade of the various services so affected for the better and the total additional cost to be incurred as the result of the reorganization schemes already sanctioned?

(d) Which are the services schemes for the reorganization of which are at present under consideration or in contemplation?

(e) Do Government propose to increase the salaries of the members of all the services that are as a rule recruited in Great Britain and Ireland, or is there any one of these which it is not proposed to bring under the salary-increasing reorganization scheme?

The Hon'ble Sir William Vincent replied:—

(a) and (b) Government have seen the articles referred to.

(c) The attention of the Hon'ble Member is drawn to the reply given by the Hon'ble Mr. Howard to the Hon'ble Rao Bahadur B. N. Sarma on the 12th instant. In the case of most of the services mentioned in that reply grades have now been abolished, and it is therefore impossible to work out the definite comparison of cost asked for.

(d) All the services detailed as annexures I to XXIV of the Report of the Public Services Commission are, as the result of that Report, the subject of consideration.

(e) There is no general scheme for increase of salaries as suggested in the question.—The case of each service is being examined separately as the result of the recommendations of the Public Services Commission. The majority of the cases have been submitted for the orders of the Secretary of State; and the recommendations made refer not only to those sections of the Imperial Services, which are recruited in the United Kingdom, but also to those sections which are recruited in India, and to the provincial services. The Secretary of State has in a recent answer given in the House of Commons stated that he will deal with all these cases as expeditiously as possible, and the decisions arrived at will be made public as soon as they are communicated to the Government of India. In these circumstances, it is not possible to give any more definite information as to the proposals of the Government of India in the case of each service.

The Hon'ble Mr. Sachchidananda Sinha asked:—

Speech delivered by the Hon'ble Sir Benjamin Robertson in connection with the Afghan War.

2. "Has the attention of Government been drawn to the following passage in the speech of the Hon'ble Sir Benjamin Robertson delivered by him on the 22nd of July last, as the President of the Legislative Council of the Central Provinces:—

'If India would have to pay a heavy bill for the Afghan War, she will only be paying for the agitation against Government which influenced the Amir in his foolish enterprise.'

[24TH SEPTEMBER, 1919.]

[*Mr. Sachchidananda Sinha ; Sir William Vincent.*]

(b) Have Government in their possession any statement made by the Amir that he was either going to invade India or had done so in view of or because of any 'agitation against Government' by the educated classes of Indians? If so, will Government be pleased to quote the said statement, or to lay it on the table?

(c) If the answer be in the negative, do Government propose to inquire from the Hon'ble Sir Benjamin Robertson the basis or justification for the said observations and to embody the same in the reply to this question? If not, will Government be pleased to state their reasons?

(d) Do Government propose to discourage agitation by the Indian people for constitutional reforms because the Amir or any other head of a foreign State may be able to make it a pretext for embarking on a 'foolish enterprise'? If not, do Government propose to make a statement to that effect?"

The Hon'ble Sir William Vincent replied :—

"(a) The Government of India have seen a passage, which the Hon'ble Member has not quoted accurately, from the speech referred to.

(b) The Hon'ble Member is referred to paragraph 3 of the Home Department Resolution of May 10, 1919.

(c) Does not arise.

(d) The Government of India do not consider that the question of constitutional reforms is relevant."

The Hon'ble Mr. Sachchidananda Sinha asked

3. "Will the Government be pleased to state whether any instructions have been issued to Magistrates that they are to call for a report from the police and the Criminal Intelligence Department (commonly known as the C. I. D.), concerning any person applying for a declaration regarding either a press or a newspaper or a periodical and are to be guided by that report in deciding the question of declaration and the demand of security?"

Instructions to Magistrates: declaration and demand of security from newspapers.

The Hon'ble Sir William Vincent replied :—

"The Government of India are not aware of any such instructions."

The Hon'ble Mr. Sachchidananda Sinha asked :—

4. "Will Government be pleased to lay on the table an up-to-date statement showing :—

(a) the total number of newspapers and periodicals and presses respectively dealt with under the Press Act of 1910 ;

(b) the names of such newspapers, periodicals and presses, together with the names of their printers, keepers, publishers or editors ;

(c) the place, province and the language in which such papers and periodicals were or are printed, and the place at which the presses were or are located ;

(d) the nature of the penalty imposed upon each under the said Act giving reasons for the same ;

(e) the name of newspapers, periodicals and presses which ceased to exist as a result of the action taken ; and

(f) the names of newspapers, periodicals and presses which could not start at all in consequence of the demand of security or refusal to grant the required declaration?"

Number of newspapers, periodicals and presses dealt with under the Press Act, 1910.

[*Sir William Vincent; Mr. Sachchidananda Sinha.*]

[24TH SEPTEMBER, 1919.]

The Hon'ble Sir William Vincent replied :—

"The Hon'ble Member's attention is invited to the statements laid on the table on March 12th, 1917. Information for the years 1917-1919 will be collected and presented when ready."

The Hon'ble Mr. Sachchidananda Sinha asked :—

Papers,
journals and
periodicals,
proscribed
by Govern-
ment.

5. "Will Government be pleased to lay on the table a statement—

(a) showing the names of papers, journals and periodicals the circulation of which has been proscribed in the various provinces from time to time, the date of the order of proscription and the name or designation of the authority which passed the said order, and

(b) indicating the papers, journals or periodicals against which the ban still continues in one or more provinces?"

The Hon'ble Sir William Vincent replied :—

"The Government will cause information regarding the action taken during the past three years to be laid on the table during the Delhi Session. They trust that the Hon'ble Member will be satisfied with this limitation of the range of his inquiry."

The Hon'ble Mr. Sachchidananda Sinha asked :—

The
Seditious
Meetings
Act.

6. "(a) Is the Seditious Meetings Act in force in the Lahore and Amritsar districts of the Punjab ?

(b) Is it not a fact that both these districts have been completely free from any disturbances for over four months ?

(c) If so, do Government propose to take any steps in the matter of the withdrawal of the operations of the said Act from these districts ? If not, why not ?"

The Hon'ble Sir William Vincent replied :—

"(a) and (b) The answer is in the affirmative.

(c) In view of the recent occurrences in these two districts, the Government of the Punjab considers that the unrestricted holding of public meetings might cause excitement and possibly result in disturbances. It does not therefore propose to withdraw the notifications issued under Act X of 1911 at present."

The Hon'ble Mr. Sachchidananda Sinha asked :—

Deportation
of Dr. Ghosh
of Peshawar
to Burma.

7. "(a) Has one Dr. Ghosh of Peshawar been deported to Burma ? Have any other persons been deported from Peshawar to Burma ? If so, how many and when have they and Dr. Ghosh been deported ?

(b) Will Government be pleased to state the circumstances justifying the deportation of Dr. Ghosh and such other persons ? How long is it proposed to keep them so deported ?"

The Hon'ble Sir William Vincent replied :—

"(a) Yes. Dr. Ghosh and twelve others were deported from Peshawar to Burma on 13th of May last.

[24TH SEPTEMBER, 1919.]

[*Sir William Vincent ; Mr. Sachchidananda Sinha ; Sir George Barnes.*]

(b) The persons deported were persons who had been active in fomenting feeling against Government and were thereby directly or indirectly assisting the King's enemies. They had created a state of excitement in the city and its environs which could not be tolerated when war was in progress on the adjacent frontier and when enemy agents were present and active in the city itself. It is reported that there was a plot for mobs to break out and damage a number of buildings and stores of vital military importance in Peshawar, on hearing that fighting had commenced at Landi Kotal. It was consequently decided to surround the city with a cordon of troops and to arrest certain prominent enemy agents, and at the same time to remove the persons referred to in the question whose activities were a support and encouragement to such agents. The arrests were effected with some difficulty. Arrangements have been made for the immediate release of ten of the thirteen men, and the other three will probably be released shortly."

The Hon'ble Mr. Sachchidananda Sinha asked :—

8. "(a) Has the attention of the Government been drawn to the following statement in an editorial paragraph headed 'Occasional Notes' in the *Statesman* of September 6th 1919 :—'The past few months have seen a prodigious investment of capital in new industrial ventures, some of them Indian controlled' ? Is this statement correct ? Industrial ventures.

(b) Will Government be pleased to lay on the table a statement showing, year by year, the names of the joint stock limited liability and private limited liability companies registered in British India during the last two years (August, 1917 to July 1919) or up to such other period for which statistics may be available—the amount of the nominal capital of each, and the constitution of the directorate of each as showing whether it is a foreign or an Indian concern ?

(c) Is it not a fact that by far the larger number of these companies and an overwhelmingly large percentage of the capital subscribed are owned and controlled by natives of the United Kingdom of Great Britain and Ireland ?

(d) Have Government in their possession any material tending to show that the announcement made by the Secretary of State for India, on the 20th of August, 1917, as to the gradual establishment of responsible government in this country, has deterred the United Kingdom capitalists from making investments in this country since the date of that declaration ? If so, will Government be pleased to state the same or to lay it on the table."

The Hon'ble Sir George Barnes replied :—

"(a) The only official knowledge which Government possess with regard to the subject-matter of the paragraph in question is contained in the monthly returns of new companies registered, issued by the Department of Statistics, copies* of which I lay on the table.

As regards the second part of the question I lay on the table* monthly returns from August 1917 to July, 1919, issued by the Department of Statistics, which give the names of the Joint Stock companies and Private Limited Liability companies registered during this period, and the amount of the authorised capital of each company. These statistical returns do not show the constitution of the directorates, but a list of directors is in each case filed with the Registrar of Joint Stock companies and is open to the public.

With regard to the third part of the question I invite the Hon'ble Member's attention to the reply given by Sir Thomas Holland on the 21st of March 1919 to a somewhat similar question asked by the Hon'ble Maharaja Sir Manindra Chandra Nandi of Kasimbazar, a copy* of which I lay upon the

*Not included in these Proceedings.

[*Sir George Barnes ; Mr. Sachchidananda Sinha ; Sir Arthur Anderson.*]

[24TH SEPTEMBER, 1919.]

table for the Hon'ble Member's convenience. It will be seen from the figures given by Sir Thomas Holland for the six months ending the 31st of January 1919, that it was estimated that out of the 113 companies registered, 65 were promoted by Europeans, 44 by Indians and 3 by Europeans and Indians together. The Government have no reason to think that the relative proportions have varied widely during the last few months.

With regard to the fourth part Government have no reason to believe that the announcement of the 20th August 1917, has deterred capitalists of the United Kingdom from making investments in this country."

The Hon'ble Mr. Sachchidananda Sinha asked :—

**The Bengal
and North
Western
Railway.**

3. "(a) Is it a fact that there was recently a strike on a fairly large scale by the employees of the Bengal and North Western Railway? If so, will Government be pleased to state the circumstances under which the strike occurred, the reasons urged therefor by the employees, the terms on which the strike was brought to a close and any other matters of public interest connected with the same?

(b) Are Government aware that there has been for a long series of years amongst the public of Bihar and of the United Provinces very great dissatisfaction with the working of the Bengal and North Western Railway and that at several sessions of the Provincial Conferences of both the above mentioned provinces, resolutions have been unanimously passed condemning the administration of that railway for the unpunctuality of its train services, the want of adequate passenger accommodation, especially for those travelling in the third class, the absence of proper arrangements for lighting the trains and platforms and supplying water to passengers at stations, and for failing to provide the necessary comforts and conveniences, such as through carriages to even first and second class passengers?

(c) If the answer be in the affirmative, what steps, if any, have been taken to bring about an improvement in the working of that line? If the answer be in the negative, do Government propose to institute an inquiry into the accuracy of the complaints enumerated above? If not, why not?

(d) Is it a fact that of the large and important lines in this country, the Bengal and North Western is the most cheaply worked and that it pays the highest dividend to its share-holders? Is there any other line of equal length which has paid during the last ten years a higher dividend? If so, which and when?

(e) Is it a fact that a large number of shares in the Bengal and North Western Railway are held by a peer or his family? If so, who is that peer, and how many shares does he or his family hold out of the total number?

(f) Are Government aware of the popular impression that the Government of India are unable to interfere with the administration of the Bengal and North Western Railway because of the great influence exerted on the Home Government by the said peer or his family? If so, is there any basis for the said impression? If not, do Government propose taking steps to improve the administration of the line? If not, why not?"

The Hon'ble Sir Arthur Anderson replied :—

"(a) The majority of workshop employees and a portion of the traffic staff of the Bengal and North Western Railway went on strike on the 28th and 31st

[24TH SEPTEMBER, 1919.]

[*Sir Arthur Anderson ; Maharaja Sir Manindra Chandra Nandi ; Mr. R. A. Mant.*]

August, respectively. The Agent of the Railway has reported that no previous signs of disaffection had been shown nor had petitions been received from the workshop employees, while in the case of the traffic staff a new scale of pay had been framed and was about to be issued. The traffic staff resumed work from the 1st September and the revised scales of pay are now in force. The workshop staff have now resumed work unconditionally.

In reply to (b) and (c), individual complaints regarding this line have been received by the Government of India. The question of punctuality is one which receives constant attention, but the railway is a difficult one to work on account of the many junctions which exist on the system, a large proportion of which are foreign, and the consequent liability of through trains to detentions if connections are to be maintained. I may explain for the information of the Hon'ble Member that the railway is inspected on behalf of Government once a year. The Inspector has instructions to report on such matters as directly affect the public, namely, conveniences for third class passengers, waiting rooms, refreshment rooms and so forth, and copies of the reports for the year ending 31st March 1919 are laid on the table. Government take such action on these reports as they may consider necessary in the interests of the travelling public, but if the Hon'ble Member will bring to the notice of the Railway Board any specific cases in which public interests are considered to have been neglected on the Bengal and North Western Railway, they will be carefully investigated.

(d) It is not a fact that the percentage of working expenses to gross earnings is lower on the Bengal and North Western Railway than on any other important system, nor are the dividends declared by that company the highest. The ratio of working expenses to gross receipts is lower on the East Indian Railway, while dividends declared by the Southern Punjab Railway are higher than those distributed by the Bengal and North Western Railway. The Southern Punjab is, it is true, worked under special terms by the North Western Railway, but the percentage of gross receipts retained by the working railway is greater than that at which the Bengal and North Western is worked. For complete information as to the relative working costs and net earnings of Railways, I would refer the Hon'ble gentleman to the Administration Report issued by the Railway Board.

(e) and (f) Government have no information, nor are they aware that any impression such as that referred to by the Hon'ble Member exists in the public mind. It may be noted that the Bengal and North Western Railway proper has been constructed entirely out of funds provided by the general public, and does not enjoy any guarantee or other financial assistance from Government."

The Hon'ble Maharaja Sir Manindra Chandra Nandi
asked :—

10. "Will Government make a statement showing, province by province, the progress made in the matter of development of agricultural and other economic resources of the country, in pursuance of the resolutions adopted at the War Conferences held at Delhi and at the different Provincial headquarters ?" Develop-
ment of
agricultural
and other
resources.

The Hon'ble Mr. R. A. Mant replied :—

"The Hon'ble Member's question can conveniently be dealt with in two parts :—

(a) The development of agricultural resources ;

[*Mr. K. A. Mant; Maharaja Sir Manindra Chandra Nandi; Sir George Barnes.*]

[24TH SEPTEMBER, 1919.]

(b) The development of other economic resources.

With regard to (a) the detailed information asked for is not in the possession of the Government of India. The failure of last year's monsoon, however, rendered it almost impossible, and the subsequent cessation of hostilities made it unnecessary to develop the agricultural resources of the country with special reference to war needs.

With regard to (b) it is impossible to say precisely which of the industrial activities of the Indian Munitions Board, of the Provincial Industries Departments, and of Controllers of Munitions were undertaken in consequence of the War Conferences, and which in pursuance of their pre-existing scheme of work. An account of all these activities is, however, given in the Indian Munitions Board Handbook which explains what has been done to develop India's industrial resources for war purposes; describes some of the general industrial development which has taken place during and on account of the war; and discusses the possibility of further development in future."

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked :—

**Imperial
Customs
Service.**

11. (a) How many subordinates have been appointed in the Customs Imperial Service by nomination, since 1910 ?

(b) How many of these are Indians ? Which posts were they selected from ?

(c) How many Indians are there at present in the Appraisers' Department of the Calcutta Customs House ? What proportion does the number bear to the total strength ? Has it come up to the figure laid down by the Secretary of State yet ?

(d) Were any of these ever promoted to the Imperial Service ?"

The Hon'ble Sir George Barnes replied :—

"(a) Since 1910, only one officer from the subordinate Customs Services has been permanently appointed to the Imperial Customs Service by nomination.

(b) He is not an Indian and was selected from the Bombay Customs Preventive Service.

(c) The present strength of appraisers in the Calcutta Custom House is 27, and the Bengal Civil List shows that out of these 8 are Indians. The Secretary of State for India has not laid down any rule regarding the number of Indians to be employed in the Appraisers Department.

(d) None of them have ever been permanently promoted to the Imperial Customs Service."

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked :—

**Admission
of Indians
into the
Appraisers'
Department.**

12. "Will Government be pleased to state whether the orders of the Secretary of State governing the admission of Indians into the Appraisers' Department of the Calcutta Customs House have any reference to the Preventive Service as well ?

(a) Is it a fact that the Preventive Service has not been thrown open to Indians ?

[MAY EXERCISES, 1919.]

[Maharaja Sir Manindra Chandra Nandi; Sir George Barnes.]

- (b) Have any applications for appointment in that service been received from Indians ?
- (c) If so, will the Government be pleased to state how those applications have been disposed of ?

The Hon'ble Sir George Barnes replied :—

“ Rules based on the first Public Services Commission Report, and permitting the appointment of Indians to both the Appraising and Preventive branches of the Customs Service, were framed by the Bengal Government and approved by the Government of India and the Secretary of State in 1891. As regards the latter branch the Bengal Government represented to the Government of India in 1900 that preventive officers were subject to great exposure in all weathers, that the conditions of their service were such that no ordinary native of Bengal would be able to discharge the duties adequately, and that in fact no application from an Indian for appointment in the Preventive Service appeared ever to have been received by the Government of Bengal. The Government of India, while considering that there were practical objections to the appointment of an Indian, save in exceptional circumstances, to be a Preventive Officer, were of opinion that the time had come when the Government of Bengal should try the experiment of appointing more Asiatics to Appraiserships, as in Bombay. In 1909, at the instance of the Secretary of State, the Government of India invited the attention of the Government of Bengal to the above-mentioned orders, and requested them to issue necessary instructions to the Collector of Customs, Calcutta, with a view to the adoption of the principles which were decided on in 1900.

“ The Government of India have no information with regard to points (b) and (c). The control of the Preventive Service rests with the Local Government who make all appointments thereto.”

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked :—

13. “ (a) Is it a fact that the Customs Club is housed free in a Government building and that the Superintendent of the Preventive Service is the ex-officio President of the Club ?”

(b) Are Government aware that a rule has recently been passed by this Club rendering Indians ineligible for membership ? ”

The Hon'ble Sir George Barnes replied :—

“ (a) In 1916, the Government of Bengal made certain proposals for the construction of quarters for the junior members of the Calcutta Preventive Department subject to the condition that the scheme would not be carried out until financial exigencies permitted and the necessary funds were available. They proposed to provide for a Recreation Room, a Reading Room and a Billiard Room on the premises. The scheme was accepted by the Government of India, but, as far as they are aware, the quarters in question have not yet been constructed.

(b) The Government of India have no information on the point.”

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked :—

14. “ (a) Is it a fact that the Preventive Officers of the Calcutta Customs House have submitted memorials to the Government of India for an increase of pay by the Preventive Officers.”

[*Maharaja Sir Manindra Chandra Nandi;*
Sir George Barnes.]

[24TH SEPTEMBER, 1916.]

in their scale of pay on the ground of their present emoluments being insufficient?

(b) Are Government aware that qualified Indians are available for service as Preventive Officers on the existing scale of pay?"

The Hon'ble Sir George Barnes replied:—

"(a) No memorial has been received by the Government of India from the Preventive officers of the Calcutta Customs House for an increase in their scale of pay for a number of years past until two days ago, when a memorial was received from them through the Government of Bengal for the substitution of an incremental system of pay for the present graded system, on the grounds that the latter has now become obsolete and that the present rate of pay is no longer sufficient owing to the high cost of living at the present time.

(b) The Government of India are not aware that any qualified Indians are available for service as Preventive Officers on the existing scale of pay. They understand that the question of appointing Indians to this branch of the Custom House has been engaging the attention of the Collector of Customs for a considerable time lately, and that that Officer reports that, though he has interviewed one or two likely candidates, he has not found anyone who could be regarded as suitable for the Service."

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked:—

Register of applicants for appointment to the Preventive Service.

15. "(a) Is it a fact that the Superintendent of the Preventive Service keeps a register of applicants for service in the department in which they are divided into two classes:—(a) Educated and (b) Uneducated?"

(b) If so, how many of class (b) are now in the Department?"

The Hon'ble Sir George Barnes replied:—

"The Preventive Service is under the control of the Local Government and the Government of India have no information on the subject."

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked:—

Indian Preventive Officers.

16. "(a) How have the non-Indian Preventive Officers worked in the Calcutta Customs House?"

(b) How many of these have been dismissed, suspended or compelled to retire during the last twelve months for suspected smuggling or acceptance of bribes?"

(c) Are there Indian Preventive Officers in the other ports?"

The Hon'ble Sir George Barnes replied:—

"The answer is the same as to the previous question, namely, the Preventive Service is under the control of the Local Government and the Government of India have no information on the subject."

[24TH SEPTEMBER, 1919.]

[Mr. W. E. Crum; Mr. R. A. Mant;
Rai Sahib Seth Nathmal.]

The Hon'ble Mr. W. E. Crum asked :—

17. "With regard to the statement in paragraph 132 of the Report of the Industrial Commission that there is no longer any justification for the expenditure of Indian revenue on the Imperial Institute, will Government be pleased to state :—

- (a) what annual grant is paid to the Imperial Institute;
- (b) whether they are aware that it is held in certain quarters that the work of the Imperial Institute is of considerable value to merchants; and
- (c) whether they will consult Chambers of Commerce before taking action in the matter?"

The Hon'ble Mr. R. A. Mant replied :—

"(a) An annual grant of £1,300 is paid to the Imperial Institute from Indian revenues, namely :—

(1) a maintenance grant to cover all charges in connection with the Indian Section other than the Scientific and Technical Department of the Institute.	1,000
(2) For the Scientific and Technical Department	... 200
(3) Half the pay of the Indian representative appointed by the Secretary of State on the Managing Committee of the Institute.	100

The institute also enjoys the interest on a special sum of £34,000 contributed by India, which was invested as an Endowment Fund.

(b) The Government of India are aware that the Imperial Institute is occasionally consulted by merchants in India, but they anticipate that inquiries on commercial subjects will in future be addressed mainly to the Indian Trade Commissioner in London who has been appointed for the special purpose of giving assistance of this nature.

(c) The Government of India are in correspondence with the Secretary of State on the subject of continuing their contributions to the Institute, and they cannot at present give any undertaking on the subject?"

The Hon'ble Rai Sahib Seth Nathmal asked :—

18. "What is the present financial position of the Indian People's Famine Trust Fund? How much money from the Fund has been allotted during the present scarcity and famine season and to what provinces, and what were the amounts allotted to each such province."

The Hon'ble Mr. R. A. Mant replied :—

"Owing to the absence on tour of the Honorary Secretary to the Fund I am unable to give an accurate statement of its present financial position, but I lay on the table a statement* showing the assets of the Fund on the 31st

*Not included in these Proceedings.

[Mr. R. A. Munt; Rai Sahib Seth Nathmal; Sir George Barnes; Mr. Shafi.]

[24TH SEPTEMBER, 1919.]

December 1918. On that date the Endowment Fund was Rs. 28,10,000 and the other assets amounted to Rs. 12,89,082-10-3. During the present famine and scarcity the following allotments have been made :—

	Rs.
Bombay	4 lakhs.
United Provinces	8 lakhs.
Central Provinces	1 lakh.
Madras	20,500."

The Hon'ble Rai Sahib Seth Nathmal asked :—

Unclaimed
balances
in Banks.

19. "(a) Is it a fact that there are large unclaimed balances left with the various banks and assurance companies throughout India, that the amounts in most cases have been unclaimed for generations past, and that the amounts have been absorbed by the banks and included in their assets ?

(b) Do Government propose to cause a return to be made by the various banks of the balances left with them as unclaimed during the past twelve years and take steps to recover the amounts as having escheated to the Crown and at the same time make legal provision absolving the banks from any future responsibility to claimants once the deposits or claims have been made over to the Government after the statutory period ? "

The Hon'ble Sir George Barnes replied :—

"The Government of India have no information regarding the unclaimed balances left with the various banks and assurance companies. The point raised by the Hon'ble Member will, however, receive consideration. "

The Hon'ble Rai Sahib Seth Nathmal asked :—

The Influenza
epidemic
of 1918.

20. "(a) What was the number of deaths in the various provinces during the period of last influenza epidemic ?

(b) What sum, if any, was allotted by the Government of India for the relief of distress to the various provinces ?

(c) How much money has been spent by the various Local Governments from the provincial funds, and how much by the local bodies from their own resources ?

(d) Do the Government of India propose to place at the disposal of the Local Governments substantial grants from their funds and also to instruct the Provincial Governments to help the local bodies to the fullest extent to relieve distress ? "

The Hon'ble Mr. Shafi replied :—

"(a) The number of deaths from all causes during the period of the influenza epidemic of 1918 is shown province by province and month by month in the statement^a which is placed on the table.

(b) No application for financial assistance was received from any province, and consequently no allotment was made by the Government of India.

(c) The information, as far as available, is to be found in the reports of Sanitary Commissioners. Further information will be requested and the replies, when received, will be laid on the table.

[24TH SEPTEMBER, 1919.]

[*Mr. Shafi ; Sir William Vincent ; Rao Bahadur B. N. Sarma ; Mr. H. F. Howard.*]

(d) Expenditure on combating epidemics such as influenza, forms a charge upon provincial revenues. The Government of India are able to assist by the supply of influenza vaccine. The steps which have been taken by the Government of India in this and other matters are explained in a circular letter from the Education Department no. 441, dated 14th July 1919, which was published at the time. It will be seen that Provincial Governments were asked to assist local bodies in the distribution of vaccines. It also appears from the reports of Sanitary Commissioners that during the epidemic of last year Local Governments gave assistance to local bodies. Thus, in the Central Provinces, grants amounting to Rs. 2,60,000 were made for this purpose and in the United Provinces all applications for financial assistance received from local bodies were immediately sanctioned in full."

The Hon'ble Rao Bahadur B. N. Sarma asked :—

21. "What is the number of the printing presses and newspapers against whom action has been taken (a) since the 30th March, 1919, (b) since the commencement of the war, and the nature of such action and the amount of security forfeited?"

Printing Presses and Newspapers.

The Hon'ble Sir William Vincent replied :—

"The Hon'ble Member is referred to the answer given to a similar request for information made by the Hon'ble Mr. Sachchidananda Sinha."

The Hon'ble Rao Bahadur B. N. Sarma asked :—

22. (a) Will Government be pleased to state whether in originally fixing the salaries of Europeans in the various departments of Government, the exchange value of the rupee was taken into consideration and, if so, at what rate it was so taken ?

Rate of exchange in fixing the salaries of Europeans in departments of the Government.

(b) Will Government be pleased to state whether in fixing the increase in the emoluments of Europeans in (a) the Indian Civil Service (b) the Army and (c) the other services, the salaries and allowances and pensions payable were fixed in sterling and then converted into rupees, and, if so, at what exchange rate they were so fixed ?"

The Hon'ble Mr. H. F. Howard replied :—

"(a) Without a very exhaustive search into old records, it would not be possible to say whether, when salaries of Europeans in the various departments of Government were originally fixed, the exchange value of the rupee was taken into consideration; but the Hon'ble Member will readily recognize that not only would the search be very laborious, but even should it appear that in some cases this was a factor in deciding pay, it would have little bearing on present circumstances, since not only have rates of pay been frequently revised in the interval without reference to this factor; but the purchasing power of the rupee has greatly varied.

(b) In no case in which recommendations have been made of recent years for the increase of pay of Europe recruited members of the services has the general principle been followed of fixing salaries or pensions in sterling and subsequently converting them into rupees. Such recommendations as have been made are based on the purchasing power of the rupee in India."

342 THE PROVINCIAL INSOLVENCY (AMENDMENT) BILL; THE INDIAN ARMS (AMENDMENT) BILL; THE INDIAN COINAGE (AMENDMENT) BILL; THE CANTONMENTS (AMENDMENT) BILL.

[*Sir George Lowndes; Sir William Vincent; Mr. H. F. Howard; His Excellency the Commander-in-Chief.*]

[24TH SEPTEMBER, 1919.]

THE PROVINCIAL INSOLVENCY (AMENDMENT) BILL.

11-23 A.M. **The Hon'ble Sir George Lowndes:**—"My Lord, I have the honour to present the Report of the Select Committee on the Bill further to amend the Provincial Insolvency Act, 1907."

THE INDIAN ARMS (AMENDMENT) BILL.

11-25 A.M. **The Hon'ble Sir William Vincent:**—"My Lord, I move that the Bill further to amend the Indian Arms Act, 1878, be taken into consideration.

"I may take the opportunity of informing the Council, with reference to the remarks made by the Hon'ble Major Sir Umar Hayat Khan Tiwana and the Hon'ble Mr. Sinha on a previous occasion, that we are consulting Local Governments on the specific questions referred to by them."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that the Bill be passed."

The motion was put and agreed to.

THE INDIAN COINAGE (AMENDMENT) BILL.

11-26 A.M. **The Hon'ble Mr. H. F. Howard:**—"My Lord, I beg to move that the Bill further to amend the Indian Coinage Act, 1906, be taken into consideration.

"I need only add to what I said the other day that specimens of the new four and eight-anna nickel coins have now been prepared and are available for any Hon'ble Members to see, who would be interested to do so."

The motion was put and agreed to.

The Hon'ble Mr. H. F. Howard:—"My Lord, I move that the Bill be passed."

The motion was put and agreed to.

THE CANTONMENTS (AMENDMENT) BILL.

11-27 A.M. **His Excellency the Commander-in-Chief:**—"My Lord, I beg to move that the Bill further to amend the Cantonments Act, 1910, be taken into consideration."

The motion was put and agreed to.

His Excellency the Commander-in-Chief:—"My Lord, I beg to move that the Bill be now passed."

The motion was put and agreed to.

THE CINEMATOGRAPH (AMENDMENT) BILL; THE INDIAN COMPANIES RESTRICTION REPEALING BILL; THE INDIAN MERCHANT SHIPPING LAW AMENDMENT BILL. 478

[24th SEPTEMBER, 1919.]

[Sir William Vincent; Mr. H. F. Howard; Sir George Barnes; The President; Rao Bahadur B. N. Sarma.]

THE CINEMATOGRAPH (AMENDMENT) BILL.

The Hon'ble Sir William Vincent:—"My Lord, I move that the Bill to amend the Cinematograph Act, 1918, be taken into consideration. 11-27 A.M.

"This Bill has been published since I introduced it and I have received no amendments or criticisms from any Members of this Council."

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—"My Lord, I move that the Bill be passed."

The motion was put and agreed to.

THE INDIAN COMPANIES RESTRICTION REPEALING BILL.

The Hon'ble Mr. H. F. Howard:—"My Lord, I move that the Bill to remove the restrictions imposed on the withdrawal of capital from the money-market by Companies be taken into consideration." 11-28 A.M.

The motion was put and agreed to.

The Hon'ble Mr. H. F. Howard:—"My Lord, I move that the Bill be passed."

The motion was put and agreed to.

THE INDIAN MERCHANT SHIPPING LAW AMENDMENT BILL.

The Hon'ble Sir George Barnes:—"My Lord, I beg to move that the Bill further to amend the Indian Merchant Shipping Acts, 1859 and 1883, be taken into consideration." 11-27 A.M.

The motion was put and agreed to.

The Hon'ble Sir George Barnes:—"My Lord, I beg to move that the Bill be now passed."

At this point the Hon'ble Mr. Sarma rose.

The President:—"I am afraid the Hon'ble Member is too late. The Council has assented to the motion that the Bill be taken into consideration."

The Hon'ble Sir George Barnes:—"I think my Hon'ble friend is under the impression that we are dealing with the next Bill on the list."

The Hon'ble Rao Bahadur B. N. Sarma:—"I am sorry."

The motion was put and agreed to.

474 THE IMPORT AND EXPORT OF GOODS (AMENDMENT)
BILL; THE INDIAN PAPER CURRENCY (FURTHER AMEND-
MENT) BILL.

[*Sir George Barnes ; Rao Bahadur B. N. Sarma ; Mr. H. F. Howard.*]

[24TH SEPTEMBER, 1919.]

THE IMPORT AND EXPORT OF GOODS (AMENDMENT)
BILL.

11-50 A.M.

The Hon'ble Sir George Barnes :—“ My Lord, I beg to move that the Bill to extend the operation of, and otherwise to amend, the Import and Export of Goods Act, 1916, be taken into consideration. ”

11-51 A.M.

The Hon'ble Rao Bahadur B. N. Sarma :—“ My Lord, I earnestly request the Council to take into consideration the question as to whether it would not be well to postpone the consideration of this important Bill to another date. My Lord, I must confess that I had not the Act with me when this Bill was introduced on the last occasion, and I did not realise the importance of the subject at the time. The time at my disposal was so very short, that I could hardly understand the true significance of this Bill. I venture to say that this Bill is one of the most important of the Bills that has been introduced during this Session into this Council, because it enables the Governor General in Council to continue the policy which was in force during the war and which has been allowed to be in force for six months after the war for another period of two years and a half. Under this Act XI of 1916 the Governor General in Council may by notification in the Gazette of India prohibit or restrict in any way he may specify in such notification the import or export of all or any goods or any class of goods from or to any country or place or from or to any person or class of persons. This gives very wide powers and affects the commercial community very closely. I know perfectly well that your Excellency's Government can pass an Ordinance, can also come here with its official majority and carry any measure it likes at any time it pleases. But, my Lord, I pray that sufficient time may be given to the public at large, to the agricultural community which would be affected by this Bill, as well as the Commercial community, to consider what the provisions mean and how they would be affected by them. The Bill was introduced, as I said, only last week; it was directed to be published in English. Well it is too late for me to quarrel on that point. But where was the time for the people to consider and understand the true significance of this Bill? I submit that absolutely no opportunity has been given to the public to understand what the significance of this Bill is. Now, under this Bill the Governor General in Council

11-53 A.M.

The Hon'ble Sir George Barnes :—“ May I say one word, my Lord. I understand that the Hon'ble Mr. Sarma's objection is that sufficient time has not been given, and I admit that the time has been very short. The present Act will be in force till the Delhi Session for it remains in force for six months after the end of the war and the official end of the war has not yet arrived. I am willing, therefore, to fall in with the Hon'ble Member's suggestion that the Bill should be postponed till the Delhi Session, if the Hon'ble Mr. Sarma really thinks that any purpose will be served by the postponement. ”

The Hon'ble Rao Bahadur B. N. Sarma :—“ I thank the Hon'ble Sir George Barnes for having consented kindly to postpone the consideration of this Bill till the Delhi Session. I have studied the Bill myself and have formed certain opinions on it; but it is for others than myself that I am speaking, and on their behalf I thank the Hon'ble the Commerce Member for his kindly consenting to postpone this Bill. ”

The motion was by leave withdrawn.

THE INDIAN PAPER CURRENCY (FURTHER AMEND-
MENT) BILL.

11-55 A.M.

The Hon'ble Mr. H. F. Howard :—“ My Lord, I beg to move for leave to introduce a Bill further to amend the Indian Paper Currency (Amend-

[24TH SEPTEMBER, 1919.]

[Mr. H. P. Howard.]

ment Act, 1917, and to amend the Indian Paper Currency Act, 1918. The effect of this Bill will be clear to Hon'ble Members from the Statement of Objects and Reasons. Briefly, it proposes to give Government powers firstly to increase their issue of currency notes against securities by 20 crores, raising the maximum from 100 to 120 crores, and, secondly, to hold as part of their paper currency reserve gold acquired by the Secretary of State on their behalf if held in the United States or in transit therefrom to India.

"I wish to say at the outset that it is with great reluctance that the Government have found themselves forced to bring this measure before the Council. I think, however, that I can very shortly convince the Council that they have no other alternative. Briefly, the position is this. During the war we were obliged to meet a very large amount of expenditure by issuing short term debt. That amount of debt has since remained outstanding and has increased. Though I do not pretend that our position is as difficult or critical as it was many times during the war, it has for the past few months been extremely difficult, and in the last week or two it has become absolutely acute, so much so, that the Controller of Currency, who is responsible for the provision of funds at places where they are wanted, is finding it impossible to carry on. I have just referred to our short term debt. The amount of our treasury bills outstanding has for some time past stood at a level of about 50 crores; it dropped a little while the loan was under flotation, but it is now rising again, and we have also been obliged, during the course of the last month or so, to take large ways and means advances from the Presidency Banks; these ways and means advances amount at the present time to Rs. 13 crores. Just to show what sort of difficulty we have to meet, I shall give an account of the position with which we were faced at the commencement of the present month. Our incomings in India were estimated to be no less than 20 crores less than our outgoings, those outgoings including payment of treasury bills amounting to no less than 13 crores. The obvious ways of bridging this gap may be said to be three in number, firstly, by issuing more treasury bills, secondly, by taking further ways and means advances from the Presidency Banks and, thirdly, by securing remittances of gold or silver from the Secretary of State. As regards treasury bills, we have recently increased the rates, and we hope that it may be possible during the current month to cover the September maturities. This, however, is merely postponing the evil day, for most of the fresh bills which we are at the present moment selling are three-month bills which will mature in December. We are thus merely throwing forward our liabilities to a date when matters will probably be still more difficult for us. When the busy trade season comes on and the trade demand for money becomes brisker, there will naturally be more difficulty in meeting these bills.

"Next, as to the advances from the Banks, we took Rs. 8 crores last month and Rs. 5 crores this month; and at present it seems improbable that the Presidency Banks will let us have any more. In fact here again as the busy season goes on, it is more likely that they will have to ask us for repayment of some of the advances already outstanding. The unhappy Finance Department, therefore, is in the position of a juggler who is compelled to spend his life trying to keep a large number of plates in the air at once, none of which he can afford to allow to fall to the ground.

"Turning now to remittances of treasure, the Secretary of State has fortunately been able to secure a substantial amount of gold for us. I need not say anything about silver as, I think, Hon'ble Members are fairly cognizant of the position as regards silver. The Secretary of State has, however, secured a substantial quantity of gold for us and this is, or will shortly be, on the way to India; and we hope we will be able to go on obtaining help in this way. It is for this reason that we are asking Council to allow us to take into account as part of our currency reserve this gold after purchase and while it is in transit. It is of course far less objectionable to issue notes against gold in this way than

[Mr. H. E. Howard.]

[24TH SEPTEMBER, 1919.]

against securities. While it is in the reserve it forms the best backing that we can have for our notes, apart from our silver rupees, and, when we come to issue the gold or to sell it, it automatically redeems the notes.

"There is a possible fourth method of course of relieving our position, namely, to reduce the amount of Councils which the Secretary of State is now selling, but I am sure that no Hon'ble Member would in the present circumstances, difficult as the exchange position is, wish us to adopt this course. Later on, the position will, we hope (though our hopes are not always realised), become easier if the recent alterations which the Secretary of State has effected in the gold acquisition rate, and the relaxation which he has made in the control and restrictions exercised over exchange, do operate to stimulate the private import of gold. That will of course reduce the demand on us for meeting the Secretary of State's Council drawings.

"Looking a little further forward, October, November and December are all deficit months. In December, as I have just said, we shall have a very large number of treasury bills to meet. I think that we have already about 15 crores of maturities banked up in that month. Unless, therefore, the Secretary of State is able to help us to bring back our funds from London to India more rapidly than we can at present anticipate, the time will come when we shall obviously not be able to carry on; and we shall in that case therefore be driven to fall back on a further issue of notes issued against our funds held in London which will of course then be held in the Paper Currency Reserve in the form of securities. It is just conceivable indeed that we may be able to carry on by hook or crook for another few weeks or even for a month or two; but it seems inevitable that, before this Council meets at Delhi, we shall be obliged to have recourse to the expedient which is now before the Council. We felt that it would be extremely undesirable, with this obvious necessity impending over us, to defer taking these powers till the adjournment, when we should have necessarily to proceed by Ordinance; and we thought that it was essential that we should place our position frankly before the Council, and ask them to give us the necessary powers now. I should like at this stage to express my regret that we have been obliged as it were to spring the matter on the Council at such short notice and ask them to pass this Bill through at a single sitting; but this necessity has arisen from our very reluctance to have recourse to the step we now propose till the last possible moment, and it is for this reason that we have deferred our appeal to the Council until we were absolutely forced to make it.

"I should like, however, to assure the Council that we have no intention of using these powers prematurely. We shall only use them as we require them bit by bit, for we are as much convinced as any Hon'ble Member here present of the undesirability of increasing unduly our fiduciary issues. I can say at once that we have no intention of indulging in an indefinite issue of currency notes which would endanger the stability of our issues and lead to the risk of suspension of their encashment. During all the anxieties of the war we steadily avoided that calamity, for so it would then have been, and managed to carry on, although, as I think, everybody knows, it was a case more than once of 'touch and go.' Now we can reasonably feel confident that the spectre of inconvertibility has been safely laid. We are in a far stronger position now than at any time during the latter part of the war. I will give some comparative figures, for instance, of the amount of our reserves. At the beginning of July last year, that is, when the reserves had been greatly depleted at an anxious time, our total circulation was 115 crores; against that we held a metallic backing of 36 crores only, that representing a percentage of 31. By the middle of September last, that is to say, practically about a year ago, our circulation was 134 crores and the metallic reserve 48 crores, the percentage having risen to 36. Our total circulation is now 169 crores; against that we held a metallic reserve of 70 crores, the percentage having

[24TH SEPTEMBER, 1919.]

[Mr. H. F. Howard.]

risen to 41. In other words, during 15 months our metallic reserves have risen two-fold, from 36 to 70 crores. Apart from that, we are at present in a much stronger position as regards encashment in several ways. The unrest and unsettlement of the past years has passed away, the difficulties in respect of our notes have disappeared, and people have got accustomed to them. We also hope that the Secretary of State will now be sending out more gold to help us to build up our reserves, any gold that we are selling being more than set off by this, while our sales of gold should tend to reduce the demand on us for rupees. Last, but not least, of our total reserve at present of 70 crores no less than 32 crores are held in coined rupees, and we have 18½ crores of uncoined bullion, a total of 50 crores of silver, which is far more than our total metallic reserve was a year ago.

“There is, however, another aspect of these possible additions to our currency about which the Council will probably expect me to say something, since this point was raised by Mr. Mant in a debate the other day, namely, their effect on prices. Mr. Sarno, I think, hit the right nail on the head when he expressed the opinion that the real difficulty of our situation in this respect was not merely inflation of currency within India, but consisted in the great inflation of currencies and the serious rise in prices all over the world. With this view I fully agree. To put the matter in the widest way the effect of additions to the currency of an individual country with a world-wide trade is necessarily distributed or dissipated over price levels of the world as a whole. Our additions to the currency have been on a far smaller scale than the additions that have been made elsewhere. This is a very abstruse and technical matter, and I can only touch on the fringe of the technicalities of such a question. Perhaps I can best illustrate India's position by a simile. It is that of a lagoon connected by a channel with the sea. When the tide rises outside the water must flow through the channel into the lagoon, naturally causing its level to rise till it reaches the sea level. This is what would have happened in India in normal conditions. With the balance of trade setting strongly in her favour money must have flowed in in one form or another, whether through the Secretary of State's Council Bills or by the import of gold to be tendered at our currency offices in exchange for internal currency, with the result that internal prices would naturally rise. But in practice there have been restrictions on trade, and control has been exercised in various ways, with the result that the channel into our lagoon has been choked, and the water level inside has not risen as rapidly as the tide outside. We have had at the same time our local deluges, with the result that the water in the lagoon has also been added to by streams flowing down from the land—possibly set off by evaporation, where the circulation has disappeared through the hoarding of rupees. Consequently the level of our lagoon is still below that of the level outside. In other words, our price levels have not risen to the same extent as they have elsewhere.

“There is another very important factor in the price question to which I should like to refer. It is one on which Mr. Mant very rightly laid great stress the other day, it is the effect of higher exchange on prices. Much as we deplore the lack of stability in exchange and its consequences to trade, the increase has had one great counterbalancing advantage. A higher exchange is the best and most important mitigant of higher prices. I thought of pursuing my simile rather further and saying that we have in effect now constructed a lock between the lagoon and the sea, which will now prevent it from continuing to rise with the tide outside. But that would not explain exactly what has occurred, so I had better mix my metaphors and explain that the higher exchange has had the effect of causing a real change of gear between rupee prices and prices in sterling in countries outside.

“I expect some Hon'ble Members to say ‘that is all very well, but what is to be the end of it?’ I can only answer that there is no immediate

[*Mr. H. F. Howard; Rao Bahadur B. N. Sarma.*]

[24th SEPTEMBER, 1919.]

and sovereign remedy, but, I think, we may hope that as the air clears and as matters become more normal and there are signs of this, we shall gradually be able to bring back to India our reserves in London and at the same time to fund our temporary debt in India. At the same time, it is essential from the facts of our position, as I have stated there, that we should use every possible measure to conserve our financial resources. I cannot do better than quote Sir James Meston on this subject :—“ Coupled with courageous outlay on essentials of progress, a strict economy in all non-essentials will in the near future be more necessary than it has ever been’.

“ My Lord, I do not wish to conclude these remarks on a note of pessimism. Difficult as matters undoubtedly are in many ways, we have at any rate the comfort, it may be cold comfort, that we are suffering much less from the financial aftermath of the war than almost any other country. The very difficulties to which ^{our} ~~our~~ embarrassments have largely been due, namely, those connected with the exchanges, are in a way evidence paradoxically enough of the fundamental soundness of our position. It is more than 50 years since 10 rupees could buy £1 sterling, and generally the pronounced strength of our foreign exchanges itself shows that the purchasing power of the rupee has undergone far less depreciation than is the case with currencies elsewhere, and this fact is a sure index of India’s solvency and indeed of her high credit.”

“ There is just one word of explanation which I would like to offer before I close. This legislation is temporary legislation, because it amends Acts which are in themselves temporary Acts and lapse six months after the termination of the war. We shall of course have later on to reconsider the whole question of our currency reserves and their constitution after we have received and considered the Report of the Committee on Exchange and Currency.”

The Hon’ble Rao Bahadur B. N. Sarma :—“ My Lord, we have listened to a very clear and lucid exposition of the whole position, and we must convey the obligations of the commercial community to the Government for making the situation clear. I am not a pessimist. We have struggled through the war, and I am sure we shall struggle hereafter also successfully. But, my Lord, I feel that we shall not be doing our duty to the Government of India or to His Majesty’s Government if we do not clearly say that our interests must be considered to be of paramount importance, and that this tinkering cannot go on very much longer, as it would involve a poor country like India in manifold difficulties. My Lord, at the Delhi Session we were looking very hopefully to the statement of the Hon’ble the Finance Member for stability in our currency. The Hon’ble Sir James Meston hoped that it might be possible even to reduce the note issue. In paragraph 76 of his speech the Hon’ble Sir James Meston said :—‘ The second task before us is some contraction of the Paper Currency. Four years ago, the effective circulation of Notes was under 60 crores : to-day it is close on 150 crores’. Then he went on describing the various evils. ‘ Some of us would probably like to go further, and reduce the Outstanding Note circulation until we hear no more of forced discounts in the country-side and their hardships on the people ; but it is not easy to see how this adjustment can be effected until silver comes out of hoards and resumes its duty as a circulating medium.’

“ From this speech we had at any rate some hope that the Note issue will not be added to, but we have been grievously disappointed. From 150 crores the Note issue has gone up to 169 crores in the space of about five or six months. Well, I do not say that the Government enter into this Note issuing process with an easy heart. But, my Lord, what is the real position ? We find large funds belonging to us locked up in London. We find that our exports are much in excess of our imports, and consequently large sums of money are due to us from the outside world. In the ordinary course of things it is met by our imports of bullion, and we can only get the value in the form of gold or silver,

THE INDIAN PAPER CURRENCY (FURTHER AMENDMENT) BILL. 179

[24th SEPTEMBER, 1919.]

[Rao Bahadur B. N. Sarma; Mr. W. E. Cram.]

because we take it that all merchandise are included under the head of 'Imports.' Now gold and silver we cannot get in the normal course of trade, because the interests of other countries will not permit of this normal channel to be used for the purpose of equalising the trade balance between India and other countries of the world. Well, then, Council Bills have to be paid. That means to say the export merchants, the agriculturists who export their produce, have to be paid either in silver coin or in Notes. Silver is also very highly priced. The net result is we multiply our currency both by way of increasing the metallic currency if possible as well as the Note Issue. We are thankful to the Government of India for so far trying to back up every Note issued by metal. That is sound and safe, but there is no going away from the fact that for every rupee we are coining, we are also issuing from the press one-rupee Notes, that is, we are increasing the Note circulation by two-fold. My Lord, there is one danger, namely, if we cannot go on multiplying silver, which is itself a danger, we go on multiplying the Notes, i.e., we have to issue Note Currency in the absence of silver. That is a great danger ahead. I am afraid that even during the flotation of the recent loans printing presses were placed at the disposal of the Presidency Banks for getting the notes and the loans back from this, and I am very glad to see that the Hon'ble Mr. Howard recognises that it is very dangerous to go on like that. But what is the sequel? We are now asked to give our consent to the issue of 20 crores of rupee notes against British Treasury Bills. That means to say, not a penny worth of gold or silver need come into India to reduce the trade balance, I mean the Bills which would issue, they are in themselves good, but here we have to manufacture notes to the value of 20 crores of rupees and give them to the public to meet the demands of exports or imports. That is an extremely unsatisfactory state of things, and, I think, we shall have to tell His Majesty's Government and the Secretary of State representing our interests that they should not be allowed to go on one minute longer like this. The normal channels must be opened to the Indian public just as they are to other countries. The normal imports of gold must be the only channel.

"My Lord, the Hon'ble Mr. Howard said that it is recognised every where that to a certain extent prices of foodstuffs would rise if the currency be increased. That is acknowledged every where. Of course, its exact ratio cannot be told, but it has that effect if things are allowed to go on as at present. In a poor country like India, her commercial interests and the interests of the poor people demand that we should not add to our Note Issue or currency any longer. I therefore implore the Government to do its level best to impress upon His Majesty's Government to safeguard the interests of Indian trade and Indian agriculture which are supreme in this matter, that the normal channels should be allowed to be utilised for the purposes of reducing the Note Issue, and that we cannot afford to lock up more money in England for the purpose of multiplying our notes here and pay the people with these Notes."

"With regard to the second aspect of the question, of course the thing is not so bad. Of course, we have gold to back our Note Issue, but, I think, my remarks with regard to the increase of currency will apply to this question also. I therefore hope that it would not be considered by His Majesty's Government that the Indian public do not feel keenly this apparent neglect of our interests. I sympathise with their difficulties, but at the same time we as a poor people cannot afford to ignore our interests any longer and now that the war is over, I hope there will be no addition to this Note Issue, and that the Hon'ble Mr. Howard will find it possible not to issue Notes to the value of 20 crores of rupees as he proposes."

The Hon'ble Mr. W. E. Cram :— "My Lord, I should like first to ^{12 r.x.} congratulate the Hon'ble Mr. Howard on the extremely lucid exposition he

[Mr. W. B. Crum; Mr. H. F. Howard.]

[24TH SEPTEMBER, 1919.]

has given us of the currency position and the necessity for the present amendment, and there is no question about it that the Council must support this amendment whole-heartedly. At the same time, the position is such that I do not think it should be allowed to pass entirely without comment. Mr. Howard has told us that since July 1918 the note circulation has risen from 115 to 169 crores, and of course since pre-war days I fancy it has nearly trebled. There is a very satisfactory feature, however, of this rise since July 1918, and that is that, whereas the note circulation has risen by 54 crores, out of that 44 crores has been backed by precious metal, and the increase in security backing is only 10 crores.

"Now, my Lord, there is one point about this redundancy of currency which I do not think has been brought out, and that is that, as prices rise, so currency also must increase, and when it is said that the increase of currency in India affects the prices and thereby increases prices, it must also be borne in mind that the increase of prices outside India demand in India a great increase of currency. And therefore I do not think that we can entirely blame the Government of India for the increase of currency, because to a certain extent that is necessary.

"Then, my Lord, we have got the point that whereas before the war the treasury and other balances held in the United Kingdom were only £50 millions, they have now gone up to something over £100 millions; and by issuing Councils, as the Hon'ble Member has pointed out, which are absolutely necessary for the trade of the country, we only increase that balance on the wrong side. Well it is very necessary, and I agree with Mr. Sarma in that, that this balance should be righted as soon as possible, and I do think there is a feeling that the Secretary of State has not quite used the opportunities that he might have, both in buying silver at certain times and in buying gold. I think when the Hon'ble Mr. Howard was in Calcutta the other day the opinion was expressed in certain quarters that the Secretary of State perhaps might have looked forward to the busy season of August, September, October, when money is always wanted for export here, and that a considerable time ago he might have foreseen the possible rise in silver and bought silver. At the same time, though I understand that he is now doing everything he can to buy gold and get gold from any quarter from which it is available, I think there is a feeling that he has to some extent missed his market with regard to gold. And I would on behalf of the commercial community, very strongly urge on the Government of India that they should do everything in their power to persuade the Secretary of State to increase his purchases of gold, and as soon as possible to transfer that balance which is in England over to this side."

12-5 P.M.

The Hon'ble Mr. H. F. Howard :—"My Lord, I would like to make one or two remarks with reference to what has fallen from Mr. Sarma and Mr. Crum. The first point which I wish to mention is, the very technical one which Mr. Crum has raised, and incidentally Mr. Sarma has also raised, as to the relation between cause and effect of currency and prices. This question is always, from the nature of it, extremely difficult to answer. It is as troublesome as the old puzzle whether the first hen came out of an egg, or the process was initiated by the first hen laying an egg. But I rather intended to imply by my lagoon simile very much what Mr. Crum said, namely, that, though our successive additions to currency no doubt do cause prices to rise or facilitate their rising, they are to some extent necessitated by the rise which has taken place in prices. Let us just place before ourselves for a moment what would happen if we refrained from making such additions. It is possible that the effect of this might be temporarily to keep down prices. But what would the result of that be? The first person it would hit would be the agriculturist whom Mr. Sarma said he was anxious to help. Transactions in his produce

[24TH SEPTEMBER, 1919.]

[Mr. H. F. Howard; the President.]

would become impossible. Again, business and industries would be hampered and unemployment and discontent would follow. I do not think I need go beyond India for an example of this. I do not know whether Mr. Crum can remember as far back as 1900 or 1901. I am not certain of the exact year. That was a time about seven or eight years after the closing of the mints when large amounts of gold were being imported into India. The Government of India had thought at that time that they were not going to have to coin rupees at any rate for a considerable time. As a result of this, this gold was tendered, on arrival in India, to the Government of India at their currency offices and mints and the hungry exporter wanted rupees in return. There were no rupees, and the condition of business at that time I believe, until Government could buy silver and put more rupees into circulation, was very grave indeed. The fact is that in all these cases currency is really the flux which makes capital fluid. Unless there is enough currency, business becomes difficult and impracticable. I saw curiously enough only a day or two ago in the papers another very striking instance of this kind—where an increase in currency followed a rise in prices—in the case of Siam. There was a great external demand for Siam's rice, but prices of rice in Siam had risen very considerably. The cultivators wanted to sell, but they would only sell at a certain price; and as a result, in order to get out the rice at that price, it was necessary to double the note issue in a very short period of about three months. I have forgotten what the figures were; they were expressed in *tikals*, I think, a currency with which I am not very familiar.

“ I should like to add a few words about what Mr. Crum said about the possibility of our bringing back our funds from London. In this matter we are rather between the devil and the deep sea. We are asked on one hand to help trade by selling Councils—we have had several piteous appeals to sell more Councils,—and, on the other hand, we are asked to move our funds back to India. The effect of selling Councils is to take our funds home. But the Secretary of State is fully conscious of the necessity of doing what he can do to help us by acquisition of the precious metals. But even without the Secretary of State in the market the price of silver has, during the last two or three months, gone up from the low fifties and even during the last day or two has crept up to 62 pence an ounce. What would have happened if the Secretary of State had been buying large quantities of silver? I can only answer, Mr. Crum by asking a question myself. As regards gold, the Secretary of State is fully alive to the importance of securing gold. It is possible he might have secured certain consignments to which Mr. Crum referred, about £5 millions which are popularly believed to have gone to Japan and South America; but after all gold was practically unprocurable till about three months ago. The United States had a prohibition on its export. The Bank of England had contracts with mines within the Empire, and they would not let gold go. The Secretary of State could not get hold of it if he had wanted to. Now he has been able to make a start—I believe he has got about five millions so far—and, I hope, he will be able shortly to get considerably more.”

The motion was put and agreed to.

The Hon'ble Mr. H. F. Howard:—“ My Lord, I introduce the Bill and I also move your Excellency to suspend the Rules of Business to admit of the Bill being taken into consideration.”

The President:—“ I suspend the Rules of Business.”

The Hon'ble Mr. H. F. Howard:—“ My Lord, I move that the Bill be taken into consideration.”

The motion was put and agreed to.

[*Mr. H. F. Howard; Sir William Vincent; Pandit Madan Mohan Malaviya; the President.*] [24TH SEPTEMBER, 1919.]

The Hon'ble Mr. H. F. Howard:—"My Lord, I move that the Bill be passed."

The motion was put and agreed to.

THE INDEMNITY BILL--(contd.)

18-19 P.M.

The Hon'ble Sir William Vincent:—"My Lord, I move that the 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, be taken into consideration.

"The main principles of this Bill have been fully debated only a few days ago, and it would be idle for me now to waste the time of the Council by covering the same ground again. Such details as have been criticised by Hon'ble Members are the subject of amendments which are before the Council, and I need not address Council in regard to them at present."

18-19 P.M.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord I beg to propose that the Bill be referred to a Select Committee. This is a very important Bill, my Lord, it involves very important questions of law, and, I submit, it is not a measure which should be hurried through the Council without its provisions being examined in a Select Committee. I suggest, my Lord, that the Select Committee should consist of the Hon'ble the Law Member, the Hon'ble the Home Member, the Hon'ble Sir Edward MacLagan, His Excellency the Commander-in-Chief, the Hon'ble Mr. Sarma, the Hon'ble the Maharaja of Kasimbazar, the Hon'ble Mr. Sinha, the Hon'ble Sardar Sundar Singh Majithia, the Hon'ble Mr. Crum and myself. There will be no harm, my Lord, if the Bill is delayed a little while; its provisions are so important that they ought to be examined in Select Committee. I therefore move that the Bill be referred to a Select Committee consisting of the Hon'ble Members whose names I have mentioned."

The Hon'ble Sir William Vincent:—"Do I understand that the Hon'ble Member is moving an amendment to the motion?"

The President:—"Is the Hon'ble Member moving an amendment to the motion which is on the paper?"

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord I have put forward what I had to say, I do not wish to add to or subtract from it."

The President:—"What I want the Hon'ble Member to give me a clear answer to is this. Is the Hon'ble Member putting forward an amendment to the motion which is on the paper?"

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I do not know whether I should call it a technical amendment. I am endeavouring on the motion before us to put forward the proposal that I have put forward, for the consideration of this Council. If a technical amendment is needed, my Lord, I will say that it is a technical amendment, but, I submit, that it is not necessary that there should be an amendment. On a motion made by the Hon'ble the Home Member, I am entitled to put forward the view I have done for the consideration of the Council."

The President:—"The Hon'ble Member is perfectly within his rights to oppose a motion which is before the Council, but if the Hon'ble Member wishes to move an amendment, he must move it now. I take it from the Hon'ble Member that he is opposing the motion and not moving an amendment."

[24TH SEPTEMBER, 1919.]

[*Pandit Madan Mohan Malaviya ; Sir William Vincent ; the President ; Sir George Lowndes.*]

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, if an amendment is the only proposition which is before the Council on a question like this, I put it forward as an amendment."

The Hon'ble Sir William Vincent :—" Then, my Lord, I take objection to the motion, on the ground that I have had no notice of the amendment."

The Hon'ble Pandit Madan Mohan Malaviya :—" I submit, my Lord, that the Rules do not require notice. I beg your Excellency to refer to the Rules."

The President :—" Will the Hon'ble Member refer me to the rule under which there is no necessity to give notice in the case of an amendment such as he proposes ?"

The Hon'ble Pandit Madan Mohan Malaviya :—" I think, your Excellency, that the Member who objects should show under what rule it is necessary. If the Hon'ble the Secretary of the Council will send me a copy of the Rules, I will refer your Excellency to it."

The Hon'ble Sir George Lowndes :—" May I suggest that the practice here is, when we have got a motion before the Council, your Lordship as President has only that one motion to put to the Council. It is only if an amendment is moved to it, that your Excellency can put another motion to the Council. At present there is only the one motion before the Council."

The President :—" It is true that, under rule 28, when a Bill is taken into consideration by the Council, any Member may propose an amendment of such a Bill of which three days' notice should be given. What the Hon'ble Member suggests is not an amendment of the Bill, and, I think, he is in order and the Hon'ble Member can move the amendment as he proposes. Do I understand the Hon'ble Member has moved the amendment ?"

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, I beg to move the amendment which I have placed before the Council."

The motion was put and negatived.

Then the motion that the Bill be taken into consideration was put and agreed to.

The Hon'ble Sir William Vincent :—" My Lord, I move as an amendment—

That in the preamble of the Bill for the words 'it has been necessary for the purpose of maintaining or restoring order to resort to martial law' the words 'martial law has been enforced' be substituted.

" During the debate on this Bill it was apparent from the speeches of many Hon'ble Members that the recital in the preamble was interpreted by them as a quasi-admission that this Legislative Council accepted the view that the declaration of martial law was necessary; among other Members, my Hon'ble friend, Mr. Sinha, drew particular attention to this point. I then said that we would consider the question of amending the preamble, and the present amendment is proposed to give effect to that intention and to make it abundantly clear that there is nothing in the Bill which can in any way be interpreted

[*Sir William Vincent ; Rao Bahadur B. N. Sarma ; the President ; Mr. Sachchidananda Sinha ; Sir George Lowndes.*]

[24TH SEPTEMBER, 1919.]

as meaning that this Council has ratified or admitted the necessity for the enforcement of martial law.

"The amendment as proposed merely makes a statement of absolute fact, which no one can controvert, that martial law was enforced."

The motion was put and agreed to.

The Hon'ble Rao Bahadur B. N. Sarma :—"I think, my Lord, the 2nd* and 3rd* amendments on the list would fall to the ground having regard to the acceptance of the first."

The President :—"That is so. No. 4† goes as well."

The Hon'ble Mr. Sachchidananda Sinha :—"My Lord, the amendment I propose is"

The Hon'ble Sir William Vincent :—"My Lord, may I suggest that, with your Lordship's permission the Hon'ble Mr. Sinha should take up this amendment, which is really a consequential one, along with a subsequent amendment of his."

The Hon'ble Mr. Sachchidananda Sinha :—"I shall do so with your Lordship's leave. I propose that—

'In the second clause of the preamble the word 'certain' be inserted between the words 'indemnify' and 'officers'

and I also propose"

The President :—"I think if the Hon'ble Member would postpone this until he comes to the clause, it will be more convenient to take it on the clause."

The Hon'ble Mr. Sachchidananda Sinha :—"I shall do so, my Lord. I now propose that in the same clause 2 of the preamble the words 'purporting to have been ordered or done' be omitted. The reasons for the proposal are these. Acts which are either done or ordered to be done for the purpose of maintaining or restoring order are acts which we can all understand. But it is difficult to understand acts to which the words in the preamble refer, namely, acts 'purporting to have been ordered or done'. As this might cause some confusion without any substantial object being gained, so far as I know, I propose that these words be omitted."

The Hon'ble Sir George Lowndes :—"My Lord, the Government are not prepared to accept this amendment. The words are perfectly innocent in themselves, and they appear in most of the indemnity clauses, which so often find a place in our Acts. The object is to avoid any dispute as to whether an act was actually done for a particular purpose or only intended so to be done though it may not have effected that purpose. Assuming that there is any question as to whether any act was done in good faith and in the belief (we shall come to that point later) that it was necessary for a particular purpose,

The Hon'ble Rao Bahadur B. N. Sarma :—

* 2. That for the first paragraph of the preamble the following be substituted, namely :—

'Whereas for the purpose of suppressing the recent disorders in certain districts of the Punjab and in other parts of India, and restoring order therein martial law has been resorted to'

3. That the words 'maintaining or' in paragraph 1 of the preamble be omitted.

† **The Hon'ble Mr. Malaviya** :—

4. That in the first clause of the preamble, the words 'maintaining or' be omitted.

[24TH SEPTEMBER, 1919.]

[*Sir George Lowndes; Mr. Sachchidananda Sinha; Pandit Madan Mohan Malaviya; Sir William Vincent; Rao Bahadur B. N. Sarma.*]

its justification ought not to depend upon whether as a matter of fact the purpose was attained; if it was intended to attain that purpose, the act ought to be covered by the Indemnity. When we come to the question of good faith, Hon'ble Members have got many amendments on the paper, and they may possibly succeed in striking out the words in that clause; if so then it might be reasonable to omit these words; but we could not omit them at the present stage. I am quite willing, my Lord, to defer a vote on this amendment until we have done with the 'good faith' amendments, if my Hon'ble friend thinks there is any chance of their being carried; but I do not think there is any great chance of that."

The Hon'ble Mr. Sachchidananda Sinha:—"As to the question of any chance of our amendments being carried, I have not the slightest hope at all; I would not defer consideration on that account."

The motion was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to move 'that in the second clause of the preamble, the words 'maintaining or' be omitted. My Lord, it is an abnormal position to my mind for which no support is found in the ancient Statutes of Parliament, though it may be found in some of the more recent enactments in some of the Colonies, that you should resort to martial law for maintaining order. Maintenance of order should be secured by the ordinary police assisted, when it may be necessary, by the military troops. I therefore submit that these two words 'maintaining or' should be omitted from the second clause of the preamble."

The Hon'ble Sir William Vincent:—"My Lord, I submit that it is essential that these words 'maintaining or' should be retained. It will be obvious to Members of this Council that once martial law is declared, or enforced, officers of the Government have not only to suppress active disorder, but they have to maintain order as well. For instance, my Lord, supposing there was a disorderly mob about to collect for some improper purpose, it would in such circumstances obviously be necessary for the military commander to issue orders prohibiting the assembly, and, if necessary, prevent such assembly by force. Otherwise indeed his position would be an impossible one; he would have to wait until mischief was begun and then begin to suppress it. It will be clear to the Council therefore, I hope, that the retention of these words is absolutely necessary."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I think that the Hon'ble the Home Member might reconsider this question. His objection to Mr. Malaviya's amendment is, that during the suppression of a disorder, order has to be maintained; it can only be maintained under martial law, and consequently the words 'maintaining or' would be thoroughly appropriate, because there would otherwise be no one to maintain order during that period."

"What is mentioned here is 'or for the purposes, the general purposes of maintaining or restoring order.' That raises a large question, namely, whether in future where disorders are to be suppressed martial law can continue for the general purpose of maintaining order, if the officers charged with the duty of suppressing disorders should be indemnified under this Act in respect of acts done after the disorders had been suppressed. My submission is that this would lead to the acceptance by the Legislature of the principle that martial law can be resorted to by the Government for the purpose of maintaining order although they had suppressed disorders, and that any person who uses extreme measures-

[*Rao Bahadur B. N. Sarma; Sir George Lowndes; Pandit Madan Mohan Malaviya.*]

[24th SEPTEMBER, 1919.]

thereafter for maintaining order should be protected. The ordinary law is that the civil arm must meet all contingencies and maintain order once violent armed rebellion is suppressed. My submission is that we in this legislative assembly should not accept any other principle. I do not want to raise this question merely for an argumentative purpose. I submit that this Act will be quoted as a precedent. It may be open to a future Government, whenever a riot cannot be quelled, to have recourse to martial law. The police and the magistracy have the right to invite the co-operation of the military for the purpose of quelling a riot and all necessary force can be used, but the civil power and the military assisting it have to take cognisance of the fact that if unnecessary force be used the officers would be liable to punishment. I do not think there have been any cases where the officers in such circumstances have been protected by an Indemnity Act. I will quote a passage from Dicey showing that protection lasts only as long as the necessity lasts for suppressing disorder, but no longer. This is what Dicey says :—

'Martial law in the sense in which the expression is here used, means the power, right or duty of the Crown and its servants, or, in other words, the Government, to maintain public order, or in technical language the King's peace at whatever cost of blood or property may be in strictness necessary for that purpose. Hence martial law comes into existence in times of invasion or insurrection where and in so far as the King's peace cannot be maintained by ordinary means, and owes its existence to urgent and paramount necessity. The point to be borne in mind is, that the power to exercise martial law which is not ill described by an expression known to the American Courts, namely, that of 'War power' as it originates in so it is limited by the necessity of the case. The only principle on which the law of England tolerates what is called martial law is necessity, its introduction can only be justified by necessity, its continuance requires precisely the same justification of necessity and if it survives the necessity on which alone it rests for a single minute it becomes instantly a mere exercise of lawless violence.'

There are a number of other passages :—

'Such legal right or duty always lasts so long and so long only as the circumstances exist which necessitate the use of force.'

"My submission is that the Government would be right in asking for the protection of their officers during the suppression of the rebellion and for the purpose of maintaining order during that period, but they cannot ask and they should not ask this Council for the acceptance of this novel principle that whenever order cannot be maintained by the police and the military force is used, its officers should be indemnified. I therefore submit that the words 'maintaining or' should be omitted in the second preamble."

19-38 P.M.

The Hon'ble Sir George Lowndes :—"My Lord, as I pointed out the other day, martial law steps in when the ordinary civil courts are unable, I use the words deliberately, to maintain order or to suppress disorder. The Hon'ble Pandit and the Hon'ble Mr. Sarma have suggested that the insertion of the word 'maintaining' created a new doctrine without a precedent. It is, if I may say so, nothing of the sort. It is inconceivable to me that Mr. Sarma should say this after reading the passage he did from Dicey. Let me read it again :—

'Hence martial law comes into existence in times of invasion or insurrection when, where, and in so far as the King's peace cannot be maintained by the ordinary means.'

The Hon'ble Pandit Madan Mohan Malaviya :—"What page?"

The Hon'ble Sir George Lowndes :—"My Lord, I decline to be interrupted by the Hon'ble Pandit. When the ordinary courts cannot

[24TH SEPTEMBER, 1919.]

[Sir George Lowndes; Pandit Madan Mohan Malaviya; the President.]

maintain order or suppress disorder, you must have martial law. The maintenance of order is one of the definite objects with which martial law is put into force. The Hon'ble Pandit also said that there was no precedent for this, and yet during the past few days I have lent him and every Member of this Council who has asked for them, the South Africa Acts which are the latest examples of martial law and Indemnifying Acts. In each one of them you find that martial law was used for maintaining order. I will not trouble the Council with many extracts, I will read the first that comes to hand. Section 1 of the Act of 1900 says—my Hon'ble friend will find the same in them all—

'All acts, matters and things whatsoever in good faith advised, commanded, ordered, directed or done, as necessary for the suppression of hostilities or the establishment and maintenance of good order and government.'

It is the same in most of the older Acts. We are introducing nothing new, nothing without precedent."

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, the Hon'ble the Law Member quotes a sentence from Dicey in which he says that where order cannot be maintained by the civil courts martial law steps in. That is very different from saying that that sentence gives support to the proposition he advances. Our point is that you do not find this authority in the Acts of Parliament. You had some authority in the three Acts of Parliament but, my Lord, these three Acts of South Africa ought not to be a model as against the Acts of Parliament. I should like the Hon'ble the Law Member to quote any Act of Parliament in which for the purposes of maintaining order martial law has been justified. Then, my Lord, I gave a certain authority which the Hon'ble the Law Member will not disregard"

The Hon'ble Sir George Lowndes :—" My Lord, may I interrupt ?"

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, I object."

The Hon'ble Sir George Lowndes :—" Very well. The Hon'ble Member does not want it. It is there."

The Hon'ble Pandit Madan Mohan Malaviya :—" The Hon'ble the Law Member was afraid to let me have the page of his quotation, which is the smallest courtesy that any Member of this Council is entitled to. We are coming to bad ways."

The President :—" I quite agree. Will the Hon'ble Member proceed."

The Hon'ble Pandit Madan Mohan Malaviya :—" Thank you, my Lord.

" Now, the Earl of Halsbury in Vol. VI of the Laws of England says :— " 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."

" I submit, my Lord, that this is an authority which the Hon'ble the Law Member cannot disregard or make light of, and it is entirely in support of the

[*Pandit Madan Mohan Malaviya; Rao Bahadur B. N. Sarma.*]

[24TH SEPTEMBER, 1919.]

proposition which I have put before the Council, namely, that the words 'maintaining or' should be omitted from the second clause of the preamble."

The motion was put and negatived.

11-45 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I beg to move that in paragraph 2 of the preamble the words 'in a reasonable belief that they were necessary' be omitted.

"My Lord, as far as I can see, the words used in all the enactments dealing with Acts to indemnify officers are 'done in good faith as necessary for the said purpose.' I have not been able to come across these additional words 'in a reasonable belief that they were necessary.' On that ground alone I might ask the Council to follow the precedents set to us by the Legislature of various countries and drop the words 'in a reasonable belief that they were necessary', because they would lead to an inquiry of a somewhat elaborate character on which no safe conclusions can be come to. But I have a greater objection, and it is this. As the Bill stands, the person who comes into the Court to seek redress will have to show two things, first of all, the act of which he complains was not done in good faith, and, secondly, that it was not done in a reasonable belief that the act was necessary for the purpose. I would first like to ask the Hon'ble the Law Member to explain clearly for what purpose these additional words have been used, and how they would not be covered by the same words 'good faith,' and if some additional meaning is sought to be imported, what that additional meaning is. But as they stand, my difficulty is, the person aggrieved will have to prove two things instead of one thing which generally he is asked to do by almost every Legislature. Then with regard to the words 'reasonable belief.' Supposing a person has to show that an officer did not believe that an act was necessary, I think it is almost impossible for him to prove it. But you may say that the words 'reasonable belief and in good faith' are there. There, my Lord, comes in the difficulty. Supposing in a particular community there is a belief entertained that particular measures, however wrong they may be from the moral standpoint, are necessary for achieving a certain end. Now, taking the moral atmosphere of Germany, for instance, it was considered by all alike, professors, philosophers of law, philosophers of morality, by military men and in fact by all classes, that certain measures which were condemned by the rest of humanity as non-civilized methods could be employed. Well, if you are to judge a German officer labouring under that impression, could not these words 'reasonable belief' protect him, because he believed that they were necessary, the atmosphere in which he moved led him to believe that they were necessary also. Therefore, if you are to judge him by that standard, certainly he ought to be protected. Similarly, supposing the atmosphere in the Punjab in those days was such that the several gentlemen who were responsible felt that there must be a deviation, a departure from standards which are generally considered to be humane and civilized. I need hardly allude to the Saluting order and several other orders that were passed to which allusion has already been made, because it will only tend to embitter feelings and do no good. There are certain orders which cannot be justified by any standard of morality. Now supposing the officers, having regard to the mental atmosphere surrounding them believed that those acts were necessary and reasonable, my Lord, will they be protected? I submit an elaborate inquiry of that description might be opened, I will not say would be opened, but might be opened, if the various theories on which States like India are held and can be held in subjection are to be brought before the law Courts. Therefore there is no precedent for it, it might lead to various difficulties, and I therefore earnestly request that these words be omitted."

[24TH SEPTEMBER, 1919.]

[Sir George Lowndes; Pandit Madan Mohan Malaviya.]

The Hon'ble Sir George Lowndes :—" My Lord, I regret I am unable either to omit these words or to explain any more clearly to my Hon'ble friend Mr. Sarma than I did on the last occasion what the real intention and object of the words are. We had a clear admission of the propriety of this clause in his previous speech when he asked us to adopt the actual wording of the South Africa Acts which the Hon'ble Pandit so violently disputed.

" I explained last time that the words ' in a reasonable belief that the acts were necessary ' are only a translation from the wording of the South Africa Acts ; we could of course use the actual words of the South Africa Acts, that is, acts ' done as necessary.' I think this means ' done as being necessary,' that is, the acts were so done because the men who did them believed that they were necessary. We do not stop there. We say ' reasonably believed ' that they were necessary. We only propose to indemnify men who had a reasonable belief that their acts were necessary. I am sure the Council will accept this as at all events a fair translation of the words which my Hon'ble friend Mr. Sarma would have preferred to have in the Bill.

" Then he talked about the mental atmosphere being immaterial. He forgot, I am sure, the quotation which I read from the speech of perhaps one of the greatest Lord Chancellors in the House of Lords. I quoted it at some length and I do not propose to read it again,— it is here and my Hon'ble friend can see it if he wishes to. Lord Thurlow says that you must take into account the mental atmosphere, that you must consider the circumstances under which a man had to make up his mind as to what he should do in an extreme emergency, and if he made up his mind reasonably, you should not consider *ex post facto* whether the acts he did were necessary. The real test should be whether he had a reasonable belief at the time that they were necessary, and did them in good faith. If Hon'ble Members are going to insert amendments like this in an Act which is intended to protect officers who did their duty in good faith under very trying circumstances, I say an Indemnity Act from this Council is not worth having."

The motion was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord ^{12-10 P.M.} I beg to propose that—

' In the second paragraph of the preamble for the words ' and in a reasonable belief that they were necessary for the said purposes,' the following be substituted :—

' necessarily and properly, in furtherance and execution of the objects for which martial law was proclaimed as aforesaid.'

" My Lord, I have taken this clause from an Act of the laws of St. Vincent, Act No. 189 of 1862. After indemnifying certain officers against acts done by them during the prevalence of martial law, the Act proceeds—' provided always an indemnity hereby granted is granted on this supposition and condition that all such acts, matters and things shall have been done or shall be done *bona fide* necessarily and properly in furtherance and execution of the objects for which martial law was proclaimed as aforesaid.'

" Now, my Lord, I think that this is a much more reasonable provision to adopt than the one that stands at present in the Bill. Here you say that a man should have acted *bona fide*, that is in good faith, and necessarily and properly. That would include a consideration of what humanity demands. That will include also that the thing should have been done, and a reasonable belief will be implied in the phraseology I have suggested. He must act reasonably in finding out that it was necessary and in a proper way."

[*Pandit Madan Mohan Malaviya*; Sir
George Lowndes.]

[24th SEPTEMBER, 1919.]

I hope this amendment at least may find acceptance at the hands of Government."

The Hon'ble Sir George Lowndes:—"If I heard the Hon'ble Member aright he said he had taken these words from an Act of St. Vincent. That is no doubt out of compliment to the Hon'ble Member who is in charge of the Bill. I can see no other reason for his having done so. The Act of St. Vincent goes back to 1862, that is getting on to 60 years ago now, whereas we have tried to follow a more recent model. I have nothing really to add to what I said on the last amendment. The point is this, as I tried to explain, that we do not want in this Bill to make the test whether things were or were not in fact necessary. The fact that they were unnecessary, judged *ex post facto*, is not the test for indemnity in the case of acts done under these very difficult circumstances. What we have got to find is, whether they were reasonably believed to be necessary at the time, taking into account the conditions under which the men who did them had to act. We are not going to examine them on an *ex post facto* basis, or consider, looking back now when all is over, we think they were really necessary or not. That is not my idea of an Indemnity Act. I regret Government is not able to accept this amendment."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, we have had some novel arguments, but the most novel argument I have heard to-day is the argument of the Law Member that a thing is to be rejected because it is ancient. I fear much will have to be put aside in favour of modern ideas as to what should or should not be done. I take it that the fact that a thing is ancient is rather a recommendation. At any rate I am prepared that the matter should be considered on its merits. Let us consider which is better, the provision which is now being proposed by the Government, the paraphrase of the words 'done as necessary' of the Acts of South Africa, or the language of the enactment from which I have borrowed my phraseology, namely, that the indemnity shall be granted upon this supposition that all such acts matters or things shall be done *bona fide*, that is in good faith of course, 'necessarily and properly in furtherance and execution of the objects for which martial law was proclaimed as aforesaid.'

"If this phraseology is adopted, where it would be reasonable to extend indemnity it would be extended, but it would cut off a lot of other acts which may not have been done properly and which may not have been necessary. The Hon'ble the Law Member would not allow any discussion of the question whether certain acts were necessary or not by the phraseology which he has chosen to adopt. How is a man to know what the belief of a particular individual was when he was acting? If you put it on the ground that he should show whether the thing was necessary, that he should show that it was proper, then you are on solid ground, but you are in the regions of vagueness and uncertainty in putting in the phraseology that a thing should be done in a reasonable belief. I therefore hope that unless the Government can find some more substantial argument against my proposition than that it is somewhat ancient as compared to the provisions in the South Africa Acts, they will reconsider the position. This will mean a great change in the outlook of those who may be concerned with such cases. If you retain the phraseology 'in good faith and in a reasonable belief,' you make it a very difficult thing, if not a practical impossibility for the plaintiff to establish a case for damage against a person who may have injured or repressed him. He may come into the box and swear that he reasonably believed that this was necessary and that would be an obstacle. The Act even saves him the necessity of swearing even to that, because the third section of the Act says that that will be presumed if a certificate has been obtained by a Secretary to Government. I therefore

[24TH SEPTEMBER, 1919.]

[*Panji Madan Mohan Malaviya ;
Sir William Vincent ; Rao Bahadur
B. N. Sarma ; the President. ; Mr.
Sachchidananda Sinha.*]

think we are carrying things too far if putting the provision in the present form, and if you accept my suggestion and substitute the words 'necessarily and properly in furtherance and execution of the objects for which martial law was proclaimed,' you would leave a fair chance to plaintiffs to have the justice to which they may be entitled. I therefore press this amendment on the consideration of the Government."

The motion was put and negatived.

The Hon'ble Sir William Vincent :—" My Lord, may I again suggest that the Hon'ble Member should take up this amendment* with his amendment No. 32. I would suggest, with your Lordship's permission, that it would be more convenient to the Council. The present is a consequential amendment on the later one."

The Hon'ble Rao Bahadur B. N. Sarma :—" I have no objection to that ; even if No. 32 is rejected it comes to the same thing."

The President :—" No. 10 *will stand over."

The Hon'ble Mr. Sachchidananda Sinha :—" My Lord, I move that—

'In clause 2 for the words 'any officer of Government whether Civil or Military,' the words 'any police officer of or below the rank of Assistant or Deputy Superintendent of Police and any soldier or non-commissioned officer of His Majesty's Army acting under the orders of their superior officers' be substituted.'

" My Lord, the reason for this amendment is obvious. In the course of his opening speech the Hon'ble the Home Member insisted repeatedly that if this Indemnity Act was not passed, it would be putting in a very serious predicament a large number of soldiers and inferior officers who had taken part in carrying out the orders of their superior officers. I, therefore, propose to limit this class by giving a definition of the officers concerned, as to who the officers will be who will be indemnified by this Act, for all acts done by them. As regards the superior officers, they will be under the common law protected for all acts done in good faith. But if it can be established that certain acts were done by them, or ordered by them not in good faith, if they committed an atrocity or something that should not be done, the law will not protect them. For this reason I propose my amendment."

The Hon'ble Sir William Vincent :—" I think when I explain to the Council what the effect of this amendment would be, every Member of this Council, every reasonable Member, including the Hon'ble mover, will be convinced that it really is an impossible amendment for acceptance. Reading the amendment, it will be seen that it would limit the protection afforded by the Bill to the case of police officers and soldiers. Now many other officers besides police officers have been engaged in the suppression of the disorders, officers both civil and military.

" I am, for instance, informed that *tehsildars* and other revenue officers have been so used. There was also an Indian Sub-divisional Officer at Kasur and there was an Indian Deputy Commissioner in one district besides European Deputy Commissioners in other districts whose services were similarly used, and there is really no reason why the protection which is given to police officers should be refused to officers of this class. Then, again, in the case even of police officers, why is an Assistant or a Deputy Superintendent of Police to be exonerated for acts done in good faith, while a Superintendent of Police is not to receive the same protection? Is that fair, is that reasonable? Is there any reason for

* The Hon'ble Mr. Sarma :—" 10 * That in paragraph 3 of the preamble the following be added ' in certain cases and subject to the limitations specified herein below.'

[*Sir William Vincent; Mr. Sachchidananda Sinha; the President.*]

[24th SEPTEMBER, 1919.]

instance why Mr. Heron, Superintendent of Police in one of the districts, whose name I have heard quoted—I do not happen to know him myself—if he has acted *bona fide* and in the reasonable belief that his action was necessary, should not receive the protection of this Act? Is there any reason why a subaltern or commissioned officer of the Army who has had to take part in quelling these disorders and who would be excluded by this amendment, should not receive the benefit of the Act? I am sure, if he thinks over the effect of his proposal, that the Hon'ble Member will withdraw his amendment."

The Hon'ble Mr. Sachchidananda Sinha:—"I desire to say in reply that the reason why I framed the amendment in this way was that I considered that those officers who may be held to have initiated a certain policy should not receive the protection of the Indemnity Act unless of course, they can show that their acts were done in good faith. That was the only principle on which I framed my amendment. I have nothing further to say."

The motion was put and negatived.

The President:—"With the rejection of that amendment the amendment to be moved by the Hon'ble Mr. Sinha, No. 5* on the paper, with regard to the preamble, will, of course, drop."

The Hon'ble Mr. Sachchidananda Sinha:—"My Lord, I move—

'That in clause 2 for the words 'person acting under the orders of any such officer' the words 'person acting under the orders of any Magistrate, police officer not below the rank of Deputy or Assistant Superintendent of Police, and any commissioned officer of His Majesty's Army' be substituted—

The reason for this amendment is that otherwise the private individual, for whose benefit this clause is intended, might plead that he did a certain act under the orders of a *chautidar* or a constable. That would be certainly carrying, I would not say the joke too far, but the point too far, and, therefore, I have brought in these words to give some substance to the proposition that the officer concerned must be one of a certain standing and not anybody or everybody. On this ground I move my amendment."

1-5 P.M.

The Hon'ble Sir William Vincent:—"This is an amendment of much the same character as the last one: the acceptance of it would involve this consequence, that any person acting under the orders of, say, an Inspector of Police—and I believe an Inspector of Police was actually the senior officer present at one place, Tarn Taran, though I have not verified this point—any person acting under the orders of an Inspector of Police would not be protected, however properly he had acted, however *bona fide* his action might have been. Again, there were many places in which non-commissioned officers of the Army were placed in positions of great responsibility. Is the man who obeyed, *bona fide*, the orders of such an officer not to be protected, if he has acted properly? Was it his duty to ascertain the badges or rank of an officer giving the orders or to inquire of a Police officer 'What are you exactly? Are you an Inspector of Police or an Assistant Superintendent?' I do not think that this amendment will commend itself for one moment to this Council. And I again suggest to the Hon'ble Member that, instead of putting an amendment of this character to the vote, he should exercise a wise discretion and withdraw it."

The Hon'ble Mr. Sachchidananda Sinha:—"There is nothing to withdraw, the result will be the same. It will be defeated."

The motion was put and negatived.

* That in second clause of the preamble the word 'certain' be inserted between the words 'indemnity' and 'officers'. Vide page 433a ante.

[24TH SEPTEMBER, 1919.]

[*Mr. Sachchidananda Sinha; Pandit Madan Mohan Malaviya; Sir William Vincent.*]

The Hon'ble Mr. Sachchidananda Sinha:—"This* is practically the same as the last amendment which I moved (No. 12) and, as that was not accepted, it is no good pressing this."

The motion was by leave withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to withdraw my amendment †."

The motion was by leave withdrawn.

The Hon'ble Mr. Sachchidananda Sinha:—"My Lord, I move that in clause 2 after the words 'British India' the words 'where martial law was established' be inserted.

"My Lord, I do hope that the Hon'ble the Home Member will see his way to accept this amendment, because it will bring the preamble into consonance with the section. The preamble very properly lays down:—

'Whereas owing to the recent disorders in certain districts in the Punjab and other parts of India, martial law has been enforced.'

In section 2 no such limitation is placed and the very general and wide words 'British India' are used. It might lead to some serious difficulty if this Act were applied in other places than the districts of the Punjab or certain other places specified in the preamble. Therefore, I think, the Government might see their way to accept my amendment that the words 'British India' should be limited by the words 'where martial law was established.'

The Hon'ble Sir William Vincent:—"My Lord, I submit this is an unsound amendment. The use of words 'martial law was established' implies in some way that a proclamation of martial law or some formal action of that kind is necessary before martial law is enforced. That is however not the fact. A proclamation of martial law is only the means by which the fact of martial law being in force is made known to the public, I presume that the Hon'ble Member meant by the words 'martial law was established' that martial law had been proclaimed."

The Hon'ble Mr. Sachchidananda Sinha:—"I mean exactly what the Hon'ble Member meant by changing the preamble himself from the words 'it has been necessary for the purpose of maintaining order to resort to martial law' into the words 'martial law has been enforced.' If he will accept the same words in this clause, I shall be quite happy to withdraw the words of my amendment 'where martial law was established.'"

The Hon'ble Sir William Vincent:—"Very well, my Lord. I am informed by my Hon'ble Colleague the Law Member that the use of the words 'where martial law was enforced' is not open to objection, and I am prepared to accept the amendment as modified."

The Hon'ble Mr. Sachchidananda Sinha:—"I am very grateful to the Hon'ble the Home Member."

The amended motion was put and agreed to.

* 13. That in clause 2 the words 'or purporting to have been ordered or done' be omitted.

† That in clause 2 the words 'maintaining or' be omitted.

[Rao Bahadur B. N. Sarma.]

[24TH SEPTEMBER, 1919.]

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I beg to move 'that in clause 2 for the words 'the 30th of March 1919' the words 'the proclamation of martial law therein' be substituted.'

"Then the clause will run :—

'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 of 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 where martial law was enforced on or after the proclamation of martial law therein, etc.'

"This is an important amendment. From the opening words of the Hon'ble the Home Member when speaking to the previous amendment, I can see in a way what the object of putting this particular date, the 30th of March 1919, is. Now, my Lord, we are here on a very important question as to whether this Indemnity Bill is to cover acts done when the civil power was in authority, but merely asked the military to aid it in suppressing disorder as it is entitled to do under the Criminal Procedure Code, or whether it is to be restricted to acts done by officers after the proclamation of martial law.

"In the former event we come to this that it is open to the executive Government to enable its officers, civil and military, to do whatever may be done during the operation of martial law even prior to the proclamation of martial law, when civil courts are sitting and in full assumption of authority and indemnifying them thereafter. My Lord, I submit that is a very dangerous doctrine to lay down. It would be extremely mischievous if the civil authorities or the military authorities who assist them, during the time of peace when the civil authorities are in full direction of the maintenance of order, are to consider themselves as entitled to protection for their acts which are legally indefensible. It would lead to very grave consequences if officers, civil and military, were to be under that impression, or if any indulgence should be shown to the executive Government by protecting their officers in respect of acts which cannot be justified under the ordinary law of the land. I know there are certain passages which can be quoted in support of the position that martial law is after all a technical term for military law, which enforces order when there is grave necessity even though there may be no proclamation, and that proclamation might possibly be construed by constitutional writers as being intended for the protection of the public not to violate certain orders. But, my Lord, we sitting here as a Legislature, and knowing full well that the people have no real voice in the Government, should not allow the executive of the land to take such wide powers or allow executive officers in the country to believe that they can seek protection even for absolutely unjustifiable acts on theoretical grounds. I submit, therefore, that the definition of martial law put forward by constitutional writers tentatively should not be relied upon by the Government as justifying the insertion of the words '30th March 1919.' My Lord, this is a very important question, for the simple reason that martial law was confined chiefly to the province of the Punjab, though, I believe, it was in force in the Bombay presidency for a day or two and never in Delhi at all. It is admitted that before the 10th of April there was no collision between the military, the civil authorities and the people. Consequently, I cannot understand the reason for the insertion of the date 30th March. Martial law was proclaimed by His Excellency the Governor General in Council only on the 14th; it might have been intended to be proclaimed a little earlier, but the earliest date was the 14th April 1919, so far as I can see. It is just prior to that period that various acts of a highly unjustifiable character according to the people were committed. I need hardly allude to the Jallianwala Bagh incident, the belly crawling incident or the aeroplane incident. Those were acts for which the civil and military authorities would have to justify themselves before the ordinary courts in the land in the usual way. To raise

[24th SEPTEMBER, 1919.]

[Rao Bahadur H. N. Sarma.]

a presumption in these cases would be, my Lord, a violent confiscation of the rights of the subject. It may be that those officers can justify themselves before the Committee of Inquiry or before a judicial tribunal; but for us, my Lord, to raise a presumption in their favour on our present information, as this Bill proposes to do, would be absolutely unjustifiable and a travesty of justice. I think, on the other hand, as to the persons who have issued these orders, who have exercised those acts in a transparently high-handed character absolutely—I do not want to prejudge matters one way or the other, but as things stand we have to go upon certain facts—I submit to enable those officers to reap the benefit of these provisions would be to ask the people to believe that the executive Government would do anything to protect its officers whatever may be their high-handedness, and however unjustifiable may be the acts. I hope and pray that the Government will have some regard for public sentiment and re-establish itself in the confidence of the people by showing clearly that it is immaterial how high the officer may be and that justice would be done. We were told that it was under the authority of the civil power that aeroplanes were used in Gujranwala, and that the incidents which occurred on the 13th April at Amritsar, were after the civil power acknowledged its inability to enforce order. Consequently, I think, it ought to be open to the judicial tribunals to go into the question as to whether by the constitutional law of the United Kingdom or India it is open to the civil power to employ aeroplanes under such circumstances or under any circumstances. My Lord, to take protection for all those acts which have been condemned in England even during the time of the war, would, I think, be going too far even in India. I hope, therefore, that the protection will be really given only in respect of acts done after martial law had been proclaimed and not a minute before. Let those officers, if any, be brought either by the Government or by the public before the judicial tribunals in the ordinary course. It is perfectly open to them to show that they acted in good faith and in a reasonable belief that they were only maintaining or restoring order and justice, that the civil power had asked them and that the civil power was justified in asking them to do so. That is a question of fact, as has been proved by constitutional writers, which has to be determined by the judicial courts, namely, the justification of any particular act done in a state of war is ultimately examinable in the ordinary courts. But in the absence of an Indemnity Act the law goes so far as to say that the justification of any act

is a question which can be brought up in a civil court. When the law is so stringent in the absence of an Indemnity Act, we ought to be very careful as to how far we interfere with the common law of the land and the statutory law of the land which lays down the policy for civil and military officers. There are the Criminal Procedure Code and the Indian Penal Code; there are various other penal laws which show clearly the limits within which officers should act during peace time, during the time the civil arm is supreme. No one will venture to say that the civil arm was not supreme before the proclamations. I therefore submit that the Council will see their way to accept my amendment which follows logically and as a natural consequence the acceptance of the principle that an Indemnity Bill follows the enforcement of martial law. The Hon'ble Sir William Vincent has told us in the beginning of his introductory speech in substance as follows 'Martial law has been proclaimed, people have acted on the faith of that; we have proclaimed on the 14th April or some such date that support will be given to every civil and military officer in enforcing order; and acting on the strength of that proclamation we are keeping our good faith with the officers who acted, and here are Hon'ble Members opposing us.' My Lord, I am not referring at all to what has been done after that promise was held out. But that promise was made only on or after the 14th April. There is another point also. Various acts committed prior to the proclamation of martial law would come within the purview of this Act, if 30th March be taken into consideration. Even taking

[*Sho. Bahadur B. N. Sarma ; Sir
William Vincent.*]

[24th SEPTEMBER, 1919.]

the theory that martial law really means law which the military would enforce when the civil arm is weak or unable to maintain order, even assuming that, my submission is that these proclamations were issued for the purpose of giving notice to the people. Even taking that doctrine, my submission is that the 30th March is absolutely unjustifiable, and I hope Government will be able to accept this amendment."

1-32 P.M.

The Hon'ble Sir William Vincent.—"My Lord, the Hon'ble Member now proposes that the period prescribed in this clause for the protection of officers should begin from the proclamation of martial law. If Hon'ble Members will look down the list of amendments they will see, however, that he proposes that the termination of the period during which protection should be given should be the 23rd April, a date long before our notification withdrawing martial law was issued. The date of commencement is to be postponed and the last day up to which protection is to be given is to be antedated. But, my Lord, I want to pass to very much broader objections than this to the amendment. It is one of a series of amendments intended to whittle down the whole effect of this Act. General principles were discussed in great detail in this Council lately, and there was a general consensus of opinion that the principle of the Bill should be accepted; I think there were only three or four Hon'ble members who did not take that view. In such circumstances, it is a very common move to say, 'well, if we have to pass the Bill let us make it ineffective by a succession of amendments,' and the present is one of the amendments intended to effect that object. My Lord, our view is that the whole of these disturbances are one connected whole; that they began with the disturbances of the 30th March at Delhi, and from that date onwards, from time to time, it was necessary to enforce martial law in different places. There was no definite proclamation of martial law in some places at all, nor is any proclamation the essence of the matter. The real question is, when was martial law actually enforced? The Hon'ble Member is aware of the weakness of his position when he said that various quotations would be made to prove that he was incorrect. I have a number of authorities on the point here. I will cite one, a quotation from the Law Quarterly Journal: Mr. Erle Richards, Lord Justice. 'A proclamation is not in any sense essential to the exercise of these powers; it is a convenient notification to the inhabitants that the Commander has assumed control of the district but in no way affects the legality or illegality of his action.' Then I will read a joint opinion by the Attorney General and the Solicitor General in regard to certain disturbances which arose in Canada. 'In any district in which by reason of armed bodies of inhabitants being engaged in insurrection the ordinary course of the law cannot be maintained, we are of opinion that the Governor may, even without any proclamation, proceed to put down the rebellion by force of arms'.

"There are numerous other authorities on the same question, and the law is perfectly clear. In fact, I am not aware that martial law was at any time proclaimed in the Bombay Presidency. If it was I have not seen any notification, I speak subject to correction. If that is so the effect would be if the Hon'ble Member's amendment were accepted, that the officers of Government in Bombay in those places in which martial law was enforced would not get any protection at all under the Bill. There were also certain districts in the Punjab in which the military authorities had to take over control when the civil authorities were not able to cope with the situation, and where martial law was enforced long before it was formally proclaimed by the Government of India. Thus, in Amritsar, the local military authorities in order to preserve peace, had to take over the situation long before or at any rate some time before martial law was proclaimed. The Hon'ble Member went on to say 'why were the ordinary laws, the Criminal Procedure Code and the Indian Penal Code not utilized?' 'Why did these gentlemen not look up these laws and act according to them?' That, my Lord, is exactly the position that I said in the opening debate was impossible. When there is serious disorder which the civil authorities are entirely unable to deal with, an insurrection against the King, is the officer

[24TH SEPTEMBER, 1919.]

[Sir William Vincent ; Pandit Madan Mohan Malaviya ; Rao Bahadur B. N. Sarma ; Sir George Lowndes.]

who has to quell it to run and look up the Criminal Procedure Code or the Indian Penal Code, to discover if there is a section that will protect him before he takes effective action? Such a position is absurd.

"For these reasons, my Lord, it is impossible for the Government to accept the date of the proclamation of martial law as the date from which this clause of the Bill is to protect officers for *bona fide* action."

[At this stage the Council adjourned for Lunch till 3 p.m.]

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, the position taken up by the Hon'ble the Home Member does not come on some of us as a surprise. Hitherto we understood that an Indemnifying Bill was to be introduced in the areas where martial law had been proclaimed and because martial law had been proclaimed. But now the position taken up by the Hon'ble the Home Member is that a proclamation of martial law is not essential, and that if the military take charge of a place where there has been a disturbance, that is sufficient to bring the area in which this happened within the operation of this Bill. My Lord, it is a dangerous extension. It is meant to cover cases which could not be justified without such extension, and it is a great wrong to those who suffered in those areas where martial law had not been proclaimed.

"My Lord, it is hopeless to expect that the Government will go back upon the position taken up by the Hon'ble the Home Member, but we feel that we must enter our protest against this departure. The Hon'ble the Home Member complained that the series of amendments which have been put forward by some of us had only one object, namely, to whittle down the Bill. My Lord, when we cannot entirely prevent the passing of the Bill the next best thing that we can do, is to minimise the evil which its provisions contain to safeguard the interests of the public as much as we can, and to object to as many provisions as are clearly objectionable, and to endeavour to put in as many safeguards as we may be able to press upon the consideration of the Government. I do not think the complaint that has been made by the Hon'ble the Home Member is justified. I hope that if the Government cannot see their way to accept this amendment, they will at any rate recognise that we have reason on our side, and that they have the votes on their side."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, we still hope that the Hon'ble the Home Member will confine the operation of the Bill to areas where martial law had been proclaimed. The Hon'ble Pandit Malaviya has also referred to the very great danger of extending it to areas where the civil arm was exercising its jurisdiction, although the civil officers had to call in the aid of the military for the purposes of enforcing order, it being thought that the police were not able to cope with the evil. There seems to me, my Lord, another great danger, and that is this. It means that any Local Government without coming up here under the provisions of section 71 of the Government of India Act for the purpose of asking the Government of India to frame regulations for their presidencies when the ordinary law is not sufficient for the purpose, can, by virtue of the doctrine now enunciated practically extend martial law to any area within their jurisdiction the moment they feel that the civil power is temporarily unable to cope with disorder in any town or village. I think that was never intended by the constitution. Section 71 of the Government of India Act says 'that the Local Government of any part of British India to which this section for the time being applies may propose to the Governor General in Council to draft any regulation for the peace and good government of that part with reasons for the proposed regulations.' The Government may or may not accept this proposal; that is quite a different matter. Here Hon'ble Members will see that the Punjab Government approached the Government of India . . .

The Hon'ble Sir George Lowndes:—"My Lord, I must protest again at the Hon'ble Member solemnly quoting from the Regulation section of

[*Sir George Lowndes ; Rao Bahadur
B. N. Sarma ; Sir William Vincent.*]

[24TH SEPTEMBER, 1919.]

the Government of India Act which only applies to certain territories like the North-West Frontier. It has no application whatever to the Punjab, to Bombay, to Bengal or to any of the major Provinces."

9-6 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—"There was a power, I know, by which the Presidency Governments were also empowered by Statute to approach the Government of India for aid where they felt the ordinary law was insufficient. My argument does not cease to have any force even if section 71 is inapplicable to this particular case. My argument is that whether the Regulation applies to this case or not, the new doctrine that martial law can be enforced by a Governor or the head of a province and people can be handed over to the tender mercies of the military who can frame new laws, new penalties and do anything they like the moment they feel that law and order cannot be temporarily coped with with the aid of the civil force alone, is entirely a wrong doctrine. My point was that the law takes note of these difficulties where the civil arm is insufficient and makes it an incumbent duty upon the military officers to help the civil. But in all these cases prior to the actual proclamation of martial law the civil power would be responsible and the ordinary law would guide the courts in deciding the legality of the actions of men who have acted during that period. Now the constitutional writers who refer to the fundamental basis of martial law merely refer to the common basis of the power of the Crown to enforce order whether martial law is proclaimed or not. They simply say that necessity is the basis of martial law. Ordinarily, therefore, even without the proclamation of martial law the civil power has got jurisdiction to arm itself for certain purposes to quell disorders, but only so much force as is necessary should be employed. Therefore the fact that there is a common basis for the two does not, I submit, empower the executive Government to treat the two as exactly parallel and ask that the civil or the military officers who had exercised jurisdiction are entitled to seek the protection of an Indemnifying Act even before the proclamation of martial law. I would only suggest, if there be any difficulty about the fixing of dates, the words 'the enforcement of martial law' may be used so as to cover any difficulty, but I do not think that the real point would be met. But I throw out this suggestion to the Hon'ble the Home Member, because on a previous occasion instead of the words 'proclamation of martial law' he accepted the words 'enforcement of martial law'. Of course whether the words 'enforcement of martial law' would cover a particular case will be dealt with by the Tribunals when the cases come up."

The motion was put and negatived.

9-10 P.M.

The Hon'ble Sir William Vincent:—"My Lord, I move 'that in clause 2 for the words 'the commencement of this Act' the words 'the 26th of August 1919' be substituted.'

"My Lord, when I moved for leave to introduce this Bill, this clause which extended the period during which special protection was afforded to our officers up to the commencement of the Act, was the subject of justifiable criticism. Since then I have again looked up the dates on which martial law was actually proclaimed and the dates on which it was withdrawn in the different areas. The dates on which it was proclaimed vary from the 13th April to, I think, the 22nd of April. The dates on which it was withdrawn vary from the 28th May to the 28th of August. I ought to explain, however, that after the 11th of June martial law was enforced only in railway lands in the Punjab, and that it was enforced there only by reason of the military requirements during the Afghan campaign. It was then obviously of paramount importance that military operations for the transport of troops and munitions should not be impeded by any disorders on the railway or by any interruption of communications.

"The areas of the Punjab in which martial law was at the time in force were disturbed areas, and there was considerable risk of communications being

[24TH SEPTEMBER, 1919.]

[Sir William Vincent ; Rao Bahadur
B. N. Sarma.]

interrupted if we relaxed military control of the railways : for that reason martial law was continued in the railway areas only up to midnight of the 25th of August this year, and that date has therefore been fixed upon now as a convenient date up to which the special protection afforded to our officers should be extended."

The Hon'ble Rao Bahadur B. N. Sarma:—"If this amendment is accepted my amendments entirely fall to the ground, because the amendments I have suggested, are that the operation of this Bill should be confined to the 23rd of April. The reason why I suggested the 23rd of April was that, as far as I could gather from the Press Communiqués which were quoted in the book 'Punjab Disturbances,' the disturbances ceased on that date. I see that there was real trouble with regard to railway and telegraph communications, wires being cut and so on, until about the 21st of April. I pointed out on a previous occasion that both the Communiqués of April 22nd and May 2nd showed that the Province had quieted down, although it may be as a matter of precaution the military were there to see that no further disturbances broke out. The following Communiqué was issued :—'Lahore April 22nd, situation well in hand and reports of the districts contain no disturbing items' except cutting of telegraph wires near Chakki bridge, Kangra District."

3-12 P.M.

"And then a Communiqué of May 2nd gives a list of all the occurrences with reference to the cutting of wires and the derailment of trains and so on, and as far as I could gather, the period that this covers is up to about the 21st of April. Later on the Communiqué states :—'The injury which has occurred since 21st April, but the operation of martial law had by that date already begun to have their effect and subsequent interruptions were comparatively few.'

"I shall proceed on the basis that martial law had this effect, even assuming for argument's sake that there were a few interruptions later on.

"I have stated already the fact that martial law can be legally enforced only so long as there was necessity therefor and not one moment longer. It would be a usurpation of absolute power, an exercise of lawless law, if it is kept one moment longer. I realise that you may have to keep the force active in order to guard against a future recurrence of events, but my submission is that that would have to be done under the ordinary law of the land, and martial law proper would cease to have operation the moment the disturbances are quelled, and that is a very important doctrine to maintain in a country like India, because the executive are not really controlled by the Legislature, and it is necessary that they should be chary of any attempt to keep these lawless laws in operation one minute more than is absolutely necessary. I submit that any action that might have been taken by the Government subsequent to that should be considered as having been done under the ordinary law of the land, that is under the civil power, and should not be brought within the jurisdiction of the military courts. It is only for that purpose that I have brought in this amendment that martial law should, as martial law, be considered to have ceased on the 23rd of April for the purposes of this Bill."

The Hon'ble Sir William Vincent:—"I am glad at last to obtain an admission from the Hon'ble Mr. Sarma that up to the 23rd of April there was serious disorder, because for some time in this Council a definite attempt was made to make out that nothing occurred at all but a little local rioting which was not of a serious character"

3-12 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—"May I say I did not agree with the question ; I assume it was so."

[Sir William Vincent ; the President.]

[24th SEPTEMBER, 1919.]

The Hon'ble Sir William Vincent:—"The Hon'ble Member may now use the word 'assume.' What he did do was to admit the fact and it is a great advance on previous statements. The Hon'ble Member went on to suggest that, at any rate, this violent form of disorder had ceased on the 23rd April. But, my Lord, I drew attention just now to the position of the Hon'ble Member in this matter. He did not wish clause (2) to take effect from the date on which the disorder began. Then he said 'No, you must stick to the date of your proclamation.' But when it is a question of determining the period during which protection by the Act should be afforded, he will not take the date on which the notification withdrawing martial law was issued. He says, 'No, you must come back to the actual facts, irrespective of the date on which martial law was withdrawn. And I maintain there was no disorder after the 23rd.' Well I suggest to the Council that this is not reasonable. Responsibility for declaring martial law rested with the Government of India, acting on the advice of the Local Government, and I read to this Council the telegram upon which we acted. The position then of our officers was this; they were aware that martial law was in force; they were therefore acting under orders. Provided that they acted *bona fide* and in a reasonable belief that their action was necessary, are they to be deprived of protection because Members of this Council may say the Government continued martial law too long, or are they not entitled to plead 'We were acting on the orders of the Government as set out in notifications which had been issued in the Gazette'? I want the Council, however, again to remember that we do not claim the protection of those men if they have acted *mala fide* or improperly; it is *bona fide* action taken in a reasonable belief that it was necessary alone that is protected. Now is it much to ask the Council to protect such men for such action during a period while the Government of India themselves rightly or wrongly declared that martial law was necessary? That is the point that I want to make to the Council. My Lord, it is often assumed that directly the military authorities have quelled the open disorder and disturbances with which they are called to deal, they must at once abrogate their authority to the civil authorities. I do not know how far that is good constitutional law, but there is good authority for the proposition that the actual presence of violent disorder is not essential to the continuance of martial law, and this has been laid down by no less an authority than Pollock, when he says 'that the absence of visible disorder and the continued sittings of the court even are not conclusive evidence of the state of peace.' There is another well known case on the point from India in which, although the courts had been open for six months and the Privy Council held that the seizure of property by the military authorities on the plea that martial law was in force, was perfectly justifiable because the war had not at the time ceased. Further, as a matter of common sense, the fact is that once you have established martial law to quell an open insurrection, it would be the height of folly, and, I think, Hon'ble Members of this Council will agree with me, it would really be the height of folly to abrogate it unless you have some reason to believe that the civil authorities could control the situation if martial law was removed. If you thought that the position was such that the military authorities would have immediately to be called in again, it would be idle to stop martial law or make over control to the civil authority. Such conduct would be doubly unwise on an occasion like the present when we were at war with a power on the frontier in close proximity to the Punjab. The date I propose for insertion in the clause, the 26th of August 1919, is actually the date on which the last notification withdrawing martial law was issued by the Government, and that is the reason for fixing that date in the Bill."

(After the Hon'ble Sir William Vincent had finished speaking, the Hon'ble Pandit Madan Mohan Malaviya rose.)

The President:—"Order, order. The Hon'ble Member has replied."

[24TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya; the President.]

The Hon'ble Pandit Madan Mohan Malaviya:—"I was going to ask your Lordship whether I was entitled to speak, because the Hon'ble Mr. Sarma

The President:—"You should have taken the opportunity of speaking immediately after the Hon'ble Mr. Sarma.

"If this amendment of Sir William Vincent's is carried, it will involve the rejection of all amendments down to amendment No. 22."

The motion was put and agreed to.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, 3-23 P.M. I beg to move—

'That in clause 2 for the words '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' the following be substituted:—

'Provided always, that the indemnity hereby granted is granted upon this supposition and condition, that all such acts, matters and things shall have been done *bona fide*, necessarily and properly, and without needless severity, in furtherance and extension of the objects for which martial law was proclaimed as aforesaid.'

"My Lord, in speaking to a similar amendment earlier in the debate, I drew attention to the fact that I have taken the language of this amendment from the Act of St. Vincent. My Lord, in this particular amendment I have introduced four words which are not to be found there, namely, 'and without needless severity'. I submit, my Lord, that it is desirable that we should substitute the amendment which I propose, in order that it might be possible for those who have suffered to have redress of their grievances. This is a measure which is being passed without the report of the Committee of Inquiry which has been appointed being laid before this Council. That imposes upon this Council the duty of more closely examining the provisions of the Bill. My Lord, if the Bill is passed as the section stands, I submit it will be very difficult for any person who has been damaged or injured by the operation of martial law to obtain a redress of his grievances, and in support of the view which I have submitted to the Council, I would invite attention to the debate that took

The Hon'ble Mr. Sarma:—

18. 'That in clause 2 for the words 'and before the commencement of this Act' the words 'up to the 23rd April 1919' be substituted.'

The Hon'ble Mr. Sarma:—

19. 'If amendment No. 18 be rejected. That for the words 'and before the commencement of this Act,' the words 'until the suppression of the disorders' be substituted.'

The Hon'ble Mr. Sarma:—

20. 'If amendment Nos. 18 and 19 be rejected. That in clause 2 for the words 'and before the commencement of this Act' the words 'during the continuance thereof' be substituted.'

The Hon'ble Mr. Sinha:—

21. 'That in clause 2 for the words from 'on or after the 30th March' to 'this Act' the words 'during the period when martial law was in force' be substituted.'

The Hon'ble Mr. Malaviya:—

22. 'That in clause 2 for the words 'on or after the 30th of March, and before the commencement of this Act,' the words 'during the continuance of martial law' be substituted.'

[Pandit Madan Mohan Malaviya ; Sir
William Vincent ; the President.]

[24th SEPTEMBER, 1919.]

place in the House of Lords in 1818. An Indemnity Bill was to be introduced there, but before it was introduced a Committee of Inquiry had been appointed and had reported. In introducing the Bill the Duke of Montrose claimed that it was a corollary from that which had preceded it, namely, the suspension of the Habeas Corpus Act, and he urged that an Indemnity Bill was a necessary consequence of the suspension of that Act. This is the view which has been urged by the Hon'ble the Home Member and the Hon'ble the Law Member. We have been told repeatedly that an Indemnity Bill was an inevitable consequence to the introduction of martial law. Here, my Lord, what the Premier said on the discussion which was raised by Lord Lansdowne was that—

'after such a report as that presented to Their Lordships by the Committee, a Bill of Indemnity seemed to follow as a measure due in justice to those who had been entrusted with the difficult task of carrying the act of suspension into execution.'

And he said :—

'The Government were anxious to lay all the information with respect to their conduct before the Committee of the two Houses of Parliament in order that they might know how they exercised the powers entrusted to them generally and particularly, and judge from that how far they were entitled to such protection as they now came forward to apply for. They did not ask for it as a necessary consequence of the suspension of the Habeas Corpus Act, but on the ground of the belief expressed by the Committee that the powers committed by Parliament to their discretion had not been abused. That and that alone was the ground upon which they stood before Parliament and the country. The Bill did not follow as a matter of course. The conduct of Ministers had been referred to a Committee. From the report of the Committee it appeared that all the detentions which took place under the suspension were fully warranted by circumstances and, if Their Lordships had any confidence in that report, they must in justice and in fairness grant the protection the Bill now proposes.'

'Now, my Lord, let us see how these remarks have a bearing upon the proposal before us. Here martial law was proclaimed at a time somewhere between the 18th and 15th of April. This was continued up to the 26th of August. There have been many protests, many representations to Government, that the continuance, at any rate, of martial law was not justified, and it was on that ground that one of your Hon'ble Colleagues laid down the reins of his office. Now, my Lord, the Government have recognised the wisdom, the justice, of appointing a Committee of Inquiry to consider how far these matters, these complaints, were justified or well-founded. That Committee of Inquiry has not yet met. The complaints, the allegations, to which I drew attention are to be laid before that Committee and that Committee has to make its report. Assuming the Committee come to the conclusion that the introduction of martial law was justified, the next question for them to consider and answer would be whether its continuance was justified, and, if so, up to what period of time, because every detention of every single individual—and I understand the number is over 1,000 of those who are at present in jails.

The Hon'ble Sir William Vincent :—" My Lord, may I rise to a point of order, to inquire whether this is relevant to the particular amendment before the Council ? "

The President (to the Hon'ble Pandit) :—" Will you show me how it is relevant ? "

The Hon'ble Pandit Madan Mohan Malaviya :—" In this way, my Lord, very easily. It is relevant to show that the language used in this section should be as I suggest, namely, that only acts done *bona fide*, necessarily and properly, and without needless severity, should be indemnified. The object of my remarks is to show to your Lordship that it is yet a question for the Committee to consider whether the continuance of martial law and the detention of so many prisoners who have been detained in jail was necessary,

[24th SEPTEMBER, 1918.]

[Pandit Madan Mohan Malaviya; The President; Sir George Lowndes.]

whether it was proper and whether it was carried out without undue severity during the period up to which this martial law existed

(The Hon'ble Sir William Vincent here rose again.)

The Hon'ble Pandit Madan Mohan Malaviya:—" May I finish my remarks; I am explaining the reasons why my speech is relevant to the amendment

The President:—" I hope you will give me some better reasons, because, at present, I am not satisfied."

The Hon'ble Pandit Madan Mohan Malaviya:—" I am giving my reasons. It is for you, my Lord, to judge whether they are right or wrong. What I submit is that there are numerous persons who have been detained and who are undergoing imprisonment. In the case of many of these persons they desire to bring suits to test the validity of the detentions. If the indemnity is granted in the general terms in which it is proposed in the Bill before us, it will be a very difficult thing for them to have a chance of proving their case. If the words which I suggest are substituted, namely, that it is only those acts which have been done *bona fide*, necessarily and without needless severity, that it is only such acts which will be indemnified, then, I submit, they will have a better chance of having redress of their grievances. That is the reason of my amendment

The President:—" If you confine your remarks to the matters and things that have been done *bona fide*, necessarily and properly, and without needless severity, you will be in order, but you will not be in order if you travel outside the discussion of those words."

The Hon'ble Pandit Madan Mohan Malaviya:—" Thank you, my Lord; I shall so confine myself.

" My Lord, from the statements laid on the table by the Hon'ble the Home Member the other day in answer to some of my questions, the Council will have seen what a large number of persons has been kept in imprisonment, and I submit that for them it will be easier to prove that certain acts were not done *bona fide*, necessarily and properly, and without needless severity than it would be for them to prove that certain acts were done in good faith in a reasonable belief that those acts were necessary. For these reasons, I commend this amendment to the consideration of the Council."

The Hon'ble Sir George Lowndes:—" My Lord, this amendment has really been discussed over and over again; and I have explained why we use the words acts done in good faith and in a reasonable belief that they were necessary. It is no good my explaining them any more. If I explained the intention fifty times, the Hon'ble Pandit would not understand. There is no one so deaf as he who will not hear. The Hon'ble Pandit again cited the Act of St. Vincent, which is, I think, going back to an ancient and, if I may say so, an insignificant precedent. If the Hon'ble Pandit prefers the British Statutes, let us by all means go back to the precedent of 1780 under which all acts which were done for the suppression of rebellion were to be validated. That is the formula adopted there. If the Hon'ble Pandit thinks that it has the sanction of time, I am quite willing to follow it. We have tried to put before the Council a more modern formula and a reasonable limitation of both validation and indemnity by the clause proposed in this Bill. If the Council thinks otherwise by all means let us go back to the beginning; not to the St. Vincent Act, which is hardly a worthy precedent for this Council to copy—let us go back to the British Statutes of the end of the 18th century. I have explained over and over again why I personally prefer the drafting

3-33 P.M.

[*Sir George Lowndes; Rao Bahadur
B. N. Sarma; the President.*]

[24TH SEPTEMBER, 1919.]

which has been adopted in this Bill, and, I think, it is clear why the Hon'ble Pandit objects to it. I submit the Council should not do anything of the sort."

The motion was put and negatived.

1-55 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I move that in clause 2 for the concluding words 'it is hereby discharged' the words 'the provisions of this Act shall apply thereto' be substituted."

It is a formal amendment which I have moved that if there be any proceeding already pending, it should be open to the plaintiff or prosecutor to show that the officer did not act in good faith and in a reasonable belief, and I do not think the Hon'ble Member intends that an action should be dismissed without giving the party an opportunity. 'If any such proceeding has been instituted before the passing of this Act' are, I think, very wide terms; and that is the reason why I have brought forward this amendment. It is a mere formal amendment."

The Hon'ble Sir George Lowndes:—"My Lord, again, I am afraid, Government are unable to accept this amendment. The plain and simple words are 'it is hereby discharged'; those are the words which have been used in the Acts which we have copied—the South Africa Acts and others. The Council may also be interested to know the wording proposed in the Indemnity Act which is either now before Parliament or will very shortly be. It is a general Indemnity Act practically for the whole Empire in respect of things done during the war. The actual words which we have adopted are to be found in this the most recent piece of drafting available. The words there used are: 'If any such proceeding has been instituted, whether, before or after the passing of the Act, it shall be discharged and made void.' We only go as far as 'discharged'; we do not think it necessary to put in the words 'made void.' I am not discussing the merits of the clause, I am only pointing out that we have followed the most modern form available."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, if the Hon'ble the Law Member had told me that if there be any proceeding instituted it would be governed by the provisions of this Bill and that the party would be entitled to show that the officer acted in bad faith or without reasonable belief, I would have been content. There is no use telling me that there are other Acts in which similar words were employed and that we are only following the modern drafting. The question is as to what by the use of this very wide language is intended. I do not think that it was the object to have all actions discussed apart from their merits, and therefore I brought in this amendment."

The Hon'ble Sir George Lowndes:—"My Lord, may I give the Hon'ble Mr. Sarma the fullest assurance that that is the intention. It is, I think, clear that that is the meaning of the words and nothing more."

The motion was put and negatived.

The President:—"The next three amendments are identical. The first is to be moved by Mr. Sarma, the second* by Mr. Malaviya and the third* by Mr. Sinha. The fate of the three will be decided upon the first."

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I move that in clause 3, the words from 'and all action' to the end of the clause be

* **The Hon'ble Mr. Malaviya:**—

26. 'That in clause 3 the words from 'and all action' to the end of the clause be omitted.'

The Hon'ble Mr. Sinha:—

27. 'That in clause 3 the words from 'and all action taken' to the end of the clause be omitted.'

[24TH SEPTEMBER, 1919.]

[Rao Bahadur B. N. Sarma; Pandit Madan Mohan Malaviya.]

omitted.' I did not intend to move this amendment if my amendment about 'reasonable belief' and about limiting the operation of this Bill to the period covered by the martial law proclamations had been accepted, because I realised that during that period this presumption in respect of acts done by officers ought to be raised, namely, that they had acted in good faith, and it would be for the other party to show that the acts were not done in good faith, and all the precedents are in favour of that proposition. I need not go over the ground again covering the period before the actual proclamations and after the actual necessity, according to some others, had ceased. We cover the incidents in Amritsar and Gujranwala and other places which we feel justified in the extension of this presumption in favour of the officers. Those are the grounds upon which I rely for asking that these words should be deleted from this clause."

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, I will add only a few words and two opinions to what has been said by Mr. Sarma in support of this amendment. We urge that the words which we have indicated should be omitted so that the onus of proof will not be thrown upon the plaintiff or complainant, to prove that the person who assailed his honour or his liberty did not act in good faith and reasonable belief. Now, my Lord, this is in conformity with the Statutes of Parliament and the English opinion. I will cite two weighty opinions on this question.

3-40 r.m.

"When the matter was being discussed in the House of Commons Mr. John Stuart Mill said :—

"There may be a public necessity in the case of rebellion requiring that certain acts not justified by the ordinary law of the country should be done, but these acts should be acts of suppression and not of punishment. Now a point which has not been noticed and to which I attach the highest importance is this—that in a case of public necessity those who act upon it, and do under the supposed necessity that which they would not ordinarily be justified in doing, should be amenable to the laws of their country for so doing. As in the case of killing any person in self-defence so in the case of putting any person to death in defence of the country, the person who does it ought to have the onus thrown upon him of satisfying the ordinary tribunals of the country that the necessity existed.

What therefore we say does not exist, and ought not to exist, and which if it does not exist we should do our utmost to put an end to, is the idea that any proceeding such as a declaration of martial law, can or ought to exempt those who act upon it from amenability to the laws of the country. We contend that the law of necessity, of which nobody denies the existence, would justify the executive in doing these things, if no such thing as martial law had ever been heard of, and that by using the term martial law you ought not to be able to get rid of all responsibility. We demand that the officers of Government of this country should not be able to escape or get out of the region and jurisdiction of the law; but, that whatever they do, if it be against the law, they should be compelled to justify. They must show the necessity which existed, not to the satisfaction of a court-martial merely, but of the regular tribunals of the country.'

"Now, my Lord, I submit that this weighty opinion should have some value with the Government of India. This was the opinion of a philosopher, a statesman and a legislator. Let me quote to Council the opinion of a Judge, Chief Justice Cockburn. In discussing an Indemnity Act he laid down, in no equivocal terms that 'it should be confined to acts honestly done in the suppression of existing rebellion and under the pressure of the most urgent necessity. The present indemnity is confined to acts done in order to suppress the insurrection and rebellion and the plea contains consequently the necessary averments that the grievances complained of were committed during the continuance of the rebellion and were used for its suppression and were reasonably and in good faith considered by the defendant to be necessary for the purpose; and it will be incumbent on the defendant to make good these averments in order to support his plea.'

[*Lanceit Madan Mohan Malaviya ; Mr. Sachchidananda Sinha ; Mr. Shafi.*]

[24th SEPTEMBER, 1919.]

"My Lord, the Bill before us would make it incumbent upon the defendant to support his plea and on the plaintiff the necessity of proving that the defendant had not acted in good faith and in the reasonable belief that his action was necessary for suppressing disorders. I submit that this is without justification and it is a pity to my mind that the Hon'ble the Law Member should have gone to the Legislature of South Africa for the clause which he has inserted in the Bill. I submit that we should adhere to the views expressed by John Stuart Mill and by Chief Justice Cockburn of leaving the onus on the person on whom it naturally and reasonably lies. Who can give evidence? The man who pleads good faith. Who can say he had a reasonable belief in a particular thing? The man who had that belief. Thus you are asking another man whom this person has assaulted or injured to give proof of the non-existence of good faith; of the non-existence of a reasonable belief. You are putting the cart before the horse; you are doing an injustice to those men who are seeking redress. I will quote the words of Lord Holland in a debate in 1818 regarding the suppression of disorder—

'After having mangled the limbs of a man without trial and without proof of guilt it was a horrible crime to deny him redress by passing an Act to protect his prosecutor.'

"The Government, my Lord, are throwing upon the plaintiff the burden of proving what it is, not reasonable possibly for him to do."

2-45 P.M.

The Hon'ble Mr. Sachchidananda Sinha :—"I should like to add a word in support of this amendment. I think it will be hard on the plaintiff or the prosecutor to have to prove his case, if the clause stands as it is. The Hon'ble the Law Member said the other day that in ordinary criminal cases the burden of proof is cast on the prosecutor. This is certainly true. But he will agree with me when I say that in criminal cases the prosecutor is discharged from responsibility when he has made out a *prima facie* case. When an accused person is put on his defence then the onus is shifted to him and he must then bring his conduct within the purview of any exception of the law. Similarly, I submit that to hold the plaintiff responsible to prove not only the want of good faith but also of the reasonableness of belief in the mind of the defendant would be certainly to place upon him a burden that he cannot possibly discharge."

2-47 P.M.

The Hon'ble Mr. Shafi :—"My Lord the amendment moved by my Hon'ble friends, everyone of whom belongs to the legal profession, raises a question of law of considerable importance and, with your permission, I propose to deal with it from the strictly legal point of view. At the very outset I wish to emphasize the fact that, in order to arrive at a correct conclusion with reference to this question, it is essential for Hon'ble Members to bear in mind what clause 3 exactly enacts. Now, even a cursory analysis of this clause will make it clear that it can be divided into two parts. The first portion of this clause relates to the evidential character of the Secretary's certificate in connection with the first issue in such cases, i.e., whether the action was performed under the orders of an officer of the Government. With reference to this portion of the clause, no Hon'ble Member has raised any objection whatever, and I take it that this portion of the clause is acceptable to everyone of them. The clause then proceeds :—'and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in reasonable belief that it was necessary therefor unless the contrary is proved'. In other words, the onus of proof of absence of good faith and of a reasonable belief will be on the plaintiff or prosecutor, as the case may be. This being so, the question arises whether the position which embodied in this clause is a novel one, incapable of being supported either by general principles or by precedent, or is it a position

[24TH SEPTEMBER, 1910.]

[Mr. Shaft.]

which is justified by general principles as well as by authority. Now, my Lord, in the very remarkable address delivered by him the other day when the Hon'ble the Law Member made a comprehensive survey of the constitutional aspect of martial law, he cited precedent after precedent from various countries within the British Empire from which it was perfectly clear that whenever and wherever martial law had been introduced, it had invariably been followed by an Indemnity Act. Hon'ble Members will remember that he cited the corresponding clauses in these Indemnity Acts in order to show that in seeking to enact clause 3 we were not making any new departure whatever. In ordinary circumstances a reference to that speech would have been quite sufficient to meet the situation, but on this occasion I propose, with your Excellency's permission, to go a little further in order to establish three propositions. The first of these propositions is that the position which is enacted in the second portion of this clause is one which already finds place in more than one of the Acts which have been passed by the Indian Legislature; the second is that it is in perfect consonance with the statutory rules of evidence as obtaining in this country, and the third proposition is that it is justified by judicial authority. Now, turning to the first proposition, as far back as the year 1850, an Act was passed by the Indian Legislature in order to protect Judicial officers in respect of acts which may have been done without jurisdiction but in good faith, Act No. XVIII of 1850. To section 1 of that Act I beg your Excellency's permission to refer. This is what is laid down—

'No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction; provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.'

"Now, my Lord, in a leading case on this section their Lordships of the Privy Council in a judgment reported in 2, Moore's Indian Appeals, at page 293, laid down the following principle. I am afraid I must correct myself. This rule was not based on this particular section, but was based on the corresponding section in 21, Geo. III, cap. 70, sec. 24. Their Lordships held that the section protecting the Provincial Magistrates in India from actions does not confer unlimited protection, but places them on the same footing as those in English Courts by a similar jurisdiction and only gives them an exemption from liability when acting *bona fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a judge for acting judicially but without jurisdiction unless he knew or had the means of knowing of the effect of jurisdiction; but now mark what follows 'and it lies upon the plaintiff in every such case to prove that fact.'

"Now, my Lord, the Hon'ble Pandit thought it was very extraordinary that the onus of proving the absence of good faith should be placed upon a plaintiff in a case such as this. Your Lordship will see that this is exactly what their Lordships of the Privy Council laid down in this ruling, i.e., that it will be for the plaintiff to prove that the Magistrate acted otherwise than in good faith in cases of this description.

"Turning now to section 43 of the Police Act, No. V of 1861, it enacts as follows :—

'When any action of prosecution shall be brought or any proceedings held against any police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the warrant directing and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour.'

"That is to say, under this enactment the mere production of the warrant directing the police officer to do a certain thing will entitle him to a verdict in his favour and a suit against him shall be dismissed.

[*Mr. Staff.*]

[24TH SEPTEMBER, 1910.]

" Now, your Lordship will see that the provision which I have just read out is analogous to the first part of clause 3, and if we had stopped at the end of the first part, we would have been perfectly justified in doing so, because there is the precedent of the Police Act in its favour; but in the present enactment, we do not stop there; we go on to say that the act must have been done in good faith and so on. Therefore, it is perfectly clear that the present Act is justified by the precedent of the Police Act also.

" Turning, my Lord, to the Statutory Rules of Evidence as obtaining in India, it seems to me that it is unquestionable that the onus of proof as laid down in the clause under discussion is in perfect consonance with the provisions of the Evidence Act. Let me in this connection invite the attention of the Council to two facts. The proceedings instituted by the person against whom action has been taken will either be criminal or civil. Now in criminal cases, it is one of the fundamental principles of criminal administration in all civilised countries, that the accused must be presumed to be innocent until his guilt is established by the prosecutor so that the onus of proof lies in every criminal case on the prosecutor to establish the guilt of the accused. No authority is required for this A. B. C. of Criminal Law, but if the Hon'ble Pandit who, I believe, has given up practice for a large number of years, requires an authority, I will only mention section 101 of the Indian Evidence Act and invite his attention to illustration A below that section :—

' A desires a court to give judgment that B shall be punished for a crime which A says B has committed the crime. And the onus of proof lies on the prosecutor.'

" Now, my Lord, turning to cases of civil proceedings, sec. 102 of the Indian Evidence Act enacts as follows :—

' The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.'

That is the general principle laid down in the Indian Evidence Act regarding the question of onus of proof. Now if in a civil suit a plaintiff were to come into court and ask for damages against the defendant officer of Government on the ground of certain action done by that officer, it is obvious that if no evidence were produced on either side, it is the plaintiff who must fail; his suit would naturally be dismissed if no evidence is produced on either side. And may I remind my three learned friends that this question is really concluded by authority. The case which, under these circumstances, will be instituted will be of the class of cases which are characterised as suits for damages for malicious prosecutions. It has been laid down by their Lordships of the Privy Council and by all the High Courts that even in cases where an accused person has been discharged or acquitted, whether in the Original Court or on appeal, when that person, in his own turn, comes into a civil court and asks for damages for malicious prosecution as against the prosecutor, he must, in spite of his discharge by the Criminal Court, establish three propositions. Firstly, that he was innocent of the crime with which he was charged, secondly, that the prosecution was malicious, and thirdly, and this is the most important point to which I wish to invite the attention of the Council, it is for the plaintiff to prove absence of reasonable and proper cause on the part of the defendant. That rule is obviously analogous to the rule which is embodied in the proposed clause. I need not cite in support of this position a long string of authorities which can be cited. It is sufficient for me to invite attention to only two leading authorities on this position. The Privy Council judgment in *Indian Law Reports* 25, Bombay, 322, Judgment by Lord Macnaghten, and the Calcutta High Court Judgment reported in *Indian Law Reports*, 28, Cal. 391, Judgment of Sir Francis Maclean, Chief Justice.

[24TH SEPTEMBER, 1919.]

[*Mr. Shafi; Sir George Lowndes; Pandit Madan Mohan Malaviya; Rao Bahadur B. N. Sarma.*]

Therefore, my Lord, I submit that, on the ground of judicial authority, on the ground of precedent, on the ground of statutory rules of evidence, the onus is rightly placed on the plaintiff or the prosecutor in this clause when he comes into court either claiming damages or charging the accused person with an offence under the criminal law of the land, and, I submit, therefore that the principle of onus laid down in this clause is not only not extraordinary, but is the rule which already prevails, and in consequence, we are not enacting anything new."

The Hon'ble Sir George Lowndes:—"My Lord, this is not an amendment which Government can accept, and I am in some difficulty in dealing with it. My Hon'ble friend Mr. Sarma told the Council that he was willing to accept the position that it should be assumed that acts were done in good faith and were necessary until the contrary is proved in all cases of what I would call statutory law. But my Hon'ble friend would not apply the same rule to cases under non-statutory martial law. I am in a difficulty as to this, as I do not understand his differentiation between the two. Then came the Hon'ble Pandit who would not accept it at all. This is a case in which I am afraid the St. Vincent Act did not help the Hon'ble Pandit, and therefore we did not hear anything about it. The Hon'ble Pandit's argument was based on a passage which, I think, he quoted from a newspaper called the 'Servant of India' referring to an argument by Chief Justice Cockburn, not as a Judge, I understand, but in a discussion on some Indemnity Bill of which the Hon'ble Member did not give us any particulars. As far as I know, an Indemnity Bill on the lines of Lord Cockburn's argument was never passed by Parliament."

The Hon'ble Pandit Madan Mohan Malaviya:—"It was as a Judge that that remark was made by Lord Cockburn."

The Hon'ble Sir George Lowndes:—"I can carry it no further than the narrative in the 'Servant of India' which I have before me. It refers to a remark by Lord Cockburn in discussing an Indemnity Bill. I know no more about it, nor, I think, does the Hon'ble Pandit."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I mention that it will be found in 4 Queen's Bench Division, which is where I think that case was reported?"

The Hon'ble Sir George Lowndes:—"Again I say that, so far as I know, such an Indemnity Bill was never passed by Parliament. It was apparently a suggestion by an eminent authority as to what should be put into an Indemnity Bill, but the suggestion does not appear to have been carried into effect."

"I think the Council may be interested to hear a relevant clause of the general Indemnity Bill which is, I believe, now before Parliament."

"The clause provides, as our Bill does, for certificates that acts were done under authority and goes on to say that 'any such act, matter or thing done by or under the authority of such person shall be deemed to have been done in good faith unless the contrary is proved.'"

"That is one of the terms of the Imperial Bill now before Parliament, and our clause follows it very closely."

The Hon'ble Mr Rao Bahadur B. N. Sarma:—"My Lord, my Hon'ble friend Mr. Shafi has obliged us by discoursing upon the rules of evidence and upon the previous history of enactments with regard to the onus of proof. I do not think anybody here need be told that the plaintiff or the

[*Rao Bahadur B. N. Sarma ; Sir
William Vincent ; Pandit Madan
Mohan Malaviya.*]

[24TH SEPTEMBER, 1910.]

prosecutor ought ordinarily to prove his case, that the actions of the accused or defendant infringe upon some legal right, some rule of law. That he has to do. But these general dicta are a little beside the point. What we are now concerned with here is that admittedly certain actions are in violation of the ordinary law of the land. Admitting that, the question is whether we are to give protection to officers violating the law on the ground that their acts are to be presumed to have been done in good faith for the purpose of carrying out the objects of martial law. That is the real point. Therefore, in the absence of an Indemnity Bill like this, the onus would really lie upon the person pleading good faith in defence. I will only quote one passage—'A person who under martial law imprisons or kills British subjects in India must, if he is to escape imprisonment, justify his conduct by proving its necessity.'

"Here what we say is, though as a matter of fact the act may not be necessary, we shall presume that the officer believed it to be necessary, and therefore we shall exempt him from punishment. Therefore I do not see how Mr. Shah's remarks will help us. The question is are we as a Legislature to raise this presumption in favour of all acts, only some or in favour of no acts? I took an intermediate position. It was necessary under the circumstances in which this Bill was brought in for Hon'ble Members to contend really that, in the absence of a clear proof of necessity, the onus should not be on the plaintiff, but even to an intermediate position objection has been taken by the Hon'ble Sir George Lowndes: here we have two classes of cases; one class, in which martial law has been proclaimed and in respect of which there is some doubt. Then we have another to which the ordinary law should be applied and to protect which would be a violation of the constitution. Having regard to the facts which have been so far disclosed it would be a travesty of justice to presume good faith and reasonable belief, in favour of certain officers in respect of some of the incidents which occurred before the 14th and the 16th of April 1910. I suggested that therefore no presumption should be raised in respect of acts done before the proclamation of martial law, and after the necessity therefore had ceased in the eye of the law. Of course here we are not arguing before Judges on the question of presumptions and technicalities, we are arguing whether the course suggested by the Government is expedient; whether it is politically right, whether it would not be a dangerous precedent, when we know as a matter of fact that those presumptions are not justifiable in many cases as far as our present information goes."

The motion was put and negatived.

4-10 P.M. **The Hon'ble Rao Bahadur B. N. Sarma**:—"My Lord, I move that after the words 'and all action taken' in clause 3 the following be inserted:—'after the proclamation of martial law therein and during the continuance thereof.' I have really stated all my reasons with reference to this point in dealing with the previous amendment. I shall therefore not weary the Council by repeating them. I respectfully submit that a distinction must be drawn between acts committed before the proclamation of martial law and after its proclamation, and, I think, there would be grave disaffection felt by the public if Government should try to shield acts which *prima facie* must be assumed to be guilty."

The Hon'ble Sir William Vincent:—"My Lord, I have really nothing to add to what I have already said on this subject. I have explained that martial law was enforced before it was formally proclaimed in certain areas."

The motion was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to move that in clause 3 for the words from 'and all action' to the end of the clause the following be substituted:—

'and that every act, matter and thing shall be presumed to have been done, *bona fide*, necessarily and properly, until the contrary shall be made to appear by the party complaining.'

[24TH SEPTEMBER, 1919.]

[Sir George Lowndes ; Rao Bahadur
B. N. Sarma.]

The Hon'ble Sir George Lowndes :—"I think there is nothing more to be said on this point, and I shall not weary the Council by repeating my arguments."

The motion was put and negatived.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, a similar amendment has been thrown out by the Council, and there is no use in pressing this." I beg to withdraw it." 4-13 P.M.

The motion was by leave withdrawn.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I ask for the omission of clause 4. Clause 4 runs thus :—

'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 until the expiration of such sentence, or until released by the Governor General in Council or otherwise discharged by lawful authority.'

"Of course this is partly governed by clause 6, which says :—

"Nothing in this Act shall—

- (a) apply to any sentence passed or punishment inflicted by or under the orders of any Commission appointed under the Martial Law Ordinance, 1919, or
- (b) be deemed to bar a full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council or to affect any question or matter to be decided therein.'

"Therefore, one class of cases really goes out, namely, those that are covered by the judgments of the Commissions appointed under the Martial Law Ordinances. I dealt at some length before with my objections to this part of the Bill and I shall not repeat them again. I shall try to summarise the various points on which I based my argument in asking the Council not to accept these convictions and sentences as being right and as deserving of confirmation. The point that was made by the Hon'ble the Home Member for bringing in a clause of this description was that, *prima facie*, these sentences might, after martial law ceased, be considered to be *ultra vires* and without jurisdiction. That therefore many persons might have to be released, and, inasmuch as inconvenient results would follow, an enactment of this description is absolutely necessary in the interests of peace and order. Well, the answer to that is two-fold. First of all, you might bring up those offenders who the Government think are really guilty and deserving of further detention before the ordinary courts. The only question would be one of expense. They may be re-arrested, and put in jail pending trial, and the interests of peace and order would not suffer in the slightest degree. The only question would be as to whether public time and public money would not be wasted by pursuing such a course. Put shortly the point is whether, on the balance of convenience, we are to confirm these convictions following precedents, or, having regard to the special methods employed in the Punjab, we should insist upon the Government bringing up the cases again wholly or partially. Hon'ble Members will see that I have got another amendment to the effect, that, at any rate in cases not covered by the Indian Penal Code or any special or local law this clause should not be applied. The objections, my Lord, are these. Assume that there was a necessity for martial law. According to many of us that necessity began, if at all, on the 14th or 16th and ceased about the

* That in clause 3 the words 'in a reasonable belief' be omitted.

[Rao Bahadur B. N. Sarma.]

[24TH SEPTEMBER, 1919.]

23rd. If the above view be correct, it was wrong both on principle and the dictates of sound policy for the Government to have established tribunals or passed any Ordinance on the 21st, for the purpose of dealing with the disturbances. The questions as to the interpretation and validity of these Ordinances, Nos. I and IV, how far they are applicable and as to whether they are applicable in cases governed by the Bengal Regulation only, are really before the Privy Council, but I submit on the question before the Legislature we are not hampered by considerations which might restrict the action of the Privy Council or of any duly constituted authority. The question, my Lord, is, was there any reason for the ordinary courts of the land not trying these offenders, and if special tribunals were rightly established, their not trying the offenders with the ordinary procedure observed, at any rate after the 21st? If Hon'ble Members turn to the statement of trials by summary courts and area officers in the districts of Lahore, Amritsar, Gujranwala, Gujrat and Jyallpur, Hon'ble Members will find that most if not all of these convictions were late in April, and in May, June, July, and on later dates. It may be argued that martial law cannot be said to be in force when the ordinary courts are sitting for administering the law, and all writers have held that that is one of the criteria. The judicial tribunals in the Punjab were administering justice ordinarily without any interference, I take it, after the 21st. If they were administering the law after the 21st or the 23rd, was there any necessity for depriving the citizens of the Punjab of the protection of the procedure which was guaranteed to them by the Legislature deliberately in enacting the Criminal Procedure Code and other laws? My submission therefore is that there was a violation of the fundamental principle of jurisprudence and violation of the protection given by the Legislature, when courts were constituted which could set at naught the ordinary procedure. This is my first and strong objection to our ratifying these convictions. Of course, if there was a state of war, if it was absolutely impossible for any court to sit and try cases, then certainly it would have been foolish on my part to say that the strict procedure of the Criminal Procedure Code should be adhered to. Necessity knows no law, and if the ordinary law courts cannot administer the law, there is no use of complaining that they did not. But here that was not the state of things. The courts were sitting; the courts were administering justice; there was absolutely nothing, therefore, to justify the depriving the citizens of the protection of the ordinary procedure. It is true that courts of three Judges have been appointed, but the ordinary right of appeal has been taken away. That is my second objection.

"There is a third objection, my Lord, and that is this. As things stand, in some cases the evidence was not clearly recorded; in other cases there are no clear judgments, so that it is absolutely impossible in a large number of cases—I will not say in all—for the Legislative Council, the Government or any Judges who may be appointed to consider as to whether these decisions were rightly come to. There can be no scrutiny, and therefore I submit as a matter of principle that there should be no confirmation of these sentences.

"Then, my Lord, there is another ground, and a stronger one. These martial law officers have issued various regulations the enforcement of which might or might not be justifiable during actual rebellion or the suppression thereof. But, I submit, it would not do for the Legislature sitting here deliberately to confirm sentences under martial law orders based on principles opposed to the ordinary notions of civilisation. The number of regulations apart from notices framed by these various officers and prescribing penalties was, I think, 15. Regulation 16 runs thus:—'Any person who contravenes any of the foregoing regulations shall be liable to trial by an officer authorised to dispose of an offence summarily under martial law, and such officer may sentence the offender to imprisonment,

[24TH SEPTEMBER 1919.]

[Rao Bahadur B. N. Sarma ; Sir George Lowndes ; Sir William Vincent ; the President.]

rigorous or simple, which may extend to two years or to fine not exceeding one thousand rupees or with both . . . and may also inflict whipping in addition to or in lieu of any other punishment which he is empowered to inflict.' I need hardly say that failure to salame a European, discourtesy to a European officer and such like things had been made offences either by notice or by regulation. Therefore the point is that if by clause 3 you confirm the conviction—I know it has been confined only to cases where persons have been confined—if you confirm the conviction you necessarily ratify the legality of a provision of this description which could inflict the punishment of whipping and other punishments upon any person guilty of any infraction of martial law. We are grateful to the Hon'ble the Home Member for confining clause 3 to cases of imprisoned persons, but I would ask him to see whether we are not, as a matter of fact, in confirming the validity of these convictions, really ratifying Regulation 16 covering them all and convictions passed under regulations which cannot, I think, be ratified by any Legislature. It may be that some of the regulations are perfectly unobjectionable ; but here the officers in command went and multiplied martial law offences, created offences which were not known to the law of the land, and under a comprehensive code of punishments a person can be whipped and imprisoned for any offence and in confirming the rule which inflicts the penalty you validate that rule ; that is my real difficulty. When the question of the amendment of the Army Act was under the consideration of this Council, I sought to move an amendment that that punishment of whipping should be abolished. His Excellency the Commander-in-Chief was so good as to sympathise with the object of my amendment

The Hon'ble Sir George Lowndes :—“ I rise to a point of order. I ask whether these remarks have anything to do with the clause of the Bill to which the Hon'ble Member has moved an amendment? It does not deal with convictions or the nature of the punishment ; it only confirms sentences of confinement and nothing else.” 4-28 p.m.

The Hon'ble Rao Bahadur B. N. Sarma :—“ That is my real difficulty and I think that is no sufficient answer to my question. I find that in case No. 159 a person was thrashed and he was also remanded.

The Hon'ble Sir William Vincent :—“ May I explain, my Lord, that this clause has nothing whatever to do with any sentence of whipping at all? I submit that the Hon'ble Member is out of order in attempting to create prejudice by bringing up this question of whipping.”

The President :—“ The Hon'ble Member must confine himself to the clause which he asks this Council to delete.”

The Hon'ble Rao Bahadur B. N. Sarma :—“ No one would be more glad if it were possible

The President :—“ It is certainly possible.”

The Hon'ble Rao Bahadur B. N. Sarma :—“ I shall then treat it as possible, because I take it that both the Hon'ble the Law Member and the Home Member do not want to uphold the legality of that rule. It may be legal or it may be illegal, that was just the point I was driving at. My real difficulty was that you would be indirectly ratifying that rule inasmuch as there were cases in which persons were remanded to custody and the punishment of whipping to which I was alluding is provided for in the general penal clause. I know that any observation made by any Hon'ble Member in the course of the discussion would be absolutely irrelevant for the purpose of interpreting the Act

[*His Bahadur B. N. Sarma; Sir William Vincent.*] [24TH SEPTEMBER, 1919.]

when it comes up before the law courts; but I do not think that there is much use carrying the discussion further on this point.

"Then, my Lord, apart from that clause I would ask this Council to bear in mind that various offences had been created, such as selling above controlled rates foodstuffs, milk, etc., and so on, punishable in the same manner, and the preamble (paragraph 3) was not limited in its operation as is clause 4 of the Bill. Of course it may be said that the operative part of an act is the thing that matters, and it is a perfectly sound argument; but I know the preamble is sometimes used in interpreting an Act. The preamble says—

'Whereas certain persons have been convicted by courts and other authorities constituted or appointed under martial law, and it is expedient to confirm and provide for the continuance of sentences passed by such courts or authorities.'

"It is very general; and therefore there is danger in wide interpretation of this clause and Regulation 16. I am glad to be told at any rate that no such use would be made of it and that it was not intended to cover that part of the Regulation which provides for the punishment of whipping, etc. I shall proceed, my Lord, on that assumption. Then the question is as to the various offences not known to the law which had been created by these martial law orders, and the various terms of imprisonment ranging up to two years, etc., inflicted under these. My submission is, would it be right for us as a Legislature to confirm these convictions without knowing more, especially when we know as a matter of fact that all the materials are not before anybody on which the rightness and appropriateness of the decisions may be examined. I therefore submit that this clause should be eliminated, and the ordinary procedure should be resorted to."

The Hon'ble Sir William Vincent:—"My Lord, I hope Hon'ble Members will not conclude, from what the Hon'ble Mr. Sarma has said that this clause involves the admission of the principles to which he has referred. It does not. He referred, for instance, to the sentences of whipping awarded by the military authorities for certain offences. Whatever may be the merits or demerits of such a form of punishment, every Member who reads the clause which is now under discussion will see that there is no reference in it to whipping at all, and that it does not justify such sentences. I suggest further that the introduction of the racial question and the mention of this form of punishment were made in order to create a prejudice in the minds of the Council. I can conceive of no other reason for the mention of these matters. My Lord, I have already in my opening speech explained to the best of my ability why we cannot accept this amendment. When martial law is introduced in a particular area, it is clearly necessary for the military authorities to have some means of enforcing their orders, of punishing summarily and speedily crimes directly connected with the disturbances and breaches of military regulations. I think that is a proposition that will be evident to everybody, and as a matter of fact, I believe that when martial law is enforced the normal procedure is to constitute some form of summary courts; if indeed such courts were not constituted, there would be no authority whatever which could enforce obedience of martial law regulations. Otherwise if the offender were sent to the Civil Courts they would say 'this is not an offence under the civil law or one of which we can take any cognizance whatever.' Many of the men sentenced by these summary courts were, as I explained to the Council before, convicted of very heinous crimes, such offences as arson, the possession of stolen property, the destruction of railway lines, etc. I am very anxious not to repeat what I have said already. A large number, about 90 per cent I believe,—but I will not guarantee that statement—were tried before 1st class Magistrates whose business it is normally to try similar offences. I have already given an undertaking to this Council, further,—and I have already

[24th SEPTEMBER, 1919.]

[Sir William Vincent.]

addressed the Punjab Government on the subject.—that we will have the sentences of all these men revised by two High Court Judges. Further, those who have been convicted of offences which are really a violation of military regulations only, will be released by Government, provided that the facts found by the Court are not such as to justify a conviction for an offence punishable under the ordinary law. I do not know if I make myself quite clear. There are a certain number of offenders who have been definitely convicted under various sections of the Indian Penal Code. There is another class of offenders who have been convicted of breaches of military regulations. In some of the latter cases the facts found would justify the conviction of these men under the ordinary criminal law. We have cases, for instance, of extortion; one man was convicted of extorting money from a townsman on threat of giving certain information to the Police. This is a conviction that might well have been had under section 384. There is another case of indecent assault on a woman in which the conviction was recorded as a breach of military regulations; then we have cases of injuries done to railways and telegraphs. In such cases although the convictions have been recorded as breaches of military regulations, these records will only be revised in the ordinary way. Where, however, the offence consists of violation of military regulations and the facts found do not constitute an offence under the ordinary law, it is the intention of the Government—I gave the undertaking before and I give it again—to release the men immediately. I hope that will go some way towards meeting Mr. Sarma. But the amendment he proposes goes a great deal further than this, and would mean that none of these sentences of imprisonment should be validated at all. My Lord, I do not know how the military Commander can do his duty without these sentences. If anybody is whipped a large section of the public at once protests: 'what a scandal, what a barbarous thing?'

"What then is to be done with these offenders if they are not to be imprisoned or whipped? Fining would not meet the circumstances of many cases. I have explained that Summary Courts were absolutely necessary and that proceedings in the ordinary courts would in cases in which speedy measures were necessary be an impossibility. Wherever martial law has been in force it has been the practice to constitute these courts, and it has been the practice to validate the sentences and the normal procedure to go very much further than the Bill which we have under consideration. Here, for instance, is the South Africa Act of 1915 which has been constantly quoted. It runs:—

'The several courts martial and military and special tribunals constituted and convened by or on behalf of the Government or its officers during the period aforesaid for the trial and punishment of persons guilty of treasonable, seditious or rebellious conduct or of persons subject to military law shall be deemed to have been constituted in accordance with law, and the several sentences . . . are hereby confirmed.'

And goes on:—

'Every person confined in any prison, gaol, lockup, or in any other place whatsoever under and by virtue of any such sentence aforesaid shall continue liable to be confined therein.'

The same provisions will be found in both the older South Africa Acts. In one of them there is a definite reference to offences which really consist of a breach of military regulations, the very class of offences to which the Hon'ble Member made a reference. Similarly, the Imperial Bill, which has now been quoted, says:—

'Any sentence passed, judgment given or order made by any military court (other than a court-martial constituted in pursuance of any Statute) in connection with the present war or by any court established for the administration of justice within any territory in the occupation of any of His Majesty's forces during such occupation or after such occupation, has determined until the Court has been abolished or superseded by such lawfully constituted authority as may hereafter be established for the administration of such territory shall be deemed to be and always to have been valid.'

In asking the Council to adopt this clause we are not therefore departing from the normal procedure. It was, however, suggested in another part of the

[*Sir William Vincent; Rao Bahadur
B. N. Sarma; Mr. Sachchidananda
Sinha.*]

[24th SEPTEMBER, 1919.]

argument of the Hon'ble Mr. Sarma, if I understood him aright, the point raised was that the ordinary courts were sitting and it was therefore improper to resort to summary courts—

4-49 P.M.

The Hon'ble Rao Bahadur B. N. Sarma :—"You could for the sake of the convenience of the administration multiply the officers, but the procedure would be the ordinary one."

4-52 P.M.

The Hon'ble Sir William Vincent :—"That is much the same thing, but in any case wherever military courts of this character have been constituted, it has been the universal practice, I think, to adopt a summary form of procedure. In fact this is obviously necessary if justice is to be administered quickly. In many cases where martial law has been established in the past, we know also that the Civil Courts have sat for the trial of ordinary offences concurrently with Military Courts specially constituted for the trial of offences connected with these disturbances. Finally, before I sit down, I want to point out two results of the adoption of this amendment. One is that Government would have to release a very large number of criminals, dangerous criminals, on to the country. That would be extremely unwise; and the second result would be that Council would deliberately put the Government in this position, that they would be liable to actions for wrongful imprisonment brought by a number of men who have done their best to destroy the safety of the State in a time of grave peril. That, I hope, this Council will not agree to."

4-58 P.M.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I am thankful to the Hon'ble the Home Member for his promise to release persons who were merely guilty of infraction of martial law regulations, and whose cases could not have been brought up under the criminal laws of the land. I think the people must be satisfied with that promise. But, my Lord, with regard to the question as to what effect it would have on public peace if a large number of people are released, I have already answered that; they may be brought before the ordinary courts. With regard to the cases of imprisonment, I still submit there is absolutely no information whatsoever as to why the ordinary courts were not allowed to proceed or the ordinary procedure was not followed, beyond the answer that military officers could not have done it. My reply to it, my Lord, is, that the courts specially constituted to try offences only on the ground of necessity might have followed the regular forms and should have followed the form in a time of peace when there was actually no rebellion. In the interests, my Lord, of persons who may have wrongly suffered as well as of the future, I think I must press this amendment."

The motion was put and negatived.

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, having regard to the promise we have received, I shall not press the other two* amendments on the agenda, and I beg leave to withdraw them."

The motions were by leave withdrawn.

4-45 P.M.

The Hon'ble Mr. Sachchidananda Sinha :—"My Lord, I propose that to clause 5 the following be added :—

'Such assessment by the said Judicial Officer shall be made pursuant to an inquiry conducted in the manner, so far as possible, laid down for the trial of suits in the Code of Civil Procedure.'

* **The Hon'ble Mr. Sarma** :—

32. That if amendment No. 81 be rejected the words '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' in clause 4 be omitted.

33. That to clause 4 the following be added :—

'Provided that no person shall continue liable to confinement after the date of commencement of this Act unless he shall have been convicted and sentenced for some offence under the Indian Penal Code or some special or local law in force before the establishment of martial law.'

[24TH SEPTEMBER, 1919.]

[*Mr. Sachchidananda Sinha ; Sir William Vincent ; the President ; Rao Bahadur B. N. Sarma.*]

'An appeal shall lie to the High Court against such order of assessment in the manner provided for appeals from orders in the Code of Civil Procedure, the order passed by the High Court being final.'

"My Lord, this amendment does not touch at all even the fringe of the substantive provisions of the Bill. It only provides a machinery for the assessment being made, and as there is no provision of that character in this Bill, I think, my Lord, this amendment might be adopted with a view to provide a machinery for the purpose."

The Hon'ble Sir William Vincent :—"My Lord, the intention of the clause is to provide a summary remedy for persons who might consider themselves aggrieved owing to their properties having been commandeered by the military authorities. The Bill does not, as I understand, prevent a regular suit from being brought. Our intention is merely to provide a convenient remedy for the assessment of damages, and any one may seek redress in a law court. In those circumstances, if any person wishes to go to a law court and have a full trial, he may do so, but we do not think that it is desirable to prescribe the lengthy procedure of the Civil Court for an officer of the kind proposed. We do not either think it necessary to allow an appeal from proceedings of this character."

The Hon'ble Mr. Sachchidananda Sinha :—"My Lord, with regard to that part of the question which refers to appeals, I am prepared to withdraw it. But I think there should be some procedure laid down, and I have added the words 'so far as possible'. I do not, therefore, insist upon the trial being conducted in strict accordance with the Civil Procedure Code. I am prepared to withdraw the second clause about the appeal, to which the Hon'ble the Home Member objects."

The motion was put and negatived.

The President :—"I should have stated after Mr. Sarma withdrew his amendments just now, that amendment* No. 10 which stood on the agenda until these amendments were disposed of was of course dropped. It is consequential."

The Hon'ble Sir William Vincent :—"My Lord, may I point out that the same position arises with regard to an amendment of Mr. Sinha also?"

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I submit that this should be accepted, because it refers to certain cases only. It refers to certain cases and subject to certain limitations only, and those words I would like to be added to paragraph 3 of the preamble."

The Hon'ble Sir William Vincent :—"If the Hon'ble Member wishes to move the amendment, I have no objection."

The President :—(To Rao Bahadur B. N. Sarma) "You move No. 10."

The Hon'ble Rao Bahadur B. N. Sarma :—"I think that will clear the position."

The President :—"Yes, Mr. Sarma is moving his amendment No. 10 which was held up until the other two amendments 32 and 33† were disposed of."

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, the Act deals with only certain cases, and it imposes certain limitations. Clause 4 deals with the cases only of persons who are actually confined in prison, and in order to bring it into conformity with the other provisions, I propose that to paragraph 3 of the preamble the words 'in certain cases and subject to the limitations specified herein below' be added. I therefore hope that this amendment will be accepted."

*10. *That to paragraph 3 of the preamble the following be added 'in certain cases and subject to the limitations specified herein below'

†*Vide* page 1008 of these Proceedings.

[*Sir William Vincent; Rao Bahadur B. N. Sarma; Pandit Madan Mohan Malaviya.*]

[24TH SEPTEMBER 1919.]

The Hon'ble Sir William Vincent :—“ My Lord, I may say at once that we have no objection whatever to the introduction of the words suggested by the Hon'ble Member if the insertion will please him, but they really do not make any difference in the effect of the Bill. As it will apparently gratify the Hon'ble Member, I am prepared to accept an amendment, substituting the words ‘ certain sentences ’ for the words ‘ sentences. ”

The Hon'ble Rao Bahadur B. N. Sarma :—“ It is not a matter for gratification, my Lord, but it is a question of some importance, and I am glad that the Hon'ble the Home Member has accepted a modified form of my amendment.”

The amended motion was put and agreed to.

4-51 P.M.

The Hon'ble Pandit Madan Mohan Malaviya :—“ My Lord, I beg to move ‘ that in clause 6, sub-clause (b) be omitted and the said sub-clause be inserted as a new clause 7, and that to the said new clause 7 the following be added :—

‘ And any order made by His Majesty in Council on any appeal presented by any individual or individuals against any conviction or sentence passed by any tribunal constituted under martial law and acting in a judicial capacity or by Commissioners appointed under the Martial Law Ordinance, 1919, as to the legality, propriety or correctness of any conviction or sentence may be taken advantage of by any other person convicted by the tribunals or Commissioners aforementioned though he may not have appealed against his conviction or sentence to His Majesty in Council, if the grounds upon which any order of His Majesty in Council is based are common to or govern the case of such other persons, and the Governor General in Council shall be bound to act upon the reasons underlying the said order of His Majesty in Council in all cases governed by such order; and the High Court of Judicature established in the Province shall on an application made to that Court for that purpose decide whether any particular case is governed by the rule laid down or reasons underlying any order of His Majesty in Council.’

“ My Lord, the object of my amendment should be obvious to everybody who has followed the debates during the last few days over the Punjab affairs. There is a large number of persons who have been arrested, detained, tried, convicted and are undergoing sentences. A few of these have appealed to His Majesty's Privy Council. An appeal to His Majesty in Privy Council is not an easy affair; it involves much expenditure, much local help, and everybody is not in a position to do so. Even if the public do extend their help to some persons, as I am thankful to say help has been extended to a number of persons to have their cases brought before His Majesty in Privy Council, but the number of such cases will, I fear, be small. There will still be a large number of persons who will not be able to approach the Privy Council. The cases that have been tried, many of them might probably rest upon some common ground. At any rate it is expected that the decision of His Majesty in Council about certain points will govern a number of cases, and the object of my amendment is that, where His Majesty in Council has considered the case and has expressed an opinion upon the matters involved in it, the benefit of that decision should be secured to such other persons who may have been tried by these martial law commissioners or summary courts and who may not have taken their case to the Privy Council. My Lord, I hope that this will commend itself to the Government because it would be anomalous and deplorable that when His Majesty in Council has expressed an opinion upon points which affect the cases of other persons, they should not have the benefit of that decision. I do not think the Government would wish to contemplate that situation. I venture to think that in this matter, at any rate, the Government will be in sympathy with my amendment. The second clause which I have added, clause 7, lays down, in order to make assurance doubly sure, that the Governor General in Council should be bound by the decision of their Lordships in the Privy Council in such cases and that they should be bound, on receipt of the orders of His Majesty in Council in any particular case to take action on all such cases as may be affected by it. But, my Lord, we are all human and there is no knowing whether a decision of the Government of India will satisfy the persons whose

[24TH SEPTEMBER, 1919.]

[*Pandit Madan Mohan Malaviya ; Mr. Sachchidananda Sinha ; Rao Bahadur B. N. Sarma ; Sir William Vincent.*]

right or interests may be involved, and for that reason, as an assurance that everybody will have a chance of having the matter properly considered and decided, I have suggested that the High Court of Judicature established in the province should, on application made to that Court for that purpose, decide whether a particular case is governed by the rules laid down or the orders of His Majesty in Council. I hope the proposal will commend itself to Government."

The Hon'ble Mr. Sachchidananda Sinha:—"I should like to say one word, my Lord, in support of this proposal, which seems to me a very reasonable one. Otherwise, there will be great hardship entailed on a large number of people who cannot appeal to His Majesty in Council. Therefore, people here should be given the benefit of a Privy Council Judgment, if they move the High Court on the ground that the facts and circumstances in their cases are similar to those of the cases before the Privy Council, and obtain a favourable order therefrom." 4-35 P.M.

The Hon'ble Rao Bahadur B. N. Sarma:—"My Lord, I have a similar amendment against my name. It is obviously just that if the grounds of decision upon which the Privy Council set aside a conviction are common, it should apply to similar cases, and the Government or the High Court should set aside those convictions and sentences also. Of course if the grounds on which the Privy Council set aside those convictions are of a technical character, and not based upon the merits, there is nothing to prevent the Government from bringing up the offenders before the regular courts for trial. Therefore the ground of convenience should not be for keeping those men in confinement, even though their cases may be really governed by the decision of the Privy Council."

The Hon'ble Sir William Vincent:—"My Lord, if Hon'ble Members will again read clause 6 of the Bill they will see that nothing in the Bill can affect trials by commissions. Sub-clause (a) of this clause runs as follows: '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.' 4-53 P.M.

"If Hon'ble Members will now turn to the amendment which is proposed in clause 6 by Mr. Malaviya, they will see that an important part of his amendment is entirely inconsistent with the sub-clause which I have just read. You cannot in one sub-clause of a Bill say that nothing in this Act shall affect trials before the Commissions, and in the next sub-clause go on to provide for such convictions and sentences. I do not know if I have made myself clear, but it seems to me that, as a matter of drafting and of principle, this is impossible. We are particularly anxious, and have been most careful throughout this Bill, to avoid any reference to these Commissions appointed under the Martial Law Ordinance, because we know that certain sentences from them are before the Privy Council on appeal, and that it would be manifestly improper."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I do not want to stick to the actual wording of the amendment. If the Hon'ble Member will put it in a different form which will be acceptable, I shall be quite agreeable."

The Hon'ble Sir William Vincent:—"I am aware of the habit of the Hon'ble Member of putting a motion in an impossible form, and then asking me at the last moment to put it into proper form. Well, I cannot do it at this juncture; he should have thought of this before. But I shall be able, I hope, to some extent at any rate, to meet the object which he has in view. I was for the moment trying to point out to the Council that it would be entirely inconsistent with the rest of the Bill if this amendment, as it is worded, was passed by the Council, and I cannot possibly undertake at a moment's notice to

[*Sir William Vincent; Mr. Sachchidananda Sinha; Pandit Madan Mohan Malaviya.*]

[21st SEPTEMBER, 1919.]

alter the amendment into a form in which it could be accepted. I have already accepted one amendment from Mr. Sinha to-day, and I am not at all sure that I was wise in doing so . . .

The Hon'ble Mr. Sachchidananda Sinha :—"I can assure the Hon'ble Member he was."

The Hon'ble Sir William Vincent :—"It may however meet the Hon'ble Member and others here if I explain that if there is a decision by the Privy Council in any appeal before them and any appellant is acquitted on grounds which affect the conviction of other persons who have not appealed, we shall certainly examine the cases, and if we are satisfied that the reasons set out in the Privy Council's judgment apply to any cases of the persons under confinement here, we shall give effect to the principles enunciated by the Privy Council. It follows necessarily, that if the men who have appealed to the Privy Council are acquitted on grounds which would apply to other cases, those who have not appealed will receive the benefit of the decision. But I want the Council to remember that the position of the persons to whom this Bill applies is entirely different from the position of persons tried by the Commissions. These men were tried by summary courts appointed by the military authorities. The proclamation of martial law is a statutory authority vested in the Governor General in Council, I believe, and it seems to me that the validity of the sentences of summary courts depends upon entirely different grounds from those which form the basis of the decisions of the Commissions. It is however quite possible that I may be wrong in this matter and, should the judgments of the Privy Council be decided on grounds which would indicate that the trial of these persons by summary courts was not justified, then certainly we shall have to take action to meet the decision of the Privy Council. I hope that this undertaking will meet, to some extent the wishes of the Hon'ble Member."

The Hon'ble Pandit Madan Mohan Malaviya :—"Will the Government accept the last provision that 'the High Court of Judicature established in the province shall on an application made to that Court for that purpose decide whether any particular case is governed by the rule laid down or reasons underlying any order of His Majesty in Council?'"

The Hon'ble Sir William Vincent :—"I did not deal with that point by error, I ought to have done so. I am afraid the Government cannot accept this proposal. They do not intend to allow any appeal to the High Court from summary convictions by a military court. That is an entire negation of the principles on which martial law is administered. But I have given an undertaking as to the intentions of Government in this matter, and if we do not carry it out, there are many opportunities by which Hon'ble Members of this Council or any one else can make it incumbent on us to fulfil our undertaking."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, my amendment does not suggest that the High Court should hear appeals from the decisions of summary courts. All that I ask is that 'the High Court of Judicature established in the province shall on an application made to that Court for that purpose decide whether any particular case is governed by the rule laid down or reasons underlying any order of His Majesty in Council'. I wish the High Court to be empowered to deal with this on an application made to them, and I think that Government might see their way to accept this much."

"My Lord, as to the assurance given by the Hon'ble the Home Member, I am thankful for it. It is satisfactory, so far as it goes, and I hope that the public may not, as I fear the public may, have reason to regret that what should have been incorporated in the Bill was merely accepted as an assurance,

[24TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya; the President; Mr. Sachchidananda Sinha; Sir William Vincent; Rao Bahadur B. N. Sarma.]

and be disappointed again as they have been in the past. Your Lordship will remember, the Council will remember, that, in the matter of the Press Act, certain assurances were given about it, but the public have had to complain that they were not carried out. Therefore, I propose this for the consideration of the Government when I suggest that the wording of clause 6 might be modified. I was under the impression that the Hon'ble the Home Member had thought of some changes in the wording which he might accept. Well, my Lord, the Bill is not to be referred to a Select Committee. The difficulty of drafting becomes very great and, in view of that difficulty, I am not surprised that the wording leaves much to be desired. But the principle of it being accepted, as the statement of the Hon'ble the Home Member shows, I hope the Government will accept the amendment as it stands."

The motion was put and negatived.

The President :—The rejection of that amendment will also dispose of Mr. Sarma's amendment* No. 37.

The Hon'ble Mr. Sachchidananda Sinha :—“ My Lord, I move is that in sub-clause (c) of clause 6 for the words ‘ against any person ’ the words ‘ against any officer of Government, Civil or Military, or any other person. ” 5-7 P.M.

“ My Lord, the only reason for this is that the Hon'ble the Home Member explained that the Government wanted to reserve to themselves the right of proceeding against any officer, if that was necessary for the ends of justice. This amendment is intended to make that point clear.”

The Hon'ble Sir William Vincent :—“ My Lord, if there was anything in the amendment I should be very pleased to accept it, but it is really entirely unnecessary. It is the first time that I have ever heard that the word ‘ person ’ does not include an officer of Government.”

The Hon'ble Mr. Sachchidananda Sinha :—“ I wanted to be quite sure of that.”

The Hon'ble Sir William Vincent :—“ That is the advice I have received from the drafting Department.”

The Hon'ble Mr. Sachchidananda Sinha :—“ I beg to withdraw it, my Lord.”

The motion was by leave withdrawn.

The Hon'ble Rao Bahadur B. N. Sarma :—“ My Lord, I beg to move the following amendment, ‘ that the following new clause be inserted as clause 7 :— ” 5-9 P.M.

‘ This Act shall be in force till the Committee appointed by the Governor General in Council to inquire into the recent disorders makes its report and for a period of three months thereafter.’

“ My Lord, I gave notice of this amendment to provide against a certain contingency. Unfortunately that contingency has occurred. If my amendment that the Bill should be confined to what took place after the proclamation of martial law and during its continuance had been accepted, there might not have been very much necessity for this amendment. I shall not repeat the reasons which I have already urged for the acceptance of this amendment.”

The Hon'ble Mr. Sarma :—

* 37. At the end of clause 6 add a new clause :—

‘ Any person convicted and sentenced by a Court or other authority constituted or appointed under martial law and acting in a judicial capacity, including commission issued under the Martial Ordinances of 1919 shall have the benefit of any order in Council regarding the legality, propriety or correctness of any conviction or sentence in an analogous case or cases in so far as the grounds of such order or decision may be applicable to him.

On application by any person convicted and sentenced as hereinbefore referred to, the High Court of the Province concerned shall determine whether the case of the applicant is governed by the decision of the Privy Council and pass such orders as it may deem fit.’

[*Bao Lachdur B. N. Sarma; Sir William Vincent.*] [24TH SEPTEMBER, 1919.]

now. All that I shall say is that we meet all the objects which the Government have in view by accepting this clause. The Government asked 'are our officers to have the sword hanging over their heads until this inquiry is over?' We have given them protection; nobody can institute any suit against them. We have also provided for the legality of all convictions and sentences during a long period. But if the Committee of Inquiry should furnish ample grounds on various questions, as to the necessity for martial law being proclaimed or as to the conduct of particular persons, high or low, before martial law was proclaimed or after it was proclaimed, it may be necessary both for the Government as well as for this Legislature to consider the question as to what protection should be afforded to those officers and to meet those contingencies. We have thrown the onus in all cases alike upon the prosecutor or the plaintiff, as the case may be. It may be that the Government or the Legislature would ask for a revision especially on the facts being ascertained by a public court of inquiry of the kind mentioned. Therefore, I submit, there are ample grounds for meeting the wishes of the people by accepting a clause of this description. We protect the officers of the Government, we provide for the legality of these trials to a certain extent, but, at the same time, the Government have appointed a Committee of Inquiry at the request of the people. That Committee of Inquiry would go necessarily into the kind of measures which were adopted by the martial law officers or others for the purpose of suppressing these disturbances, and, I think, a report of that description would help the solution of the difficulty. It may be that the inquiry will show there was absolutely no necessity for it, and in that case everybody would be satisfied that the action of the Government was right. I hope, therefore, that this amendment may meet with some luck."

5-13 P.M.

The Hon'ble Sir William Vincent:—“My Lord, there are more cogent reasons against accepting this amendment than arguments of mere convenience. It is true that many of us would be averse from going through all this troublesome discussion on the Bill again three or four months later; but the real objections to this amendment are more deeply-rooted, and, I myself am rather surprised that a gentleman who is a professional lawyer, as I understand, should have failed to realise that this passage of the Bill has absolutely no connection with the work of the Committee. The one principle upon which we have insisted and which has been accepted by this Council is, that the Report of this Committee is an administrative matter; the Committee will inquire into the conduct of officers from an administrative point of view; their report will in any case only be considered by Government in deciding what the action of the administrative authorities is to be. This Bill deals with the question of legal liability of officers and others, and has nothing to do with the report of the Committee. Let us assume for one moment that the committee reported that a man was liable to censure or should be punished. Can it be supposed for one moment that that would affect his legal liability that the report can be put in as evidence? Nothing of the kind. The two subjects are entirely distinct; the one deals with the administrative aspect of the action taken, and the other with the legal aspect of any case gone into by the Courts. It was for that reason that my Hon'ble friend, Sardar Sundar Singh, asked me whether, if the report of the Committee indicates that certain persons are liable to be censured, the Government would act on the report irrespective of the Bill, and I was able to give him an assurance that the passing of this Bill will not make any difference to that question at all.

“There is a further objection to the amendment, one of root principle, which has been discussed *ad nauseam* in this Council; it is this, that if the amendment were accepted our unfortunate officers would only obtain exemption from suit for a few months, and at the end of that time they would again become liable to suits (having had a short interregnum of peace), although they have acted *ex-hypothesi* properly and *bona fide*. A very similar question we discussed in the opening debate, and if this amendment is pressed to a division, I really do not believe that the Hon'ble Member will now receive more than one vote in support of his proposal.”

[24TH SEPTEMBER, 1919.]

[Rao Bahadur B. N. Sarma.]

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, the Hon'ble the Home Member's arguments may be extremely convincing to him and to several others, but I may assure him that the matter does not admit of such a summary disposal. I never for a moment thought that the report of the committee would be evidence in any judicial tribunal, or that that would necessarily completely govern the action either of the Government or of the Legislature. All that I said was that it would enable us to enact an Indemnity Bill that is suited to the occasion, which would satisfy the requirements of justice as well as the legitimate wishes of the people, while affording protection to those who really deserve it. We have had to proceed on assumptions to a very large extent in enacting this Bill. Ordinarily an Act of Indemnity would only follow martial law only if there was necessity for the enforcement of martial law. If an Indemnity Bill be not passed the questions whether there was necessity for the enforcement of martial law, whether there was a state of war, are questions of fact which would be adjudicated upon in a court of law. Therefore, we consented to the amendment moved by the Hon'ble the Home Member, because we felt that there were cogent reasons for an interim Act of this description. If there really was no necessity, then the question would stand upon the same footing as when the civil power takes the assistance of the military authorities for the purpose of protecting law and order. Of course, if the Legislature should still feel inclined to protect those officers even under those circumstances, it may do so; but it would not have much of a precedent in its favour. Therefore, my Lord, the decision of the Inquiry Committee would not be final and conclusive, but would help both the Government and the Legislature in arriving at sounder conclusions on questions of presumption, on questions of fact, than they are in a position to do at present, when everything must be taken for granted one way or the other. Take, for instance, the actions about which so much reference has been made, on the 13th and 14th April. We are asked to presume good faith and reasonable belief. Would it not be more satisfactory to have the explanations of the officers themselves, to have the evidence before us that they were justified in doing what they did? If they were justified, then by all means protect them by a legislative enactment. Therefore, my Lord, it is not without very sound reasons that I have brought forward this amendment. What is the cry outside? What is the legitimate cry? It is that the Government have been hurrying through a Bill simply to protect their officers, many of whom do not deserve it. It may be that the Government should do something to protect their officers before they can quite make up their minds as to what they should ultimately do. But my submission is that that should only be temporary, and they should not ask the Council as they have asked, by means of a majority, to raise certain presumptions in the way they are doing; the Council might not have done it if they had the facts more clearly. That is the reason why I ask that this Bill should be of a suspensory character; and I have behind me the opinion of very eminent men outside the Council who have been connected with the administration. There is no necessity of giving any names; but they are people who are not likely to take irrational views of things. Therefore, here is no question for professional lawyer or non-professional men. Nobody could fall into the error that this committee's report would be evidence in any court of law, or that we should necessarily act upon it. All that I said and say still is that we would have better material upon which we can proceed before enacting a measure of this description, which is sure to create dissatisfaction everywhere and which has already created dissatisfaction."

The motion was put and negatived.

The Council then adjourned till Thursday, the 25th September, 1919, at 11 A.M.

SIMLA :

The 7th October, 1919.

H. M. SMITH,

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