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**P L**

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

***ASSEMBLED FOR THE PURPOSE OF MAKING***

**LAWS AND REGULATIONS**

**VOL. LVIII**

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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER  
THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1915.

(5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Viceregal Lodge, Simla, on  
Thursday, the 25th September, 1919.

PRESENT :

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.I.E., G.C.M.G., G.C.B.E.,  
Viceroy and Governor General, *presiding*, and 47 Members, of whom 39  
were Additional Members.

QUESTIONS AND ANSWERS.

The Hon'ble Mr. Sachchidananda Sinha asked :—

11 A.M.

1. " Do Government propose to place before His Majesty's Government an expression of the views and sentiments of His Majesty's Mussulman subjects in India in the matter of the reconstitution of the Turkish Empire attendant upon the conclusion of peace ?" Peace terms with Turkey

The Hon'ble Sir William Vincent replied :—

" The Hon'ble Member's attention is drawn to the following passage from His Excellency the President's speech of 3rd September ;—

' I have throughout done all in my power to ensure full representation of their feelings. Not only have the Government of India placed the views of Muslim India with strong emphasis before His Majesty's Government, our delegates voiced those views before the Peace Conference, and that nothing might be left undone to lend weight to their evidence, it was reinforced by three Muslims of distinction who had been specially delegated to attend the Peace Conference with them. Muslim India may, therefore, rest assured that its feelings have been given the fullest representation possible.'

From this the Hon'ble Member will see that the Government of India have done everything within their power to secure that the views of Indian Muhammadans should be given all possible consideration, and I can assure the Hon'ble Member that they will continue to do so."

[Mr. Sachchidananda Sinha ; Sir George Barnes.]

[25TH SEPTEMBER, 1919.]

**The Hon'ble Mr. Sachchidananda Sinha asked :—**

Filling of vacancies in the cadre of Superintendents of Post Offices and Railway Mail Service.

2. (a) Have the vacancies that have occurred in the cadre of the Superintendents of Post Offices and Railway Mail Service during the last five years been filled up by promotion of officers in the lower grades? How many such vacancies have occurred, and how many have been so filled up? If all the vacancies have not been so filled up, will Government state the reason therefor?

(b) What measures, if any, have been taken to give effect to the recommendations of the Public Services Commission regarding the increase of salaries of the Superintendents of Post Offices and Railway Mail Service? If no steps have been taken so far, will Government be pleased to state the reason for the delay?

(c) Have the recommendations of the Commission in respect of the increase of salaries been carried out in the Postal and Telegraph Departments to any extent? If so, in respect of which particular offices, and why for these alone so far?"

**The Hon'ble Sir George Barnes replied :—**

"(a) The vacancies that have occurred in the cadre of the Superintendents of Post Offices and Railway Mail Service during the last five years have been filled up both by the promotion of officers in the lower grades and by direct recruitment of qualified persons not already in the service of the Department. Direct recruits usually join the Department as probationary Superintendents, and in a few cases as reserve Superintendents. There were 59 vacancies during the period in question, of which 37 have been filled up by promotion of departmental subordinates, 20 by probationary Superintendents, and 2 by reserve Superintendents.

For the appointment of Superintendent of Post Offices it has always been the practice to fill up half the vacancies by the promotion of officials from the subordinate ranks, leaving half for persons not already in the service of the Department. The work of a Superintendent requires activity of mind and body, and the Royal Commission on the Public Services in India considered that a certain proportion of direct recruitment was necessary in order to secure a sufficient leaven of younger men. They suggested that an even higher rate of direct recruitment should be adopted, if experience of the working of the existing arrangement continued to prove satisfactory. It will be seen, however, from the figures given in the preceding paragraph that there has been in recent years a preponderance of promoted subordinates in the Superintendent's grade, but this is largely due to the fact that a number of promotions were given to officials who did good service in the Field.

(b) A despatch containing the views of the Government of India on the recommendations of the Public Services Commission regarding the increase of salaries of the Superintendents of Post Offices and Railway Mail Service and of other officers of the Department was forwarded to the Secretary of State on 11th June 1919, and his orders on the subject are awaited.

(c) As already stated the orders of the Secretary of State on the recommendations of the Public Services Commission have not yet been received. For this reason the Commission's recommendations have not yet been carried out in respect of any officers of the Posts and Telegraphs Department."

**The Hon'ble Mr. Sachchidananda Sinha asked :—**

Action taken against newspapers under the Defence of India Act.

3. Will Government be pleased to state—

(a) the number of presses and newspapers, respectively, against which action has been taken under the Defence of India Act since its enactment up to date?



[25TH SEPTEMBER, 1919.]

[Mr. Sachchidananda Sinha ; Sir William Vincent ; Sir Arthur Anderson.]

(b) the nature of the action taken against each, giving reasons for the same and naming the press or the newspaper, the language and the place in which the latter was or is still published, and in the case of a press the place at which it was kept, as also the names of the keeper and publisher of the press, the editor of the newspaper and the date of the order ?

(c) whether any of these presses and newspapers—and if so, which—existed prior to 1910, and whether they were able to continue or had to stop as a result of the action taken ? ”

**The Hon'ble Sir William Vincent** replied :—

“ The information asked for will be collected and a Statement will, if possible, be laid on the table at the next Session of Council.”

**The Hon'ble Mr. Sachchidananda Sinha** asked :—

4. “ (a) Is it a fact that a punitive police have been lately imposed on the people of Peshawar ? Punitive  
Police  
Peshawar.

(b) If so, was it because of any riots or disturbances that took place in that city, and, if so, what was their nature or character ?

(c) If the answer to part (b) be in the negative, will Government be pleased to state the circumstances justifying the imposition of the punitive police ?

(d) What is the total amount of annual cost for which the people of Peshawar will be liable on account of the maintenance of the said punitive police ? and

(e) What is the period for which the punitive force has been imposed ? ”

**The Hon'ble Sir William Vincent** replied :—

“ (a) Yes.

(b) and (c) During April and May Peshawar city was the focus of seditious intrigues in connection with Afghan designs upon India and the agitation against the Rowlatt Act. A Committee of Union and Progress was formed which attempted to set up a revolutionary administration and attacks were planned upon the Cantonments and the Jail. The whole city was in a dangerous state and serious disturbances were narrowly averted.

(d) 1½ lakhs of rupees.

(e) 3 years. ”

**The Hon'ble Mr. Sachchidananda Sinha** asked :—

5. “ (a) Is it a fact that there have been several serious accidents on the Railways in India during the current year ? If so, how many, at what places and on which lines ? Accidents on  
Railways  
during the  
current  
year.

(b) What are the circumstances under which they occurred and the loss of life and the number of persons injured in each ?

(c) Have Government taken any steps to minimise the chances of such accidents ? If so, what ? If not, do they propose to do so ? If not, why not ? ”

**The Hon'ble Sir Arthur Anderson** replied :—

“ As regards (a) and (b) of the Hon'ble Member's question a statement\* is placed on the table giving particulars of serious accidents involving loss of life

\* Vide Appendix A.

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

[25TH SEPTEMBER, 1919.]

or injury to passengers which have occurred during the current year and the circumstances attending each case.

(c) The circumstances of all serious accidents are carefully investigated by a Committee of Inquiry and by the Senior Government Inspectors of Railways, with the object of ascertaining the exact cause of each accident, and making recommendations for the adoption of any measures which they consider would prevent a recurrence.

The reports and recommendations of these committees and of the Government Inspectors are seen and dealt with by the Railway Board."

**The Hon'ble Mr. Sachchidananda Sinha** asked :—

Names of officers deputed to England and their allowances, &c.

6. "Will the Government be pleased to state (a) the names of officers who are at present on special duty in Europe, (b) the objects of their deputation, (c) the date from and the period for which they have been deputed, (d) the special allowance, if any, which each of them is receiving in addition to his emoluments, and (e) the additional cost likely to be incurred on their account for these allowances and for their passages to and back from Europe?"

**The Hon'ble Sir William Vincent** replied :—

"A statement\* giving the information required by the Hon'ble Member is laid on the table. It does not include the names of Messrs. A. C. Chatterjee, C.I.E., I.C.S., and J. D. Engel, Chief Inspector of Factories, Bombay, who have been sent by the Government of India to the International Labour Conference at Washington as Government representative and Government Adviser, respectively."

**The Hon'ble Pandit Madan Mohan Malaviya** asked :—

Number of persons arrested in connection with the recent Punjab disturbances.

7. "With reference to the answer given by the Hon'ble the Home Member to a supplementary question put by me to question No. 40, at the meeting of the 10th September, 1919, will Government be pleased to ask the Punjab Government for information as to the number of persons arrested in connection with the recent disturbances in the Punjab and to supply the information to this Council?"

**The Hon'ble Sir William Vincent** replied :—

"The Punjab Government has been asked to supply the required information, but it has not yet been received."

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

Release of Darsi Chenchiab.

8. "Have any orders to release Darsi Chenchiab, Nellore, Madras Presidency, been passed? If no such orders have been passed, do Government propose to favourably consider his petition for release and the petitions of his family?"

**The Hon'ble Sir William Vincent** replied :—

"No orders for the release of Darsi Chenchiab have yet been passed. His case is now under consideration."

\*Not included in these Proceedings.

[25th SEPTEMBER, 1919.]

[*Rao Bahadur B. N. Sarma ; His Excellency the Commander-in-Chief ; Maharaja Sir Manindra Chandra Nandi ; Sir George Barnes.*]

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

9. " What are the war bonuses and increases in emoluments, pay, batta, <sup>war</sup> allowances and pensions granted since the commencement of the war, to British <sup>Bonuses.</sup> officers and soldiers, Indian officers and sepoy in the Indian Army, and the total cost to the treasury, under each head ? "

**His Excellency the Commander-in-Chief** replied :—

" A statement\* is placed upon the table. It is believed to be complete and gives in detail the various concessions, both permanent and temporary, which have been sanctioned for the Indian Officer and the Indian Sepoy of the Indian Army since the commencement of the war. From an examination of this statement it will be seen that a large number of the items are of such a nature that it is impossible to maintain separate accounts of their cost, and it would be equally impossible to frame any reliable estimate. In the case of British Officers and soldiers no similar consolidated statement of concessions has hitherto been drawn up, and the preparation of such a statement would involve an expenditure of time and labour which would be incommensurate with the results obtainable. Further, as in the case of Indian personnel, the war accounts have not been maintained in such a form as to render it possible to state the cost of the concessions under the heads indicated in the Hon'ble Member's question.

If the Hon'ble Mr. Sarma could make it convenient to meet either the Army Secretary or the Financial Adviser, we should be glad to explain in greater detail than is permissible within the limits of a reply to a question in Council the practical obstacles which stand in the way of giving the information in the form in which the Hon'ble Mr. Sarma requires it. And we should be glad also to give such information as may be available on any individual point which the Hon'ble Member has specially in mind."

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

10. (a) Is it a fact that a memorial praying for the grant of house-rent allowances was lately submitted by men in the local scale of the Indian Telegraph Department ? If so with what result ?

Emoluments of local and general service men of the Indian Telegraph Department.

(b) Do Government propose to consider their prayer favourably ?

(c) Is it a fact that in the recent revision the initial pay of the local scale has been increased only by 43 per cent, while that of the general scale has been increased by 50 per cent ? If so, why so ?

(d) Is it a fact that, while the training, nature of work and duties are almost the same for both the local and general service men, their emoluments differ very greatly ? If so, do Government propose to consider the question of re-adjusting the emoluments of the local service men more equitably ? "

**The Hon'ble Sir George Barnes** replied :—

" (a) and (b) Memorials praying for the grant of house-rent allowances were submitted by men in the local scale of the Indian Telegraph Department in March 1918, but it was not found possible to grant the allowances.

In my reply to a question by the Hon'ble Member on the 20th February 1918, I pointed out that the reasons for giving free quarters or house-rent allowances to the General Scale telegraphists are that these men are liable for

\* Not included in these Proceedings.

[*Sir George Barnes; Maharaja Sir Manindra Chandra Nandi.* [25TH SEPTEMBER, 1919.]

service throughout India. They may therefore be transferred to distant provinces, and are thus called upon to dismantle and to set up house again at short notice, usually in expensive places. Local Service men, on the other hand, remain within a restricted area, and many of them stay in one place for years together; they are thus able to settle down and obtain permanent quarters more cheaply, or to live with their relatives or friends.

(c) The fact stated by the Hon'ble Member in the first part of this question is correct. The initial pay of both the services has been increased in order to attract recruits who would be capable of rising to the more important charges now open to telegraph subordinates. A statement\* is laid on the table showing the new rates of pay of telegraphists in the General and Local Services respectively, the increases which took effect from the 1st January 1919, and the percentage of increase for each year of service. The statement shows that except for the first three years of service the percentage of increase was greater in the case of the Local than of the General Service. In regard to the first three years of service, it was felt that the old rates of pay for the General Service were relatively inferior to those for the Local Service, considering that men in the General Service are liable to be transferred to any part of India and Burma.

(d) From the reply given above it will be seen that the difference of pay between the two Services is not based on the nature of their work and qualifications. The General Service men receive a higher rate of pay because they are liable to be transferred to any part of India or Burma, while the Local Service men are not sent beyond the limits of their province. The Government of India do not propose to consider the question of a re-adjustment of pay."

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

Indians in  
departmental tele-  
graph  
offices.

11. "(c) Has sanction been accorded by the Secretary of State to the proposals for increasing the proportion of Indians to be employed in departmental telegraph offices, referred to by Sir George Barnes in reply to questions Nos. 15 and 20 of the 20th February, 1918 ?

(b) If so, what action has since been taken in pursuance thereof ? "

**The Hon'ble Sir George Barnes** replied :—

"The answer to the part marked (a) is yes.

In reply to part marked (b) Since the receipt of the Secretary of State's sanction, 487 candidates have been recruited for the signalling establishment of the Indian Telegraph Department, of whom 204 belong to the General Service and 283 to the Local Service. 217 of the total number were Indians and 260 non-Indians, inclusive of 43 women telegraphists recruited for the Local Service."

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

Control of  
prices of  
cotton cloth.

12. "What action has been taken in the different provinces for controlling the prices of cotton cloth or for steadying the cloth market ? "

\* Vide Appendix B.

[25TH SEPTEMBER, 1919.]

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

**The Hon'ble Sir George Barnes** replied :—

“ Standard and other cloth has been supplied by the Controller of Cotton Cloth to the following Provinces in quantities which are shown in the reply to the Hon'ble Member's next question :—

The provinces are :—The United Provinces, Bihar and Orissa, Punjab, Assam, Central Provinces, Bombay, Baluchistan, Bengal, North-West Frontier Province and Delhi.

It has been sold at controlled rates in these Provinces. The Government of Bihar and Orissa also made very large purchases of imported cloth in November last when the market was at its lowest point. In October last, the Government of Bengal decided to license wholesale transactions in cloth in Calcutta and appointed a Cotton Advisory Committee which issued some 1,700 licenses and whose operations brought about a heavy fall in the price of cloth.”

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

13. “ (a) What quantities of standard cloth have been procured by the different Provincial Governments during each month since the passing of the Cotton Cloth Act? <sup>standards cloth.</sup>

(b) At what rates have these been sold and how do such rates compare with those at which the cheapest varieties of cloth (other than standard cloth) of equivalent size were at the same time available in the market?

(c) What are the various agencies for the sale of standard cloth ? ”

**The Hon'ble Sir George Barnes** replied :—

“ In answer to (a) details showing the quantities of cloth supplied to the various Provinces monthly since the passing of the Cotton Cloth Act are not available. Although the Act was passed in October last, its provisions were not put formally into operation until February. Before that date a considerable amount of standard and other cloth was obtained by the Controller of Cotton Cloth on a voluntary basis. The statement\* laid on the table shows the amount of cloth obtained both before and after the provisions of the Act were put into formal operation. From that statement it will be seen that the total quantity of cloth obtained upto date by the Controller of Cotton Cloth and supplied to various Provinces is 10,716 bales, amounting to very nearly twenty million yards.

In answer to (b) a statement\* showing the prices paid to the mills for the two orders placed with them is laid on the table. Detailed information regarding the prices at which the cloth of the two allocations was sold in the different provinces has been called for. The prices of the ordinary lines of cloth vary so greatly in the different provinces and even in different parts of the same province, that no satisfactory comparison of the price of standard cloth with that of ordinary cloth is possible.

In reply to (c) in Bihar and Orissa, the bulk of the cloth has been disposed of by the staff of the Provincial Controller of Cotton Cloth and by the District officials. A considerable quantity has also been sold through the agency of the local Post offices. In the United Provinces, the cloth was sold at the outset by licensed wholesale and retail dealers. This arrangement was found not entirely satisfactory, and arrangements have recently been made under which the stocks of cloth on hand will be taken over by District Boards and similar agencies. In the Punjab, the greater part of the cloth has been

\* File Appendix C.

[Sir George Barnes; Maharaja Sir Manindra Chandra Nandi.] [25th SEPTEMBER, 1919.]

disposed of by Co-operative Societies, and in the Central Provinces by District Boards and Municipalities. In the remaining Provinces, the most usual agency has been that of Government officials."

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

Failure on the part of Local Governments to take sufficient supply of standard cloth.

14. "Did any of the Provincial Governments fail to take sufficient advantage of the Cotton Cloth Act for the supply of standard cloth? If so, which are those Governments and what are the reasons for such failure?"

**The Hon'ble Sir George Barnes** replied :—

"The Government are not aware that any of the Provincial Governments failed to take sufficient advantage of the Cotton Cloth Act for the supply of standard cloth."

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

Supply of standard cloth by the Government of Bengal and other Local Governments.

15. "(a) Has the attention of Government been drawn to a speech delivered by Sir Edward Gait at a meeting of the Bihar and Orissa Legislative Council held on the 29th last, in course of which reference was made to the large saving effected to the people by the adoption of certain measures for the supply of cheap cloth?"

(b) Has the attention of Government also been drawn to a discussion in the Bengal Legislative Council on the 13th February, 1919, in connection with a resolution recommending that in connection with high price of cloth steps should be taken in Bengal on the lines adopted by the Government of Bihar and Orissa?"

(c) Did Sir Henry Wheeler in the course of the said discussion mention certain considerations as justifying the Local Government in holding their hands in the matter, and did he apprehend the possible danger of upsetting the market by the supply of standard cloth?"

(d) If so, have Government any information (i) as to how far such considerations hold good at the present moment in Bengal; and (ii) as to how far such apprehension has been realised, if at all, by the Government of Bihar and Orissa or any other Local Government that has undertaken the supply of standard cloth?"

**The Hon'ble Sir George Barnes** replied :—

"In answer to the parts marked (a) (b) and (c), the answer is yes.

In answer to (d) the question should be put in the Legislative Councils of the Local Governments concerned."

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

Price of standard cloth in comparison with cheap varieties.

16. "How does the price of standard cloth compare with the average retail price of other cloth of the cheapest varieties of equivalent size at present available in the market in the different provinces?"

[25TH SEPTEMBER, 1919.]

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

**The Hon'ble Sir George Barnes** replied :—

"The Hon'ble Member is referred to the reply which I have given him in relation to question No. 13. At the time the first order for standard cloth was placed with the mills, the price fixed for it was about seven or eight annas a pound lower than the wholesale price of ordinary cloth then prevailing. Prices fell immediately standard cloth was placed on the market, and the fact that it has been on sale has undoubtedly kept the price of ordinary cloth down. The latter has fluctuated considerably during the last few months, but there is every reason to believe that, throughout the operations, the price of standard cloth has been appreciably below that of ordinary cloth of similar or even inferior quality. Prices have recently fallen heavily in Bombay and the margin between the price of standard cloth which was based on the price of cotton at the time it was manufactured and the price of ordinary cloth is now very small."

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

17. "Have Government any information as to the present stocks of cloth in the different provinces, and how far these are sufficient for their respective needs?"

**The Hon'ble Sir George Barnes** replied :—

"The Government of India have no detailed information on this subject."

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

18. "Are Government aware that the high prices of cloth have very much aggravated the present distress? If so, do the Government of India propose to direct Local Governments to take prompt action under the Cotton Cloth Act?"

**The Hon'ble Sir George Barnes** replied :—

"Government consider that, owing to the operation of the Cotton Cloth Act and other causes, the price of cloth is not now so high as to cause distress. It will be seen from the replies to previous questions put by the Hon'ble Member that Local Governments have freely taken advantage of the provisions of the Act, and it may be mentioned that the Governments of the United Provinces and of Bihar and Orissa, in which the shortage of cloth was originally most acute, have still large stocks of standard cloth on hand."

**The Hon'ble Rai Sahib Seth Nathmal** asked :—

19. "(a) Will Government be pleased to lay on the table a statement showing the total amount of money raised as subscriptions, donations and grants by the Imperial Indian Relief and other War Relief Funds, respectively, since 4th August, 1914, up to 31st March, 1919, or up to any date for which the complete figures are available?"

(b) What amount has so far been spent and on what different objects of relief? Will Government be pleased to state the amounts respectively spent on British soldiers and officers and Indian soldiers and officers?"

[*Rai Sahib Seth Nathmal ; Mr. H. F. Howard.*]

[25TH SEPTEMBER, 1919.]

(c) What is the actual balance now left with the various funds, and how do Government propose to control the future administration of these funds ?

**The Hon'ble Mr. E. F. Howard** replied :—

" (a) It is assumed that the Hon'ble Member's question relates only to the Imperial Indian Relief Fund, the Bombay War and Relief Fund and the Madras War Fund, as these are the only Funds directly connected with War Relief. A statement\* giving the information required by the Hon'ble Member with regard to the Imperial Indian Relief Fund is laid on the table. The other two Funds referred to above are purely local, and, beyond the printed reports which have been issued to the public, the Government of India have no information as to their proceedings.

(b) The information required by the Hon'ble Member is given in detail in the statement above referred to.

(c) The balance in the hand of the Central Fund on 30th June, 1919 amounted (in round figures) to Rs. 1,14,28,000 which will be utilized in the distribution of *post bellum* relief. Relief will, it is hoped, shortly be distributed to the various classes who have suffered through the war, and a scheme has been drawn up which aims at assisting each class and, so far as possible, each member of that class, according to their degree of necessity. The intention is to help—

(a) Indian officers, non-commissioned officers and men and followers who have been invalided out of the army on account of wounds or injuries received in the war and the widows and dependants of those who have fallen ;

(b) The widows and dependants in straitened circumstances of British officers of the Indian Army and the Indian Army Reserve and the members of certain other European services.

It has been decided that expenditure on this *post bellum* distribution of relief to European and Indian classes should be in the proportion of 1 : 3. The amount which, it is hoped, will be available for the purpose is estimated roughly at Rs. 128 lakhs. It is proposed that any balance remaining after this distribution in the hands of the Central Committee should be amalgamated with a permanent Fund which is being established, the details of which have not yet been completely settled, and which will be utilised for the relief of any cases of necessity arising primarily from the recent war, and subject to this from any future war in India.

The balance in the hand of the provincial branches on the 31st January 1919 amounted to about Rs. 6,75,500. Any amount remaining after the interim distribution of relief has been closed will be utilised in connection with the *post bellum* scheme."

**The Hon'ble Rai Sahib Seth Nathmal** asked :—

Disposal of  
bodies of  
Indian  
soldiers and  
erection of  
monuments.

20. (a) Will Government be pleased to state how the dead bodies of Indian soldiers killed in the various theatres of the war were disposed of ?

(b) Is it not a fact that in the case of British soldiers and officers killed in the war monuments or tombs have been or are proposed to be erected ? What action do Government propose to take in the case of Hindu and Muhammadan officers and soldiers so killed ?

\* Vide Appendix D.



[25TH SEPTEMBER, 1919.]

[His Excellency the Commander-in-Chief;  
Mr. K. V. Rangaswamy Ayyangar;  
Sir William Vincent.]

**His Excellency the Commander-in-Chief replied :—**

“ As regards (a) the bodies of Indian Soldiers who were killed in action or died in various theatres of war were in most cases interred near the places where they fell.

As regards (b) the question of the erection of memorials to British and Indian soldiers is being dealt with by the Imperial Graves Commission in London, upon which India is represented by two specially selected representatives, namely, Sir Prabhashankar Pattani and Sahibzada Aftab Khan.

Designs of monuments of an appropriate character to mark the graves of Hindu, Sikh and Mussalman soldiers respectively have been prepared and sent home. The Government of India have also offered to defray the cost of a general monument to be erected in each theatre of war, to commemorate the achievements of the units, British and Indian, forming part of the Expeditionary Force despatched from India overseas.

In addition to the memorials I have mentioned, it is proposed to erect village memorials in special cases, specimens of which have been placed for inspection by the Hon'ble Members at the entrance to the Council Chamber.”

**The Hon'ble Mr. K. V. Rangaswamy Ayyangar asked —**

21. “ (1) Is it a fact—

(a) that one Pandit Arjunlall Sethi, B.A., a Jain resident of Jaipur, was arrested in connection with the Delhi Conspiracy case in March, 1914, at <sup>Arrested at</sup> <sup>Pandit</sup> <sup>Arjunlall</sup> <sup>Sethi</sup> <sup>Indore,</sup> where he was then working as the Honorary Principal of the Tilak Ghand Jain High School ?

(b) that he has since then been detained in solitary confinement, and is at present in the Government Jail at Vellore Fort, Madras ;

(c) that he was informed in December last, that he would be released if he agreed—

(i) not to adopt the profession of a teacher,

(ii) not to reside within the Jaipur territory ; and

(iii) not to deliver public lectures ;

(d) that he agreed to the above conditions ; and

(e) that no final orders in his case have yet been communicated to him ?

(2) Will Government be pleased to make a statement regarding the case ?”

**The Hon'ble Sir William Vincent replied :—**

“ (a) The person named was arrested in March 1914 on account of his suspected complicity in the Delhi Conspiracy case and the Nimaj murder, in which a Sadhu and his servant were brutally murdered.

(b) On 5th December 1914 he was sentenced to five years' imprisonment by the Jaipur Durbar, who found him guilty of being concerned in political conspiracies, and of having been a danger to the public peace and being likely to be so in future. It was found impossible to keep him in adequate confinement in Jaipur, where he was likely to be a focus of intrigue and disaffection, and the Jaipur Durbar asked in 1917 for his confinement elsewhere. The Governor General in Council being satisfied that his confinement was necessary in the interests of the State, decided to issue a warrant under Regulation III of 1818, and Arjunlall Sethi has since been detained in the Vellore Central jail.

[*Sir William Vincent.*]

[25TH SEPTEMBER, 1919.]

He is not in solitary confinement, and his son is allowed to live with him. He is allowed books and the other privileges ordinarily given to State Prisoners. He has admitted that he is well treated and that he has no complaints to make.

(d) Government have informed Arjunall Sethi that they are prepared to release him provided—

(i) he agrees not to return to Jaipur State without first obtaining the permission of the Durbar; and

(ii) that, while resident in British territory, some restrictions are placed on his movements; these will be as little irksome as possible and will be removed when it is found that his behaviour is satisfactory.

(d) and (e) Arjunall Sethi has agreed to the above conditions and Government are now considering, in communication with his relatives, where and with whom he should be permitted to reside, as the proposals so far received have not been satisfactory."

### THE INDEMNITY BILL.—(concl'd.)

11-26 A.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 passed, as amended by this Council. I think most Members of this Council are relieved at the conclusion of a somewhat long and troublesome debate, and I will not detain them long. The discussion of the Bill has necessarily involved references to subjects of considerable delicacy, upon which there is great feeling on the part of many Members of this Council, but nevertheless the Council may congratulate itself, on the whole, on the self-restraint that has been manifested in the course of the debate. There was however great feeling, as I said, on both sides, and despite obvious efforts at times, it has manifested itself to a considerable degree. Nor can there be any doubt that both Europeans and Indians are deeply moved by the recent occurrences. I am glad that in spite of all this nothing has prevented the Council from arriving at a perfectly just appreciation of the requirements of the case, and that Members have recognised, generally speaking, that this Bill is a necessary measure which deals with principles, and not with individual actions. It is for that reason I believe that the Bill, which I have had the honour to move before the Council, has met with such general approval, and as I am speaking on it, I think that the Council might like to know the views of one who has taken a great interest, both in these disorders and in the measures which have been taken to suppress them. I refer to Mr. Gandhi. There are different opinions about this gentleman. Some look on him as a dangerous crank with an extraordinary amount of that Scotch quality a good conceit of himself. There are others, persons whose opinion is equally entitled to great weight, who believe him to be a man, of saint-like character, selfless disposition and almost superhuman insight. Mr. Montagu himself in a recent debate described him as a man of the highest motives and the finest character, a man whom his worst enemy, if he has any enemies (he is very lucky if he has not) would agree is of the most disinterested ambitions it is possible to conceive. Well, my Lord, it is probable that a correct estimate of the character of Mr. Gandhi would lie between these various extremes, but I hope that the Council will not in any way acquire the impression that in offering these observations I am seeking to convey my own opinion about him, or the opinion of the Government. An expression of opinion would be improper. At the same time, there are certain characteristics in Mr. Gandhi which all will admit. He is not in any way predisposed to favour the policy of Government. That is certain. He has also got what is not very often

[25TH SEPTEMBER, 1919.]

[Sir William Vincent; Pandit Madan Mohan Malaviya.]

found in this country, the full courage of his convictions. If he thinks anything he never hesitates to tell either the Government or any one else what his views are, and for that reason, I think, it would interest the Council to hear what a leading Indian of this position and character thinks about the Bill. So far as the question of indemnity is concerned, Mr. Gandhi would go very much further than we have done. He does not refer at all to *bona fide* or reasonable belief. He assumes these, and says—"I would therefore say that rather than complain that the Bill has been prematurely brought in, we should give our best attention to the provisions of the Bill. Thus, for instance, we would allow a provision to the effect that such officers as may have given orders of firing shall not be criminally triable for murder or civilly liable for damages." Then he goes on to say that such officers where in fault should be dealt with administratively.

"Members of this Council will see that our Bill does not go nearly as far as that. In a later letter in which he answers various persons who have attacked the Bill he writes as follows:—I am quoting from 'Young India' of the 20th September, a paper which, I believe, is now controlled by Mr. Gandhi.

'I must respectfully dissent from the view that such a Bill can only be properly passed after a Commission has reported. I venture to submit that the Bill as published is almost harmless and it is a Bill we shall be bound to pass as it is even after the Commission has reported.'

"My Lord, that opinion, take it for what it is worth, I think, supports the view which the Government has put forward throughout this debate. The Hon'ble Mr. Madan Mohan Malaviya has repeatedly referred to Mr. Gandhi as an authority of the very greatest weight, to whose views the deepest consideration is due. Well, my Lord, may we hope that on this occasion he will concur in the views of the authority whom he so much reveres. At any rate, I put it to the Council that these letters are of interest and that they support the conclusions which we have always advocated in this Council, that this Bill is a necessary and harmless measure which in no way forestalls the report of the Commission."

**The Hon'ble Pandit Madan Mohan Malaviya:—**"My Lord, I regret I must oppose the motion that the Bill as amended be passed. I do so with all the responsibility which I feel rests upon me as an elected Member of this Council, and I do so after having heard the words of my esteemed friend Mr. Gandhi, to which reference has been made by the Hon'ble the Home Member.

"My Lord, the Bill has to be considered on its merits. Opinions for and against it have no doubt to be weighed, and the opinion of Mr. Gandhi is entitled to weight. I am glad that the Hon'ble the Home Member has paid a compliment to Mr. Gandhi and advised us to pay great heed to his opinion. I hope, after reading this opinion of Mr. Gandhi, he will advise the Government of India, in the first instance, not to delay cancelling the order which they have maintained against Mr. Gandhi for the last many months, confining him to the Bombay Presidency, and, secondly, I hope the Hon'ble the Home Member will advise the Punjab Government and the Delhi Administration to follow suit. My Lord, that should be the least evidence of the sincerity of the appreciation of the Hon'ble the Home Member of Mr. Gandhi's position.

"Coming to the question before us, I attach, as I have said, great weight to the opinion of Mr. Gandhi; but there is a higher authority to which I have to bow, and that is the conscience that sits within me; and that conscience tells me that the Bill ought not to be passed as it stands.

"Now, my Lord, I will make my position very clear, and as briefly as I can. Your Lordship and the Council know, the whole country knows, that the Bill as it was drafted rested on the preamble wherein it was stated:—

[Pandit Madan Mohan Malaviya.]

[25TH SEPTEMBER, 1919.]

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

"My Lord, that phraseology was in conformity with well-established precedents. But our complaint was that the phrase, 'as it has been necessary,' used in this preamble was not sufficient, and that the larger phraseology of the English Statutes, to which I draw attention, should have been employed. I did not refer to William and Mary to which the Hon'ble the Law Member took us back, but, as he did refer to it, so far as I remember, I may say that the phraseology used therein also supports my contention. The preamble to that Act said :—

'Whereas about the time of His Majesty's enterprize divers Lords and Gentlemen well affected to their country did act as Lieutenants, etc., though not authorized thereunto, and did apprehend and put in custody criminal and suspected persons, and did seize horses, etc., in which proceedings some force or violence, or defect of form was unavoidable which in a time of peace would not have been warrantable, and divers matters and things have been done, all of which were allowable and necessary in regard of the exigencies of public affairs and ought to be justified, and the parties thereto indemnified, he it enacted therefore, ' etc.

Mark the language 'all of which were allowable and necessary in regard of the exigencies of public affairs and ought to be justified.'

"That was, my Lord, in 1689. I will omit the intermediate Statutes and I will come to the Statutes of 1715 in which, as I reminded the Council, it was recited in the preamble, which is the most important part of an Indemnity Bill, that the Acts which that Statute sought to justify were done during the rebellion 'in order to preserve our present happy establishment and the peace of this Kingdom and to suppress and put an end to the said rebellion.' Here, my Lord, I will say parenthetically that I regret I was wrong in saying that there was no authority for the use of the words 'maintaining or' in the Bill in the earlier Statutes of the English Parliament. My friend the Hon'ble the Law Member was right and I was wrong. But, my Lord, the language that was used was employed to show that the maintenance of peace was necessary, because there had been a rebellion or an insurrection or riots amounting to war. Now, my Lord in the Statute of 1715, after reciting the acts which had been done, it was said that whereas 'certain persons had for the purposes aforesaid, namely, in order to preserve our present happy establishment and the peace of this Kingdom and to suppress and put an end to the said rebellion, did divers acts which could not be justified by the strict forms of law, and yet were necessary, and so much for the service of the publick that they ought to be justified by Act of Parliament, and the persons by whom they were transacted ought to be indemnified, it should therefore be enacted,' etc. My Lord, my complaint was that while the draft of the Bill did use words in the preamble to show that the acts which it was sought to indemnify officers against were necessary, i.e., that it was necessary to resort to martial law, the advisers of the Government had not seen fit to incorporate the next clause of these earlier Acts, that is, the one which said, that, besides being necessary, the acts were also 'so much for the service of the public that they ought to be justified by Act of Parliament.' My Lord, I need not refer to the other Statutes, namely, to those of 1745 and 1780, this is the phraseology that has been used in both of them. Now, my Lord, not only in the English Statutes but in the South African Statutes also, to which the Hon'ble the Law Member seems to have taken a great fancy, the language used was acts 'done as necessary for the suppression of hostility in or the maintenance of good (or order) government, or the public safety of this Colony.' That was in Act VI of 1900, when the Boer War was going on. So also in Act IV of 1902 the language used was 'done as necessary for the suppression of hostilities or the establishment and maintenance of good order and government, in or for the public safety of this Colony.' It will be clear, therefore, my Lord, that the keystone upon which the edifice of an Indemnity Bill rests in all these Statutes, whether of the English Parliament

[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya; Sir George Lowndes.]

of South Africa, has been the declaration by the Legislature that the acts which were done and which it was sought to justify and indemnify officers against, were acts necessary for the suppression of disorders or for the preservation of the public peace. Not only that, but the English Statutes go further and say that those acts should also have been so much for the service of the public that they ought to be justified by Act of Parliament.

"This view is supported by the opinions of some distinguished Members of the House of Lords in the debate of 1818 and by the opinion of John Stuart Mill, to which I invited attention yesterday. Now, my Lord, the position taken up by the Government in the Bill as it was introduced was that it was necessary to introduce martial law for restoring or maintaining order. What have the Government done? The Government have now taken out the words 'It has been necessary for the purpose of maintaining or restoring order to resort to martial law,' and have substituted therefor 'martial law has been enforced'. I say the Law Member and the Home Member have cut the ground from under their feet, and they have no legs to stand upon in this Council and ask that the Indemnity Bill should be passed. I should like the Hon'ble the Law Member, who is a very learned man and whose researches in law and history must be deep, to tell me of any instance where an Indemnity Bill has been put on the Statute-book of any country without its Parliament or legislative body being satisfied that the acts which had been done were necessary, just and proper.

**The Hon'ble Sir George Lowndes** :—"Does the Hon'ble Pandit really want me to tell him?"

**The Hon'ble Pandit Madan Mohan Malaviya** :—"I shall feel thankful to the Hon'ble the Law Member if he will do so."

**The Hon'ble Sir George Lowndes** :—"Will the Hon'ble Pandit look at the St. Vincent Act that he is so much in love with?"

**The Hon'ble Pandit Madan Mohan Malaviya** :—"I thank the Hon'ble the Law Member. The St. Vincent Act said: 'acts which had been done *bona fide*, necessarily and properly for the suppression of rebellion. The language used there is clear.

**The Hon'ble Sir George Lowndes** :—"The Hon'ble Pandit must refer to the preamble; he is not reading from it now."

**The Hon'ble Pandit Madan Mohan Malaviya** :—"You have to take the preamble and the body of the Bill together. However, my Lord, without spending more time to look up that Act of St. Vincent—I have found the preamble of the amending Act, but the original Act I am not able to lay my hands upon just at this moment—I will say that I am glad to find a change in the attitude of the Hon'ble the Law Member towards the Act of St. Vincent. It was but yesterday that he held up that Act to ridicule, and to-day he cites it as an authority for the attitude now taken up by Government. What have things come to, my Lord? What a fall, what a sad fall? My Lord, if this is the position, I say the Government have to justify the introduction of this measure, and I submit that they have left no justification whatever for it now. My Lord, the whole situation has been altered by the modification which the Government have introduced; and I submit that on this ground alone, without raising any other point, I am entitled to ask that the Council should not pass this Bill. I submit that the Government have to go further than what the preamble as it now stands lays down. It is not enough to say that, whereas martial law had been enforced, certain acts done during the course of martial law should be justified and indemnified. It is not enough to say that. You must consider what

[*Pandit Madan Mohan Malaviya.*]

[25th SEPTEMBER, 1919.]

the acts were ; and has it been shown that the acts done were such as ought to be justified and indemnified against ? The other day I referred at some length to the many allegations on the part of the people who have suffered, that it was not necessary to introduce martial law. I have referred to many opinions expressed, and I will quote one more to-day. At the end of the debate the Hon'ble the Home Member read to the Council a telegram which the Government of India had received from the Punjab Government on the 13th April last asking that martial law should be introduced in Lahore, Amritsar and certain other parts of the Punjab. Now, my Lord, that telegram stated that certain unhappy events had happened on the 10th April at Amritsar and Lahore, and that two Europeans had been killed at Kasur on the 12th. My Lord, I submit that that telegram did not state the whole truth. It stated only a part of the truth, and did not supply all the material that was necessary in order to enable a sound judgment to be formed as to whether martial law should or should not be introduced. My Lord, as a matter of fact, we have indisputable evidence that on the evening of the 10th April after the temporary stir and disturbance and the firing on certain persons on the Upper Mall and at Anarkali Bazar, everything was quiet in Lahore. The then Lieutenant-Governor was entertained at the Government House at a party that evening only a little after that time, and the Lahore correspondent of the 'Pioneer,' whose identity must be known, I think, to the Hon'ble Mr. Thompson, writing on the 20th of April (his letter was published in the 'Pioneer' of April 25th) said as follows :—

'As a matter of fact when that evening was over (namely, the evening of the 10th April) no real anxiety remained. No real anxiety remained though he adds—'although of course the rioters were still exercising their sway and on the Friday, Saturday and Sunday business and ordinary administration was practically at a standstill.'

My Lord, I am sure the identity of this writer cannot be an unfathomable mystery to the officers of Government, and writing on the 20th April, this writer stated as a matter of fact that when that evening of the 10th April was over, there was no real anxiety left. That was the state of things in Lahore ; and we have had in the official Communiqués and the 'Civil and Military Gazette' publications that after 5-30 P.M., there was quiet in Amritsar on the 10th of April. I submit, therefore, my Lord, that the telegram upon which the Hon'ble the Home Member has relied was not sufficient to justify the introduction of martial law. Nor did he say anything else to justify the introduction of martial law in Lahore and Amritsar and in several other parts of the Punjab. We have, on the other hand, allegations put forward after some inquiry which show that there was nothing to justify the introduction of martial law. It is one thing to call in the aid of the military to suppress disorder, and quite another thing to introduce martial law. There was trouble at Lahore, there was trouble at Amritsar and in certain other places. The civil authorities rightly called in the aid of the military when they thought that their forces might not be sufficient to quell the disturbances. That has been done on numerous occasions without martial law being introduced ; that will be done and ought to be done when necessary. As the Hon'ble the Law Member told us in his exposition of the law, where the civil authority finds itself unable to cope with disturbances or to quell them, it is justified in calling in the aid of the military ; and where both acting together fail to establish order or to quell the rebellion, it is then that the civil authority would be justified in handing over their charge to the military. Now, I submit that the events which have been stated show that the first stage was reached, and that the second stage was not reached. That is to say, the civil authorities with the help of the military had restored quiet in Lahore and in Amritsar and in some other places, for instance, at Kasur, and that they succeeded in restoring quiet. And that therefore it was not necessary to resort to the next step, namely, to make over charge of the towns and the population to the will of the military officers.

[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

"My Lord, of the many allegations that I put forward in support of my opposition to the Bill, an attempt has been made to controvert only some and to qualify a few others. A partial attempt has been made to offer an explanation of some of the allegations of people who have suffered or of the relations of people who have suffered. Many have remained unanswered. As I said on the first day, the Government have not taken the opportunity which I offered to them of stating the facts of which they must have a better knowledge than other people. But the Government having refused to state the facts for the information of the Council, I submit, my Lord, I am entitled to assume the correctness of the allegations implied in my questions for the purposes of this debate. Council will remember that I did not profess to have any personal knowledge of the martial law incidents. I put forward these allegations on the authority of partial investigation by myself and my friends. I put forward these allegations as they were vouched for by respectable persons in whose veracity and honour I have confidence. If any of the statements are incorrect no one will be more happy than myself to be corrected. No one can be more sorry than I will be if statements in regard to which I may have been mistaken or misinformed remain uncontradicted. I therefore welcome any criticism which would throw light on the facts brought forward if they are incorrect, and I should be thankful to any gentleman who supplied correct information. But what has been the case here? Let me examine some of the statements made by way of criticism of, or reply to, what I said. I will deal with the speeches of the Hon'ble Mr. Hailey, Mr. Thompson, General Havelock Hudson and Sir George Lowndes.

"My Lord, in the admirable statement which Mr. Hailey made on behalf of the Government, he wanted us to believe that the state of things in Lahore and in Amritsar and in other places in the Punjab, where martial law was introduced, was so horrible that Government could not but resort to martial law. He told us that the Rowlatt Act agitation had created an atmosphere that was surcharged with danger. He said that the Satyagraha movement had come in and spread in the Punjab. But, my Lord, the Rowlatt Act agitation was not confined to the cities of Lahore and Amritsar. The Hon'ble Mr. Hailey is well aware, even better than I am, that there was agitation against the Rowlatt Act throughout the Punjab. He is also aware, I presume, that the Satyagraha movement had spread to all parts of the Punjab; that, generally speaking, the 6th of April was observed as a Satyagraha day throughout the Punjab. He is aware that in none of these other numerous districts of the Punjab did the agitation against the Rowlatt Act or the Satyagraha movement lead to any stir or to any insurrectionary or rebellious movement. He is aware that there was no trouble whatever in any of these places. And no trouble arose in these places, for instance, in Jullundur and all the other districts of that division, because the authorities did not interfere intemperately, but interfered sympathetically with the movement. They wisely said 'let the people give vent to their feelings regarding the Rowlatt Act; let them observe the Satyagraha day as they like.' Here, in Simla, Mr. Tollinton, the Deputy Commissioner, expressed sympathy with the attitude of the people in observing the Satyagraha day. On the day following they resumed their business in the ordinary way. I could name several other Punjab officials who acted in the same way; but perhaps I had better not. I am sure the Hon'ble Mr. Hailey, being Additional Secretary to the Punjab Government, must know that in many districts of the Punjab, where the Rowlatt Act agitation and the Satyagraha movement were as strong as in any other place, there was no trouble. I contend therefore that the circumstance to which the trouble owed its origin was the blazing indiscretion of the Punjab Government as it was then constituted, in having deported two such public men as Dr. Satya Pal and Dr. Kitchlew. That was the root of the trouble.

"I need not repeat the sequence of events here. I submit that for a proper consideration of the question that is now before the Council, it is neces-

[*Pardit Madan Mohan Malaviya.*]

[25th SEPTEMBER, 1919.]

sary for the Government to show that there was a clear necessity for the introduction of martial law. But it is not enough to show that the introduction of martial law was necessary. It may have been necessary, let us assume for argument's sake that it was necessary to introduce martial law in certain places at a certain time; the Government have to go further and to show that it was necessary to introduce it at midnight on the 15th of April; the Government have to show that it was necessary to introduce it in other parts of the Punjab and to maintain it up to the periods up to which it was maintained. I submit that this has not been shown by the Hon'ble Mr. Hailey. But I will not deal with the rest of Mr. Hailey's remarks, as I wish to compress my speech as much as possible. While Mr. Hailey has shown that these were anxious times in the Punjab and that the Government had to exercise vigilance, he has not shown that the situation was such that a sober-headed sympathetic Governor could not have managed it, without resorting to martial law and inflicting the many indignities and humiliations that were inflicted on the loyal people of the Punjab. In contrast to this, I drew attention to what happened at Ahmedabad. Nobody on the official side has referred to it. Perhaps because it could not be referred to except to support what I have said. Trouble arose in Ahmedabad, too, but it was completely got over in two days' time by the Government of Bombay allowing Mr. Gandhi to go to Ahmedabad and advise the people. A similar course could have been pursued at Lahore and Amritsar, and, if it was found necessary to introduce martial law, it should have been got rid of at the outside within four days or six days or a week. It was certainly not necessary to expose respectable people to all the indignities and humiliations to which they were exposed, and to keep up this state of things for the inordinate period of time for which it was kept up.

"I will next deal with the Hon'ble Mr. Thompson. Mr. Thompson was the Chief Secretary to the Government of Sir Michael O'Dwyer while martial law was enforced. I can quite understand that he feels he is personally on trial, and I can therefore excuse him for importing a great deal of the personal element and unnecessary heat into the statements he put before the Council. But, my Lord, when we calmly examine his statements what do they come to? As I said before I am never discomfited if any statement made by me in the Council or elsewhere should be found to be inaccurate. Therefore, I repeat that, if Mr. Thompson only gave me correct information in regard to incidents which I have mentioned, I should have whole-heartedly thanked him, however poignant might be my regret that I should have made an incorrect statement. Mr. Thompson said that I had said that in the Badshahi mosque meeting a C. I. D. Inspector, Ali Gauhar, had made certain remarks which had caused resentment to the persons assembled there.

"He told us that he had the file of the case before him, and that nowhere had it been stated in it that such a statement as I had made had been made, namely, that this Inspector had made certain remarks or said something which excited the people assembled there. For the benefit of Mr. Thompson and the Council, I beg to draw attention to the statement made on solemn affirmation by Inspector Ali Gauhar Khan, Criminal Investigation Department, himself in trial No. 1 of 1919 before the Martial Law Commission. He there stated:—  
 'We were in plain clothes in the mosque. There were several thousands of people in the mosque awaiting the people who were to address the meeting. Abdul Hai told me that he recognised me as a C. I. D. man, as my department had had him imprisoned for three months and put on security for three years. When I denied that I was a C. I. D. official, Abdul Hai went towards the pulpit and addressed the crowd saying 'the C. I. D. police had always been intruding in our meetings,' etc.

"Now the man was a C. I. D. official, and only when he denied it, Abdul Hai went to the pulpit and addressed the crowd saying that the C. I. D. police were always intruding in their meetings, etc.



[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

" Now, my Lord, I am sure that Mr. Thompson would feel that my statement that the C. I. D. Inspector had made certain remarks which were resented by some persons at the meeting, was not altogether incorrect.

" I take the next point made by Mr. Thompson, that relates to the incident regarding hand-cuffing in Amritsar. Mr. Thompson wanted the Council to believe that so far as he knew nobody had been hand-cuffed there. I hope I am repeating his words correctly. Speaking with reference to the hardships to which Indians had been subjected, he also spoke of the not dissimilar inconveniences to which certain European ladies and children who had been sent to the Fort had been subjected. Now, my Lord, I would place before the Council a statement on the subject, which I have in my hands of a Barrister-at-Law who says: ' On the 21st morning I myself with Shoikh Mahomed Amin, pleader, his son and brother were taken to the Rambagh in a well guarded *bund gari* and from thence ordered to be taken to the Fort. We four were there put in a cell hand-cuffed two together. In a corner of the cell was a little heap of parched gram and a bucket of water. In the afternoon we were taken out and marched in a file with a large number of Kashmiri coolies and others to the open square inside the Fort, all hand-cuffed, two together. There we had to march round and round with European ladies and gentlemen watching the show.' I suppose this was one of the inconveniences to which the European ladies and gentlemen were exposed in the Fort.

" Now, my Lord, I will take the next point. I referred to several cases of flogging. Mr. Thompson picked up one case and said, ' Oh, they were school boys; the Head-Master had asked the Military to help him in maintaining discipline amongst students by flogging some.' He overlooks the fact that even that would not justify the flogging of the students by the Military people. And he has not a word to say regarding the many other cases of flogging which are mentioned in the statement which was laid on the table by the Hon'ble the Home Member in reply to a question which I put on the subject.

" Mr. Thompson next referred to Mr. Manohar Lal's case. My Lord, I had said in regard to Mr. Manohar Lal's case that his wife and children had been turned out and were obliged to live in one of the outhouses used as servants' quarters until the bungalow had been searched about a week later. I did not state the exact period, because I did not know it. Mr. Thompson in referring to it grew very angry, and said that the wife and children of this gentleman were allowed, so far as he was aware, to return to the bungalow the next day. Now, my Lord, I have ascertained the exact facts from Mr. Manohar Lal and from others who knew it. Mr. Manohar Lal's house was locked on the 18th. His wife, an invalid lady, was turned out of the house at once. She was compelled to live in one of the outhouses on the whole of the 18th, the whole of the 19th and until late in the evening of the 20th, until the search of the house had been completed. She had not any bedding to lie upon with her, she was not allowed to take anything out of the house. Her friends sent her bedding and food, and thus she lived in an outhouse in her invalid condition for three days. Now, my Lord, if my statement that it was about a week later that they were allowed to return to the house was incorrect, Mr. Thompson, in his capacity as Chief Secretary to the Punjab Government, should have told us what the exact period was and not fulminated that this was a very serious discrepancy.

" My Lord, I should not leave Mr. Manohar Lal's case without drawing your Excellency's attention to certain other remarks Mr. Thompson made about it. He said Mr. Manohar Lal was a Trustee of the 'Tribune', and as such he was wont to take some interest in the paper and Mr. Thompson wanted the Council to think that that was a sufficient justification for the action that had been taken against him. I am not surprised, my Lord, that this view was put

[*Pandit Madan Mohan Malaviya.*][9<sup>TH</sup> SEPTEMBER, 1919.]

forward by Mr. Thompson, because in the letter, dated the 20th April which appeared in the 'Pioneer' to which I have referred before, I find it stated :—

'Manohar Lal, the Trustee of the 'Tribune' represents one of those cases which make one despair of educating on western lines. He gained a scholarship to England and at the 'Varsity' gained a brilliant reputation for economics. On his return to India, however, he failed to maintain the promise of his academic career, and while he has always posed as an authority on education, he has done very little practically to utilise his own talents to their full extent.'

"My Lord, it is sad to find that with the writer of the letter in the 'Pioneer,' Mr. Thompson thinks that the mere fact of Mr. Manohar Lal's being a trustee of the 'Tribune' was sufficient to put this distinguished scholar, not less distinguished than Mr. Thompson, to all the indignities, humiliation and suffering to which he and his wife were exposed !

"The next point I will deal with is the treatment of respectable citizens in Gujranwala. Mr. Thompson read what I thought was a letter from Colonel O'Brien giving his version of the affair. My Lord, he seemed, so far as I could make out, to question the correctness of the statement that a Hindu and a Mussalman were handcuffed together by deliberate design. He said that was accidental. My Lord, I refuse to take that statement as correct. I will quote from the correspondent of the 'Pioneer' on this subject, also from a letter published in the paper of the 25th April. He said :—

'The outbreak in Gujranwala had almost a comic opera termination. Colonel O'Brien had handed over charge to Mirza Sultan Ahmed and was in Lahore when the news came in. He immediately hurried back to his former district, and after the immediate suppression of the riot he arrested eleven leaders (including one Mangal Sen, a local financial genius) marched them in procession through the city, accompanied by a detachment of the 2-6th Royal Sussex and headed by two City Fathers—a Hindu and Mussalman respectively—who under orders shouted out to their constituents not to misbehave themselves by acts of violence. This spectacle, says the learned and large-hearted correspondent of the 'Pioneer', 'this spectacle of Hindu-Mussalman unity must have been almost as impressive as the sight of Munshi Ram preaching in the Jumna Masjid at Delhi.'

I leave the Council to judge from this quotation what were the feelings of the men whom Mr. Thompson represents, in relation to this incident, and I ask the Council not to accept the statement read out by Mr. Thompson that it was merely by accident that a Hindu and a Mussalman were handcuffed together and marched in the disgraceful manner in which they were.

"My Lord, Mr. Thompson's next point related to my reference to trials in a summary way. I have said that in certain cases notes of evidence had not been recorded. I did not say that in all cases notes had not been recorded. Mr. Thompson showed that he had before him several pages of notes of evidence in certain cases. That may be ; I never said there were no notes of evidence taken in any case. What I did say was, that it had been alleged that notes of evidence had not been recorded in a certain number of cases. I also placed before the Council certified copies of judgments in two cases, in one of which I pointed out that even the offence with which the accused was charged was not mentioned. That was a case tried by Mr. Hoyle on the 26th of May, 1919. Mr. Thompson had not a word to say about it.

"My Lord, the next incident to which I referred and to which Mr. Thompson also alluded, was the Ramnagar case, where it is alleged that the King's effigy was burnt. Mr. Thompson failed to grasp my point and did not represent me correctly. My complaint was that here was a case in which respectable, probably the most respectable, Hindu citizens of Ramnagar, were charged with having burned the King's effigy. Their position and status in society, their wealth and status, made it impossible for me to believe, and should make it impossible to be believed, that they

[25TH SEPTEMBER, 1919.]

[Pundit Madan Mohan Malaviya.]

would be guilty of such foolish and wicked mischief. Their complaint was that they had not had a public inquiry which they wanted. They had not had a regular inquiry, and they urged that if they had a regular inquiry, if they had an opportunity of appeal to a higher court, the facts would have been sifted and their innocence would have been established. They urged that the case was a trumped up one, without any foundation, and that they were entitled to have the matter regularly tried. There was no martial law necessity for trying this matter in a summary way before any martial law tribunal, and my complaint was that by having been put before a martial law summary court for trial on such a charge, they were deprived of the opportunity they should have had to establish their innocence, and that they have been unjustly dealt with.

"My Lord, I must also say a word about the Lyallpur *bhusa* case. It has been said that at Lyallpur Rs. 60,000 worth of *bhusa* was set fire to by incendiaries. If this was so, it was of course a very serious mischief. But was it so? I hold in my hand a copy of an Order passed by the District Magistrate of Lyallpur on an inquiry relating to this affair. Government had evidently asked him to report under section 15-A. of the Police Act what compensation should be fixed upon for the burning of this *bhusa*. The case was taken up by Mr. G. E. deMontmorency, and the conclusion which he arrived at was, that the burning of the *bhusa* was not the result of incendiarism, committed by any of those who were believed to have taken part in the rioting, but that it was probably due to an accident. At any rate, he was unable to find that it was the act of any of those who were suspected of it. This is what he says:—

'The *bhusa* appears to have gone on fire between 8-15 P.M. and 8-45 P.M. The flare was noticed by the picket at about 8-40. . . . A few people from the factories, a few members of the Municipal Staff and the Storekeeper alluded to above were the only persons on the spot when I arrived. There was no information of any crowd having visited the stacks or of any single person having been seen near the stacks. The absence of the *chaakidar* seems to have been due to laziness, and not to have been arranged or premeditated. Neither patrol nor picket saw anything suspicious in the vicinity of the goodsyard. . . . A very exhaustive police inquiry was made; no trace of anything bearing on the burning of the *bhusa* came out. There were some approvers in the Lyallpur cases who were associates and in the secrets of those who were convicted in the Lyallpur disorders. None of these however had any information to give in regard to the burning of *bhusa* which does not seem to have formed part of the plans of their associates.

'There was a strong suspicion at the time that this was the work of an incendiary because—

- (1) similar acts had occurred elsewhere in connection with the disorders;
- (2) a plot to burn *bhusa* had been alleged to exist at Toba Tek Singh;
- (3) the fact that goods had been moved from the goodsyard the day before.

'The police inquiry has failed to connect the burning of this *bhusa* with the act of any incendiary or with any riot or rioters. Those convicted in jail in Lyallpur disorders were questioned by me. They have now after conviction no object in concealing what they know and have given information on a number of other points, but none of them have any information to give about the *bhusa*.

'I have examined the theory of whether it was the act of some villager or villagers, but no clue has been obtained.'

The learned District Magistrate says that there had been several fires since April last due to cinders from chimneys, but he is not certain that this was due to that. In conclusion he says:—'I have been unable to find anything except suspicion to point to this injury having arisen from riot and unlawful assembly within the area. I am therefore unable to make the assessment contemplated in section 15A (2) (c) of the Police Act.' So much for the burning of the *bhusa*. I hope that my Hon'ble friend will revise his opinion about this incident also.

'I will now come to the question of the number of deaths caused by the firing in Jallianwalla Bagh. Mr. Thompson warned the Council against accepting

[*Pandit Madan Mohan Malaviya : Mr.  
J. P. Thompson.*]

[25th SEPTEMBER, 1919.]

the statement communicated to me on the day I spoke last on the subject that 530 deaths had been traced and that 192 persons had been found to have been wounded. With reference to the number of deaths, he told the Council that the Government had issued a proclamation to ascertain their number, and that the number which had been reported was 291. He further told us that the Government of the Punjab had adopted every means in their power to ascertain the number of deaths in question. He said :—

‘ A proclamation was made in Amritsar and the surrounding villages inviting all persons who had any information regarding the names of those who had met with death. Instructions were issued to the local authorities there to encourage men to come forward and give the information they possessed. Every possible step was taken in that direction. The result of the inquiry was that the total number of casualties amounted to 291, and any further number suggested by anybody must be taken with great discretion.’

**The Hon'ble Mr. J. P. Thompson :—**“ Suspicion was the word I used, my Lord.”

**The Hon'ble Pandit Madan Mohan Malaviya :—**“ He used the words ‘ great suspicion ’ ; very well. But, my Lord, what are the actual facts ? I have in my hand a letter which has been published by Mr. V. N. Tiwari, Honorary Secretary of the Seva Samiti, who has been working for some time in connection with the distribution of relief in Amritsar. He writes :—

‘ The number of killed so far known to us comes up to 530 including 60 who could not be traced and, unknown and unclaimed, were cremated by certain philanthropic gentlemen.’

“ Now, my Lord, the representatives of the Seva Samiti went to Amritsar to distribute relief, and we set an inquiry on foot to find out who were the persons who had been killed or wounded in order to decide whom to give succour, and it was thus that we found out, by sending men round, the number of persons who had met with death or had been wounded. Our Secretary writes :—

‘ I have had to make from the day I came here strenuous efforts to ascertain the number of killed and wounded at the Jallianwalla Bagh. The method pursued by our volunteers has been to go from house to house in the city of Amritsar, ascertaining the names not only of the killed, but also of the wounded. I further arranged to send out volunteers to visit every single village in the districts of Amritsar, Gurdaspur, Sialkot and Lahore, so that we might give relief to their dependants in case of want. We are also advertising in the Urdu and Gurmukhi papers of the Punjab asking people to communicate to the office the names and addresses of the killed and wounded.’

It is thus, my Lord, that the number, 530, was obtained. It was not an imaginary number. It was a number obtained with at least as much care, if not much greater care, as the number reported to the authorities at Amritsar. But, my Lord, to give the authorities at Amritsar their due, I do not think they have anywhere stated that they have received the last information about the number of deaths caused. So far as I remember, I think they said that up to the date on which they sent the information to the Government of India, the number of deaths reported was 291, and, I think, it was so stated in the statement which was laid on the table. The Hon'ble Mr. Thompson need not, therefore, have asked the Council to receive the number, I stated ‘ with great suspicion.’ Receive it with caution always, but you should not refuse to believe that a larger number of deaths may have occurred simply because the official sources have told you that the number was 291. I do not wish to add even one to the number of deaths that has been caused. I cannot. The number has to be found out. Let us combine to find out the truth and let us stand by the truth.

“ Lastly, I will refer to the incident of the corpse in the Jallianwalla Bagh well. Here the Hon'ble Mr. Thompson excelled himself. Referring to my statement, he questioned its correctness and held it up as a test by which any

[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

allegations placed by me before the Council or the country should be judged. My Lord, I am compelled therefore for his benefit, as well as for the information of the Council, to refer to this unfortunate incident at some length. My Lord, my esteemed friends, Pandit Motilal Nehru, Swami Shradhdanand and myself, accompanied by several other gentlemen, went to the Jallianwala Bagh, to see the locality where the massacre of so many of our fellow-men had occurred. When we were there we looked into this well, and one of my friends noticed that there was what looked like a corpse in the well. A stone was thrown at it; the thing turned up and we saw it, and the stench was so great that we all moved back from the well. When we returned home, it struck me and one of my friends, that we should bring this fact to the notice of the Deputy Commissioner of Amritsar, merely from the point of view of the sanitation of the locality. There was absolutely no political meaning in my letter to the Chairman of the Municipal Board, and there was no point to be made against the Government, assuming, which would be a wicked assumption, that we were anxious to find out facts against the Government, with the desire of *badnaming* the Government. My Lord, as the fact of a corpse being in the well had come to our notice, we thought that, as a matter of humanity to the people who were living around, we should draw the attention of the authorities to it. I therefore wrote this letter to the Chairman of the Municipal Board:—

I beg to draw your attention to the fact that there are still one or more corpses in the big well situated in the Jallianwala Bagh in a very advanced stage of decomposition. I visited the Bagh yesterday in the company of some friends, and we saw a corpse giving out an unbearable stench floating in the water. There are inhabited houses in the close vicinity of the well and, unless it is thoroughly cleansed and disinfected immediately, the health of the neighbourhood will suffer seriously.

This letter was dated the 30th of June. On the 8th of July, I got a reply from the President of the Municipal Committee in which he said:—

In reply to your letter of 30th June 1919 reporting the existence of corpses in a well in Bagh Jallianwala, I have the honour to say that the well was thoroughly dragged by divers in the presence of the Police and ten competent witnesses. No corpses or skeletons were found, the only things discovered were some pieces of cloth and an earthen pot.

The well has been disused for some time, which doubtless accounts for the odour you noticed.

My Lord, I have to move about a good deal and could not reply to this letter till late in August, and then both my friend Pandit Motilal and I sent a letter to the Deputy Commissioner of Amritsar. In his letter my friend Pandit Motilal said:—

The report made by his subordinates, I have no hesitation in saying, is a wholly perverted and false account of the incident.

The Hon'ble Pandit Madan Mohan Malaviya and myself in company with other gentlemen of unimpeachable veracity have actually seen clearly and unmistakably with our own eyes a dead human body in the well and no police *camouflage* will alter the fact. They may as well try to make out that no human lives were lost in the Jallianwala Bagh on the fateful afternoon of the 13th April.

It is not my business to inquire by what legal means the putrid corpse came to be substituted by the loot from the National Bank, and the only reason why I am troubling you with this letter is that you have by writing to me for information about bribery in the Police of Amritsar evinced a desire to take the people into your confidence, a desire which is highly valued by all public men in India. This incident will, however, show what use the underlings in office make of an honest endeavour on the part of the public to bring facts to the notice of the authorities, and how ready the latter are to accept the garbled accounts of their subordinates in preference to authentic statements of facts made by persons of the position and standing of the Hon'ble Pandit Madan Mohan Malaviya. It also affords a sad commentary on the possibility of the much-talked-of co-operation between officials and non-officials.

My Lord, I supplemented this with a short letter, I said:

Pandit Motilal Nehru has now told you what he and I in the company of several gentlemen actually saw in the well at the Jallianwala Bagh, and the fact that some pieces of cloth

[*Pandit Madan Mohan Malaviya.*]

[25TH SEPTEMBER, 1919.]

and an earthen pot were found when 'the well was thoroughly dragged by divers in the presence of the Police and ten competent witnesses' some days later seems to me wholly immaterial. That there was at least one corpse in the well when we visited it on the 29th June last can admit of no possible doubt, and no length of disuse of the well can account for what we saw with our own eyes. I may add that our sense of smell is sufficiently developed to distinguish between the exhalations from a decomposing corpse and the odour of a disused well.'

"My Lord, the Deputy Commissioner of Amritsar acknowledged this letter thus:—

'I thank you for your letter of August 20th. Whatever may be the true facts of the case I think I could convince you, if you could spare time on one of your visits to Amritsar to see me, that my predecessor had as good reasons for supposing you were mistaken as to what you saw in the well as he had for thinking you were correct.'

This was a letter from a gentleman to another gentleman.

"Now, my Lord, I think the facts are sufficiently clear and I need not dilate upon them. Will anybody tell me that it is impossible that the corpse which we saw had been taken out of the well before the ten competent witnesses had been summoned by the police to make a report such as was made? I leave it to every reasonable man to judge it for himself.

"Now, my Lord, I will not spend any more time upon the Hon'ble Mr. Thompson. I will only say this. He is a junior member of this Council; I am a senior member of this Council, perhaps the most senior. My Lord, the traditions of this Council have been, the old traditions of this Council are, that we treat every member who enters our brotherhood as a gentleman. I hope the Hon'ble Mr. Thompson will not compel us to depart from those traditions.

"I hope that now that I have told him the facts he will behave as a gentleman and withdraw the unworthy remarks with which he offended the dignity of this Council.

"My Lord, I will next deal with the remarks of General Sir Havelock Hudson *re*: the incidents at the Jallianwala Bagh. My Lord, it is painful to me to have to refer to these incidents. I have not known in my reading of history anything more distressing to think of than those incidents. The General has tried to give an explanation. He has not controverted the facts, he has tried to give an explanation according to the facts supplied to him. I do not impute any personal misstatement to the General. He is an honourable soldier. He has spoken according to the brief supplied to him by those who were in a position to do so, or whose duty it was to do so. But judging from the allegations which have been made to me, allegations made in many cases by persons who were actually in the Jallianwala Bagh when this tragedy occurred, I am sorry to have to say that several of the statements supplied to the General are incorrect. My Lord, the General described to us, as far as he could, the state of mind in which the military officer, who was asked to co-operate with the civil authorities, would find himself. He said: 'When the military officer had reached the place his first care would be to dispose of his troops with a view to the protection of life and property: his second would be to warn the populace as to the result if it became necessary to resort to force in suppressing any attempt at rioting. These are the steps which were in fact taken by the Officer Commanding at Amritsar. On the 11th and 12th, he reorganised his troops and on the 12th he marched a column round and through the city in order that a display of force might have its effect on the minds of the populace.' Then, my Lord, the General said that a proclamation was issued on the evening of the 12th, and on the morning of the 13th April, the Officer Commanding marched a body of troops through all the main streets of the city and announced by beat of drum his intention of using force should occasion arise. The people were permitted to collect in order to hear the proclamations. He then went on to say: 'While the troops were still in the city, information reached the Officer Commanding at about 12 o'clock that in

[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

spite of his proclamation a big meeting of rebels would be held at the Jallianwala Bagh at 4-30 in the afternoon.' Now, my Lord, a meeting was no doubt held, but were the men who assembled there rebels? It is a violation of truth to say that they were. I am not saying that the General has said it; he is repeating, I take it, what has been put into him. But I say, my Lord, it is an untruth to say that the men who were assembled at the Jallianwala Bagh, —unarmed, inoffensive men, children of tender years and aged men, and the rest of them—that they were rebels. They showed nothing to justify the accusation that they were rebels. But let me proceed. The Officer Commanding received information at about 12 noon that a meeting would be held at 4-30. What did he do, my Lord? General Hudson says: 'As this place had been used before for meetings, and as large assemblies had been addressed by the heads of the agitators on the 29th March and 30th March and the 2nd April, and as a dense mass meeting had assembled here on the 6th during the *hartal* and had listened to speeches intended to bring Government into hatred and contempt, it would thus have been clear to the officer in command that he might expect deliberate defiance of his orders.' Why should any such silly thing have been clear to the officer in command? Because certain meetings had been held in this place, because certain speeches had been delivered on another occasion, and because all that had been done peacefully and without giving rise to any violence or disorder, should not the officer in command have concluded that the meeting of the people which was to assemble would disperse as peacefully as similar meetings had done before? What was there to justify the view that he should expect a deliberate defiance of his orders? Even if he did come to such a conclusion, was it not his duty to see that sufficient warning was given to the people that if they did not disperse they would be shot at? No such warning was given. I submit, my Lord, that was a great, a most sinful and criminal dereliction of duty. And what does the General say happened? The Officer Commanding at Amritsar had to decide about midday on the 13th April how he would act, if the projected meeting took place in direct defiance of his authority. I say that the first thing that he ought to have done when he heard of the projected meeting was to communicate by beat of drum to the people that the meeting was prohibited, and that if they assembled in defiance of his order they would be dispersed by force. It is said that there was a proclamation made in some parts of Amritsar. The people allege, those who live there told me that the proclamation was not made in all parts of the city, but only in certain parts, and that people in the other parts did not hear of it at all or they would not have gone to expose themselves to a risk of their lives.

'The next thing, my Lord, that the General has been made to put forward is equally unsatisfactory. He has said: 'The Officer Commanding at Amritsar had to decide about midday on the 13th April how he would act if the projected meeting took place in direct defiance of his authority. After making dispositions for the safety of his command, he found that he had but a small striking force at his disposal. Realising the gravity of the situation the Officer Commanding this small force (of 50 rifles and forty men armed with kukries only and two armoured cars), marched this force straight to the Jallianwala Bagh, leaving the armoured cars behind owing to the narrowness of streets. On reaching the Bagh his force was confronted by a vast assembly, some thousands strong, who were being harangued by a man who was standing on a raised platform.' Now, my Lord, was this force of 50 rifles and 40 men armed with kukries only such a despicable force as the general would have us believe? Was this force with all the munition it had at its disposal—I am told on the authority of a high official that 1,700 service bullets were used there, another version being that 2800 had been used—such a despicable force that it could not face a few thousands of men who were utterly unarmed? Could it by any justification be said that this force was confronted by a force of some thousands strong, as one force is confronted

[*Tarbat Madan Mohan Malaviya.*]

[25th SEPTEMBER, 1919.]

by another force? I submit not. The General went on to say: 'Realising the danger it was clearly the duty of the officer to disperse this unlawful assembly.' Very well, I will agree it was; then this duty could have been performed by simply proclaiming to the people that if they did not disperse they would be fired on. My Lord, I referred the other day to the Riot Act passed, I think, in the reign of George I. In that Act it is provided that after a proclamation has been read to a riotous assembly to disperse, an hour must elapse from the time of reading the proclamation, before the assembly should be fired on. That was a humane provision. Do not wait for an hour, if you think you must not; but most certainly you must make sure that the people have heard the proclamation and understood what the situation is; and if they continue to remain where they were then fire on them, but still not in a way to kill them but to impress them with the danger to which they are exposed and to make them run away from the place. But what was the course followed here? The General said: 'Realising the danger to his small force, unless he took immediate action, and being aware of the inadequacy of the measures taken to restore order on the 10th of April, he (the Officer Commanding) ordered fire to be opened. The crowd was dispersed and the force withdrew.'

"My Lord, what a chapter of woe is concealed between these two sentences. The people were fired on. They began to run for their lives to all the corners of the Jallianwala Bagh; and they were shot at even when they were flying. I have seen the place, and people have told me that there were heaps of corpses piled one on the top of another. The people tried to climb over the walls to save themselves from the fire. They were not allowed to escape. I am told that there was a wall of corpses raised at more than one place in the Jallianwala Bagh. I have seen a narrow lane, not wider than five feet, into which the people ran for their lives and were there shot at. I have seen a receptacle there which it was said was filled with the blood of those men who were killed or wounded. Was it necessary for dispersing the assembly, to shoot at people who were running for their lives? When the Officer Commanding had seen that the persons assembled were running away for their lives, was it necessary to continue the firing? Should he not have stopped it at least then? It is well known to the military authorities, and to General Hudson, that a number of men had stretched themselves on the ground to escape being shot. One of these men told me that, while he was lying so stretched on the ground, two shots passed over him and that the third hit him in the leg and has maimed him for life. Should not these facts have been disclosed by General Hudson when he was speaking on behalf of the Government, and should not some explanation be offered for them? My Lord, it was a most unjustifiable massacre of men which was made in the Jallianwala Bagh in the name of dispersing the assembly there. General Hudson spoke of this assembly as an organised rebellion. I do not know what to say about it. It is inexpressibly sad to hear any such expression used of men who had not the remotest idea of rebelling against the King. I have told the Council that there was one man in the assembly with a child of 7 months in his arms. There were a number of boys there of ages ranging from 12 to 18. I have seen some of the young men who were injured; I have talked to them. They did not go to the meeting with any idea of organised rebellion; they had no such idea. If they had any such idea they would have gone there armed at least with *lathis*; they were entirely unarmed, innocent and helpless, and yet they were fired on. I will not attempt to characterise the whole sad affair. My feelings are too deep to permit of my doing so.

"I will now refer to the incident of people having been made to crawl on their hands and knees. I was shocked at the ripple of laughter which passed through some parts of the Council when it was told that several men had undertaken to do this voluntarily. I should like to know whether any Member of this Council would like to voluntarily perform that process in this



[25th SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

room. I will say nothing more about it. But before I leave Amritsar, I should say a word about the stopping of the electric lights and the supply of water. As a sort of explanation, I could not regard it as a justification. It was said that there was a fear that the people were going to attack the water pump station. But it was not said that there was any attack really made. It was also said that there was a rumour afloat in the city that the water had been poisoned, and so it was considered prudent to stop the supply. But the water was not stopped in the civil station, and if such a rumour had got about, should it not have been left to die of itself? Could not the residents of the city have been left to discard any such rumour if they had heard it? Was it not the best way to kill the rumour to let the people have the water to quench their thirst and be happy? I say this is the feeblest, flimsiest explanation that was ever offered. And then what about the electric light? Was any poison introduced in it? Why was it then cut off? I have never heard such flimsy arguments used in this Council ever before. I will now come to the Gujranwala incidents. I think I have made it clear that I have no complaint personally against General Hudson. I take it that he merely put forward the case which those who were responsible for supplying him with his brief, put in his hands. But I must point out that no case has been made out for the use of the aeroplane in Gujranwala. It was said at the time in the 'Civil and Military Gazette' that 'the crowds were giving up the contest' i.e., were dispersing when the aeroplanes arrived from Lahore. Now, if the crowds had begun to disperse when the aeroplanes arrived, where was the necessity for using them? Where was the necessity for inflicting several casualties by bombs and machine guns? Where was the necessity of throwing bombs at places a mile and a half or two miles from the railway goods shed which had been set fire to? Where was the necessity of dropping bombs from aeroplanes in the villages of Gharjak, Bhagwanpur and Dhulla? The picture given of Gujranwala by General Hudson would make one think that there was a condition of war there. The difficulties of aiming from aeroplanes were brought into requisition and offered as some sort of explanation. Were there any sort of anti-aircraft machines at work at Gujranwala that the aeroplanes had to fly at great height and so missed their aims? I have been told that the bombs were dropped from no great height—perhaps from 100 feet at the outside. Would a bomb dropped from a height of 50, 60, or 100 feet fall half a mile or a mile away from the place where the object aimed at existed? The village Gharjak which I visited must be over a mile from the place where the crowd was assembled. I was told that there were some small children playing in the field where the bomb was dropped. It was mere luck that they were not hurt. I have seen the Khalsa Boarding House at Gujranwala; it is, I think, about a mile from the town proper. I have seen where a bomb fell in that institution. It was lucky that 160 students of the boarding house had just gone out then of the hostel to see the aeroplanes, or some of them might have been done to death. I saw the injuries done to the walls by the missiles. In Dhulla, a woman and a child were killed. Was this, I ask, my Lord, necessary for maintaining or restoring order at Gujranwala? I submit not. As regards the plea for the soldier which General Hudson put forward with such pathos, I will deal with it later on. I have not less regard for a soldier's life than General Hudson has; but things have to be seen in their true proportion. We have to see clearly what the duties and responsibilities of soldiers, as well as of civilians, are to the civil population at a time of disorder.

"I shall now deal with the speech of the Hon'ble the Law Member. He ridiculed the opposition to the Bill.

"He held up the Hon'ble Raja Sir Rampal Singh to ridicule and said that the speech which he delivered in this Council the other day was not written by him, but by some one else for him. My Lord, this statement was untrue, and it was a gratuitous insult offered to Raja Sir Rampal Singh. I knew that Raja Sir Rampal Singh is able to write his own speeches and does

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

[25th SEPTEMBER, 1919.]

write his own speeches ; and I wired to him asking him to come up here to be able to reply to the charge, but the Hon'ble Member evidently got my wire rather late. So he has wired to me : 'Wire too late cannot reach in time. Townsends' attack unjustifiable and groundless ; speech was written by me, contained my views, Government is wrong.'

"Now, my Lord, the next gentleman to be attacked was Mr. Sinha. If he had made a speech which met with the approval of the Hon'ble the Law Member, he would have had the honour of being quoted as Mrs. Besant, Mr. Horniman, Mr. Sastri and Mr. Gandhi have been quoted. But he had the misfortune to express opinions which were not acceptable to the Hon'ble the Law Member at the time, and my Lord, Mr. Sinha also came in for unjust criticism. So did my friend Mr. Chanda. I will not speak of myself, for I take the criticisms of some Hon'ble Members on the Government side in a very calm and considerate manner. I know that it is a very unpleasant thing to speak the truth and even more unpleasant to hear the truth on occasions. But I try to put forward the truth according to my light. Perhaps I err sometimes in doing so. Perhaps I err more than others. If so, I am sorry for it ; but I put forward what I believe to be the truth wholeheartedly, and I shall continue to do so regardless of any frown or criticisms from Government benches. The learned Law Member referred to us as gentlemen who came from remote places—he said one came from his palace or fortress in Oudh—I do not exactly remember the exact words he used . . . . .

**The Hon'ble Mr. Sachchidananda Sinha :—**"From the fastnesses of Oudh."

**The Hon'ble Pandit Madan Mohan Malaviya :—**"Yes, from the fastnesses of Oudh ; another from Assam ; a third from Bihar ; and a fourth came from Allahabad, and he said that not a single Punjab Member had asked that the Bill should not be proceeded with. My Lord, you do a wrong to the people of the Punjab in not giving them an opportunity to elect their own representatives. You nominate such men as you like, and then you turn back upon them and say that the Members who are sitting here from the Punjab do not say that the Bill should not be proceeded with. I mean no disrespect to the Punjab members ; but if you yourself shut the popular voice out of this Council, should you turn back and make use of that fact as an argument in support of your measures ? Is this fair, my Lord ? I say it is not. I know perhaps one Member from the Punjab is elected. But how many elected Members have you given to the Punjab ? Let the people have the opportunity of returning those in whom they have confidence, and you will hear their opinions as freely expressed here as you hear the opinions of the people of the other provinces. My Lord, the Hon'ble the Law Member went on to quote Mrs. Besant, and Mr. Horniman,—and when he had not the courtesy of putting a 'Mr.' before his name,—and he or Mr. Hailey quoted Mr. Sastri. My Lord, I am sorry for the Hon'ble the Law Member that he should have to rely in support of the Bill before the Council on expressions of opinion by Mr. Horniman in his paper when the sad events of the Punjab were fresh and when it had not been investigated what the facts were ;—when the Punjab Government supported by the Government of India would not allow the real facts of the situation to leak out from the Punjab, when people were taken aback by what had happened, but had had no time and opportunity to investigate the facts. Mrs. Besant stood in the same position. I am sure if the facts were known as they are known now, neither Mrs. Besant nor Mr. Horniman, nor Mr. Sastri would adhere to the opinions which they had expressed ; the opinions they would now express would be very much modified in the light of the facts which have been published.

[25th SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

"Then, my Lord, my friend the Law Member went a little further, and speaking with the air of a Dogberry dressed in a little brief authority, he spoke of us contemptuously as self-constituted Commissioners who went from Allahabad to the Punjab. Now, my Lord, let me tell the Hon'ble Member that we are not self-constituted Commissioners. The Congress, the last Congress, was attended at Delhi by nearly 5,400 delegates from all parts of India. According to a prescribed procedure, it regularly appoints every year an All-India Congress Committee as its executive. This All-India Congress Committee is representative of all sections of the people. In view of the recent events in the Punjab, this Committee met and considered the situation, and appointed a sub-committee,—of which I have the honour to be *ex-officio* President and my esteemed friend the Hon'ble Pandit Motilal Nehru a member, and of which several other distinguished Congressmen are members,—to arrange to help in the inquiry which the Government had said was going to be conducted. Now, my Lord, having been so commissioned, not by ourselves, but by a very respectable body, from whom it is an honour to take a commission, we did spend some time in the Punjab. We investigated the facts; we visited the places where these sad events had happened; we saw with regret the signs of the fires that had been set to houses and Churches; we saw also with regret and pain the signs of the killing that had been resorted to in the Jallianwala Bagh; and we heard distressing accounts of other deaths which had been caused. My Lord, we did not publish any expression of our personal opinions on the situation until we had visited these places and made inquiries. What was the next step I took? My Lord, I sent to the Government the result of my investigations, and the investigations of my colleagues, in the shape of a number of questions, and asked them to give us information on the various allegations that had been made to us.

"We thus placed the Government in the best position we could to know the facts; and if they did not know them, to inquire into them. And now that the Bill before us is being pressed by Government, I feel it my duty to oppose the Bill on the ground that those allegations should be inquired into by the Committee that has been appointed before the Bill is passed. I have said in distinct terms more than once, as the report of my speech by the official reporters will show, that the facts have to be sifted. Let them be sifted by the Committee of Inquiry which you have appointed, and when we know what the facts are, then will be the time for the Government and the Council to sit down together and weigh what are the acts which should be justified by this Council; what are the acts among those which some people had unfortunately, in the performance of their duty, to commit, and against which they should be indemnified. That is the reason why I oppose the Bill. I have during these six weeks met a number of men of the Punjab, both among those who are enjoying their freedom as we do, and those who have unfortunately been deprived of their freedom and are shut up in His Majesty's jails. I have met a number of such people and ascertained facts first-hand from them, some of the facts from the lips of the men who are condemned to death and are passing anxious days to know what will happen to them. I have not put forward these facts lightly; I feel it my duty to bring these facts to the notice of Government. Even if I had not a commission from the Congress Committee, I should have been proud and thankful to God to have gone forward to the Punjab, as a self-constituted commissioner, to find out the wrongs that had been done to my fellow-men and to bring those wrongs to light. My Lord, I owe a duty to my fellow-men. When atrocities were perpetrated in Belgium, who constituted the Commission over which Lord Bryce presided? Did the Belgian Government constitute that Commission? No, so far as I remember, it was the then Premier of England who asked Lord Bryce and others to visit Belgium and to report upon the wrongs which it was said had been perpetrated. If the Government of India did not take the steps which they were bound in duty and in honour to take; if the Punjab Government did not take the steps

[Pandit Madan Mohan Malaviya.]

[25TH SEPTEMBER, 1919.]

which they were bound in honour and in duty to His Majesty the King-Emperor and the people to take, to ascertain the facts and to seek to have the proper remedies adopted, it was no sin on my part, nor on the part of my friend Pandit Moti Lal Nehru or my other fellow-workers, to go to the Punjab and to make such a sacrifice of our time and other advantages as was demanded by the situation in the cause of humanity. Now, my Lord, I appeal to all my friends, to all my friends, official as well as non-official, to look at the whole question in a fair manner. Speeches cannot explain away things. Let us combine to find out the facts. I have heard some very brilliant speeches made in this Council on these unhappy incidents; I heard these speeches applauded, loudly applauded, by those whose points of view coincided with those of the speakers. My Lord, I have been reminded of a few lines from Milton (quoted by a writer on the atrocities in Belgium), in which he draws a terrible imagery when he says of Nature:

' Only with speeches fair  
She woos the gentle air  
To hide her guilty front with innocent snow,  
And on her naked shame  
Pollute with sinful blame  
The saintly veil of maiden white to throw ;  
Confounded that her Maker's eyes  
Should look so near upon her foul deformities.'

" My Lord, I fear that even now some of my Hon'ble friends on the Government benches do not realise the enormity of the things that have been done. I appeal to them not to think of disposing of these by speeches, but to look closely into the facts, and if the truth be where the people allege it is, to accept the truth. George Herbert is one of your holiest of divines. He has been described as 'groaning and growing towards heaven.' He has beautifully expressed this sentiment, of which I make a present to my friends; not by way of taunt, the occasion is too serious for it; but in all humility and sincerity. Let the officers of Government and ourselves, putting aside all small feeling of jealousy, all small feeling of racial bias, let the officers of Government and ourselves combine to find out the truth. Let the truth be established in order that justice may be done. George Herbert says:—

' If truth be with thy friend, be with them both,  
Share in the Conquest, and confess a truth'

" If the truth is with my friends, who have put the opposite side, I say, my Lord, solemnly and deliberately, I shall bow to them and be grateful to them for establishing it. But if the truth be on the other side, for God's sake, for the sake of our fellow-men, for the sake of truth and justice, for the good name of the British Government, let it be found and established, and let the Council be then asked to determine what acts ought to be justified and indemnified.

" My Lord, there is only one other aspect of the question to which I have to draw attention. I am sorry I have not the strength in me at this moment to say all that I wish to say; but I cannot conclude—I shall not be doing my duty to this Council and to His Majesty, to whom I owe allegiance, if I were to conclude without making one more earnest and final effort to prevent the Government from committing the great mistake which they are going to commit if they accept this Bill. Among the arguments advanced by the Hon'ble Sir George Lowndes, one was that an Indemnity Bill was a necessity. Your Lordship also was advised to say in your opening speech that, whatever the result of the inquiry, we were bound to protect our officers. My Lord, with great respect I beg to differ from that view. It is not correct to say that, whatever may be the result of the inquiry, an Indemnity Bill must be passed. As Lord Alverstone said in a debate in 1818 in the House of Lords—from which I quoted yesterday—' a legislative assembly has to be satisfied whether the acts

[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

done were necessary and proper before it would indemnify those that committed those acts.'

"Now, my Lord, the rights of man do not depend upon any particular charter or constitution. 'The sacred rights of man,' as Alexander Hamilton has well put it, 'are not to be searched for in old parchments and musty records; they are written as with a sunbeam in the whole volume of human nature by the hand of Divinity itself and can never be erased by mortal power.' Among these is the right to protection of life and liberty. Every single individual, however humble he may be, can claim this right of his Government. His Majesty's Government have also promised this right to every individual among his subjects. Now, my Lord, if a man has been injured, if one has been deprived of his life or limb, or liberty or honour, he or his relations have a right to seek a redress of the wrong done. If you want that a person who has suffered loss of life, limb, liberty or honour should not be able to seek any redress against that loss, you must put it on some footing which will be understood and appreciated by him. Parliament can excuse certain acts. The community, the public at large whom the Parliament or the Council represents, can take note of the events which happened, and of the circumstances in which they happened, and can say, that though certain wrongs were done, yet in view of the situation, in view of the greatest good of the greatest number, those regrettable wrongs shall be excused. The individual acquiesces in that decision, he waives his right to sue his oppressor or assailant or those who injured him. That is done with the implied consent of the person who is vitally interested in the matter. Here you are asking us to assent to a Bill which seeks to justify acts which still require investigation, to indemnify officers against acts, the legality, the propriety, the humanity, of which is still under consideration, still to be investigated. I submit, my Lord, it is an utterly wrong procedure that you are following. The keystone of an Indemnity Bill, as I have submitted, is that the introduction of martial law should have been necessary and for the benefit of the public. You have taken away that keystone and yet you want to pass the Bill. My Lord, it is not right to do so. Let me here quote to the Council the opinion of Sir James Macintosh cited at page 541 of Dicoy's 'Law of the Constitution.' He says:—

'The only principle on which the law of England tolerates what is called Martial Law is necessity; its continuance requires precisely the same justification of necessity; and if it survives the necessity on which alone it exists for a single minute, it becomes instantly a mere exercise of lawless violence. When foreign invasion or Civil War renders it impossible for Courts of Law to sit, or to enforce the execution of their judgments, it becomes necessary to find some rude substitute for them, and to employ for that purpose the Military, which is the only remaining Force in the community. While the laws are silenced by the noise of arms, the rulers of the Armed Force must punish, as equitably as they can, those crimes which threaten their own safety and that of society *but no longer.*'

"My Lord, martial law was introduced at midnight between the 15th and 16th of April. This Bill seeks to justify and validate acts which were done before that date. It also seeks to justify and validate acts done during all the long period during which martial law was maintained. I submit, my Lord, there is no justification for the Council to pass such a Bill, to accept such a measure.

"My Lord, the Law Member dealt with many side-issues in his long and learned speech, but he did not reply to the main points raised by me, points which have become very much stronger by the alteration made by the Government in the preamble of the Bill. I submit, therefore, that the Government are not justified in proceeding with the Bill. I may here say that the learned Law Member told the Council that the conviction in the case of Fitzgerald to

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

[25th SEPTEMBER, 1919.]

which I had referred had been quashed. I find on page 819, in column 820, of 27 State Trials of 1830 the following paragraph :—

'An application was made on the part of Fitzgerald in the Court of Exchequer to set aside the verdict obtained against him by Mr. Wright which was dismissed with full costs.'

**The Hon'ble Sir George Lowndes :—**" May I explain that that is the passage I quoted from, and it appears to me to be direct authority for the statement that the conviction was quashed ?"

**The Hon'ble Pandit Madan Mohan Malaviya :—**" Here is the authority."

**The Hon'ble Sir George Lowndes :—**" The Hon'ble Member knows English. As I read the passage, 'which' refers to the last substantive before it."

**The Hon'ble Pandit Madan Mohan Malaviya :—**" I will again read the passage and leave it to my Hon'ble friend who knows English better than I do to say what it means :—

'An application was made on the part of Fitzgerald in the Court of Exchequer to set aside the verdict obtained against him by Mr. Wright which was dismissed with full costs.'

"Now, my Lord, I will not detain the Council longer. I think what I have said is sufficient to show that the Council ought not to accept the motion of the Hon'ble the Home Member unless it is satisfied of the essential fact that there was an open rebellion, and that it was necessary to introduce martial law. This question remains to be determined by the Committee of Inquiry and therefore the Bill is premature.

"My Lord, the learned Law Member and the Hon'ble the Home Member spoke vehemently of the duty of protecting soldiers, policemen and other officers who had acted under the orders of Government. They urged that these at least should not suffer for any error of the Government of India. I submit that this is an entirely fallacious argument, opposed to the basic principles of the constitution. It is a well-settled principle that no order of a superior officer can protect or ought to protect a subordinate in his commission of any illegal act. If a subordinate receives an order to do any illegal thing or act from his superior, it is his duty to disobey it. Even the King cannot give an order to do an illegal thing. In support of this view I would draw attention to a passage in Dickey at page 283. He says :—

'The legal dogma, as old at least as the time of Edward the Fourth, that, if any man arrest another without lawful warrant, even by the King's command, he shall not be excused, but shall be liable to an action for false imprisonment, is not a special limitation imposed upon the royal prerogative, but the application to acts done under royal orders of that principle of individual responsibility which runs through the whole law of torts.'

"My Lord, the Governor General cannot claim to exercise a higher right than His Majesty the King does, and in the case of a King, I may remind the Council that the promise given by Charles I to Strafford that 'not a hair of your head shall be touched by Parliament' was insufficient to protect that bureaucrat from the just anger of Parliament. The argument that the Council is bound in honour to protect its officers has also no force. The Council never made a promise to anybody to protect him. If the Executive made a promise, every officer ought to know the limitations on the power of the Executive, and I hope that one of the results of these deplorable incidents will be that soldiers and public officers will have learnt their duty to the people. If any officers of Government have acted in excess of their authority or without humanity, they ought to take their trial and answer a charge on that account. The Hon'ble the Law Member and the Hon'ble the Home Member specially mentioned the cases of soldiers called

[25TH SEPTEMBER, 1919.]

[Pandit Madan Mohan Malaviya.]

upon to protect the lives and property of civilians, and said that if indemnity was not granted to them the soldiers would refuse in future to act. My Lord, I do not think that any such evil result will follow. I think the result that will follow will be a salutary one for the soldiers and for the Civilians as well. The argument is an entirely fallacious one. Soldiers have a right like other citizens to repel force by force and to take all proper steps to protect life and property. But if soldiers 'were to kill men unarmed, unresisting, and disfigure, maim or cut down women and children, if unresisting men were cut down, whether by troops or not, it would be murder, for which the parties are liable to be tried by the laws of the country.' I refer my Hon'ble friend, the Law Member, to the case of *R. vs. Burdett*, 4 B. and Al. 323 at p. 327, where the Judgment of Bayley, J. from which I have quoted is given.

"But it is said that soldiers must obey orders given by their military officers on pain of being court-martialled. Here also the law is quite clear. Soldiers are bound to obey orders, but not illegal orders, orders which are manifestly and obviously illegal such as the order to fire at Jallianwala Bagh was. I shall again refer to Dacey who puts this view very clearly. He says at p. 299 :—

'A soldier is bound to obey any lawful order which he receives from his military superior. But a soldier cannot any more than a civilian avoid responsibility for breach of the law by pleading that he broke the law in *bona fide* obedience to the orders' (say) of the Commander-in-Chief. 'Hence the position of a soldier is in theory and may be in practice a difficult one. He may, as it has been well said, be liable to be shot by a Court-martial if he disobeys an order, and to be hanged by a judge and jury if he obeys it. His situation and the line of his duty may be seen by considering how soldiers ought to act on such occasions.'

"Now I will not quote further, though what follows is very important and throws valuable light upon the question raised by the Hon'ble the Law Member. The whole law has been very well summarised by Dacey at p. 302 of his valuable book. He says :—

'The hardship of a soldier's position resulting from this inconvenience is much diminished by the power of the Crown to nullify the effect of an unjust conviction by means of a pardon. While, however, a soldier runs no substantial risk of punishment for obedience to orders which a man of common sense may honestly believe to involve no breach of law, he can under no circumstances escape the chance of his military conduct becoming the subject of inquiry before a civil tribunal, and cannot avoid liability on the ground of obedience to superior orders for any act which a man of ordinary sense must have known to be a crime.'

"I submit, my Lord, this places the legal aspect of the case in a thoroughly clear light. I will refer to only one other passage from a judgment of Mr. Justice Stephen which is found at p. 301 of Dacey's book, and which seems to me to be very apposite. It is this :—

'Soldiers might reasonably think that their officer had good grounds for ordering them to fire into a disorderly crowd which to them might not appear to be at that moment engaged in acts of dangerous violence, but soldiers could hardly suppose that their officer could have any good grounds for ordering them to fire a volley down a crowded street when no disturbance of any kind was either in progress or apprehended. The doctrine that a soldier is bound under all circumstances whatever to obey his superior officer would be fatal to military discipline itself, for it would justify the private in shooting the Colonel by the orders of the Captain, or in deserting to the enemy on the field of battle on the order of his immediate superior. I think it is not less monstrous to suppose that superior orders would justify a soldier in the massacre of unoffending civilians in time of peace or in the exercise of inhuman cruelties such as the slaughter of women and children, during a rebellion.'

"I submit, therefore, with confidence, that the view put forward by the Hon'ble the Law Member is not the correct view of the law, and I submit that both on grounds of fact and law this Bill is premature. Let, my Lord, the Government and the country wait therefore for the result of the inquiry which the Secretary of State and your Excellency's Government have agreed to institute. On the results of that inquiry being known, let the matter be

[*Pandit Madan Mohan Malaviya; Mr.  
J. P. Thompson.*]

[25TH SEPTEMBER, 1919.]

placed before this Council for further consideration, and let everybody concerned rest assured that every man will render all the reasonable support which ought to be given to soldiers and other public officers who have discharged their duty properly. I once more most earnestly request your Excellency not to proceed with this Bill and to let it stand over till the next Session in Delhi."

[At this stage the Council adjourned for Lunch till 3 P.M.]

3-3 P.M.

**The Hon'ble Mr. J. P. Thompson:**—"I should be grateful, my Lord, to the Hon'ble Member for having given me such an easy task to deal with. If it is true that there are people from whom abuse is a compliment, I should thank the Hon'ble Member for the compliments he has showered on me. But I feel I do not deserve them. The heat with which he credited me was non-existent and many of the statements which he put into my mouth I never made.

"The first case that the Hon'ble Member dealt with was that of the Inspector who was assaulted in the Badshahi mosque at Lahore. He prefaced his remarks by telling us that he had sent in certain questions and that, as Government did not give him an answer to those questions, he felt justified in stating these questions to the Council in the form of facts. I should like to have heard from the Hon'ble Member, if he had been in his seat, whether the allegation against the Inspector was ever submitted in the form of a question. If it was, all I can say is that, to the best of my recollection, I have never seen it. I do not propose to deal with the quotation which he read out from the evidence of Inspector Ali Gauhar, because the ripple of laughter which went round the Council when the Hon'ble Member read it showed me that I had already a verdict in my favour. The Hon'ble Member played his trump card and found he had revoked.

"The next case he dealt with was that of the persons confined in the racket court at Amritsar. As regards this I gave the facts as they were supplied to me. How far that explanation satisfies the Hon'ble Member or the Council is another question, but I pointed out, as the Council will remember, that if these gentlemen were subjected to hardships, there were European women and children suffering not dissimilar hardships within a very few yards of the place where they were confined.

"The next case to which the Hon'ble Pandit passed was that of the schoolboys who were flogged at Kasur. He complained, if I understood him aright, that I did not deal with many other cases of flogging. He left it to be inferred that a reference to these other cases had been contained in the question which had been disallowed and which he afterwards stated to the Council in the form of a narrative. I will read that question to the Council—"Will the Government be pleased to state if it is a fact that several schoolboys at Kasur were flogged and, if so, state their names, ages, and the number of stripes administered in each case and the offences for which they were punished." I told him that three pupils of the Municipal Boarding School were caned and three of the Islamia school. This was done by way of school discipline. At the request of the Head Master, military aid had been invoked 'to deal with continuous insubordination on the part of the boys'. I am reading from the explanation submitted by the Sub-divisional Officer. That explained what had happened in the case of the schoolboys who had been caned at the request of the Head Master. I went on to say that two other schoolboys were sent by the Commission for summary trial and received three strokes of the cane after trial by the martial law officer. I ask the Council what other explanation I could give. So far as I am aware that explanation covers the cases of flogging of schoolboys at Kasur, and it was with the flogging of schoolboys at Kasur that the question put by the Hon'ble Member dealt.



[25TH SEPTEMBER, 1919.]

[Mr. J. P. Thompson.]

"Then, my Lord, (the Pandit went on to the case of Mr. Manohar Lal). He tells us, if I understood him aright, that Mr. Manohar Lal's house was locked up for several days and that his family were compelled to live in outhouses. The facts as I understand them and as I have received them from the officers at Lahore who are familiar with the case are that Mr. Manohar Lal was arrested on the 18th April. On the evening of that day, I think, the house was shut up by the Police. When they got there, they found his family moving into outhouses, thereby indicating that they had already received instructions from Mr. Manohar Lal as to what they were to do. The house was searched on the morning of the 19th and at 1 o'clock that day his family were permitted to return to the house.

"Then, my Lord, we come to the case of Gujranwala. On this as well as other cases, the Pandit quoted certain extracts from accounts which appeared in the *Civil and Military Gazette* and he appeared to be under the impression that there was something official about them. Hon'ble Members will recollect that at an early stage in the proceedings the Pandit quoted from a publication entitled 'Punjab disturbances' which was issued by the *Civil and Military Gazette* in respect of which he definitely alleged that the publication was one which was published under the authority of the Punjab Government. I corrected him, and he pretended not to be satisfied with my explanation, but I note he did not venture to quote it as a Government publication again. My Lord, as far as I can recall, the only connection that the Punjab Government had with the publication was to protest against the inclusion of certain of its contents. The Pandit read certain extracts from one of these articles which had appeared in the *Civil and Military Gazette* on what happened at Gujranwala. The Council will remember that in his original speech he stated that respectable persons were chained together and were marched to the city two by two, headed by a Hindu and a Muhammadan 'with a view to ridicule Hindu and Muhammadan unity as was stated by Colonel O'Brien.' Now, my Lord, the passage which he quoted from the article after describing how persons had been marched through the city went on to say that this spectacle of Hindu and Muhammadan unity must have been most impressive. Would not anybody reading that article come to the conclusion that that was merely a comment of the writer? I do not see what justification the Pandit had for reading into the action of Colonel O'Brien, who was in charge of the arrests at Gujranwala, the sentiments supplied by the writer of the article in the *Civil and Military Gazette*.

As regards the Ramnagar case I have nothing more to say. The Pandit gave no answer to the criticism which I passed on what he said at the time. All he had to offer us was the *a priori* argument that because these people were respectable they could never have taken part in such disreputable performances.

"The Hon'ble Pandit also attributed to me, if I understood him aright, certain remarks regarding the burning of a *bhusa* stack at Lyallpur. To the best of my belief, my Lord, I never touched on the incident of the burning of a *bhusa* stack at Lyallpur. I knew perfectly well what the facts were, and the Pandit, so far as I remember, asked no question about it. It is possible, I think, that it was Mr. Hailey who in another connection mentioned the case of burning a *bhusa* stack at Lyallpur, but as I do not remember exactly in what connection he mentioned it, I am unable to say how far, from the point of view of the Pandit, that mention was justified.

"I now come, my Lord, to the case of the Jallianwala Bagh at Amritsar. The Pandit told us that he received a letter from a Mr. Tiwari, stating that 531 persons had been killed including 60 who had not been traced. He did not tell us how he came to include persons who had not been traced, but he said that 531 were killed.

[Mr. J. P. Thompson; Pandit Madan  
Mohan Malaviya.]

[25TH SEPTEMBER, 1919.]

"Now, my Lord, since I spoke on last Friday, another fact has come to my notice which makes it more probable perhaps than before that the details that we have got regarding the number of persons who were killed in Amritsar are very near the mark. I was informed only a few days ago by a very old resident of Amritsar that for every cemetery and every burning ground in Amritsar, there are sub-registrars who write down particulars of every corpse which is brought for disposal. Those returns are submitted to the Registrar and through him to the Health Officer. So that whether people report deaths or not there is this additional check, supplied by the cemeteries and burning grounds. I still claim, my Lord, that any deaths which were reported, which are considerably in excess of the number which we admit, namely 201, must be received with grave suspicion. I did not claim, and I do not claim now, that we know or ever shall know, the exact number of persons who were killed. But what I do say is, that the information that we have supplied is far and away the best information which is at present available, and that if the people who are collecting information for the Pandit have done their duty in responding to the invitation which was conveyed to them to give us any information which they might possess as to the number of persons who had been killed—I say that if they have done their duty—then our figures are as nearly complete as I or the Pandit can make them.

"As regards the corpse which the Pandit says he saw in the well, really the incident is hardly worth dealing with. But one thing is certain, and that is, that if there was a corpse down the well when the Pandit visited the place at the end of June, it was not the corpse of anybody who had been killed on the 13th of April. It is established by expert evidence that after 2½ months in the hot weather a corpse would be a mere collection of bones at the bottom of a well—so that as evidence of anything which had been in there from the time when the firing took place on April the 13th, there is nothing in it at all. But it does seem to me that when the Pandit wrote to the Municipal Committee saying that there were 'still' one or more corpses down the well, it was perfectly obvious that what he was doing was trying to create horror or pity in the minds of his hearers in connection with the incident of the Jallianwala Bagh. I leave the matter to the Council, but that conclusion appears to me to be irrefutable.

"The Pandit again talked of the desire for co-operation between officials and non-officials in connection with these disturbances. I have already given you one instance in which we had invited the co-operation of those who were collecting information in regard to the number of deaths in Jallianwala Bagh. The Pandit's assertion that the number of deaths is nearly double what we found after issuing that invitation, is a strange comment on the degree of co-operation which has been offered by non-officials. I will give the Council another instance. There were, as the Pandit no doubt knows, a large number of serious allegations against the honesty of the police at Amritsar. It was said that many of them had made large sums. The Lieutenant-Governor was anxious that these allegations should be probed to the bottom, and instructions were issued that the local authorities should invite the co-operation of the Pandit and Pandit Motilal Nehru in finding out whether there was anything in them. Letters were written and the answers we received gave us no information at all. Whether any further answers have been sent since the two which I saw, I cannot say; but the first letters that were received gave us no information at all . . .

**The Hon'ble Pandit Madan Mohan Malaviya:**—"I have seen no letter of the kind mentioned; nor has my friend Pandit Motilal Nehru received anything as far as I know."

**The Hon'ble Mr. J. P. Thompson:**—"The Hon'ble Member is certainly in a better position than I am to say whether he received a letter or not, but I understood a letter was sent to him and to Pandit Motilal Nehru who was working in close co-operation with him, and the answer that was

[25TH SEPTEMBER, 1919.]

[Mr. J. P. Thompson; Major Malik Sir Umar Hayat Khan.]

received was one which gave us no assistance at all. Whether a separate letter was sent to the Pandit or not seems to me to be really immaterial.

"The last specific allegation that the Pandit made was in regard to the cutting off of the electric lights and water-supply at Amritsar by order of the General Officer Commanding. It was not really for me to justify the action taken by the military authorities. But I gave the Council what I believed to be the facts, and here again it is for the Council to say whether they are satisfied with the explanation or not. But what I said, on the information supplied to me, was that on the 10th of April—I give it in rather greater detail—on the 10th of April two out of the three feeders which give energy to the city were damaged by the mob about 1 P.M. Later on at 2.30 P.M. the mob entered the power-house and stopped the whole plant. At 7 P.M. the one remaining feeder was started. On the 11th the mob prevented a mistri from mending the two damaged feeders. That evening the power was cut off the city altogether by order of the General Officer Commanding, and remained off till the 19th. In regard to the water-supply, I mentioned the story that the supply had been poisoned. But the water was turned on again early on the 11th after having been cut off on the evening of the 10th, and it was again cut off later on the 11th and remained off till the 14th. Those were the facts and that is the explanation. How far it is a justification it is for the Council to say. That completes, my Lord, the examination of the cases with which the Pandit has dealt.

"He then went on to give me a severe rebuke for transgressing, as he said, the traditions of this Council. I think if the Hon'ble Member had been familiar with the lighter forms of English literature and especially with the literature of the comic stage, he would have avoided the 'you're no gentleman' retort. It is a retort which usually comes from a housemaid caught out in an embarrassing situation. It is hardly worthy of the dignity of this Council.

"Towards the close of his speech the Hon'ble Member quoted us some lines from Milton. It is quite in keeping, my Lord, with human nature for a disappointed man to seek refuge in great literature. His attack has failed all along the line, and I sympathise with him in his disappointment. Let me give him another quotation from the same poem which, I think, perhaps describes his situation with some appropriateness:—

'The old Dragon under ground  
In straiter limits bound,  
Not half so far casts his usurped sway,  
And wroth to see his kingdom fail,  
Swinges the scaly horror of his folded tail.'

"My Lord, the lashing of the Pandit's tail is the measure of his disappointment.

"My Lord, I have nothing more to say. But with regard to what the Pandit has said about me, what I will say is this. What this Council values above all else, and what I trust it will always value is straightforwardness and simplicity of character. And I hope that, senior or junior, there will never be a lack of Members in this Council who will be ready to protest against perversions of truth and to stomp misrepresentations for what they are."

**The Hon'ble Major Malik Sir Umar Hayat Khan:—**"My Lord, allow me to congratulate the Hon'ble the Home Member on the skill with which he has piloted the ship of the Indemnity Bill through the storm of discussion, no doubt, with the help of the high-skilled Legal Engineer, the Law

[Major Malik Sir Umar Haqat Khan.]

[25TH SEPTEMBER, 1919.]

Member and cleverly manœuvring it has saved it from the three pests, i.e., mine, torpedo and submarine, with not less than 38 attempts by them.

"After the complete victory of the Right the other day the course of events was so changed that nearly all had joined the victorious camp except those whose business naturally it was not to do so and had to stick on, through thick and thin, to the opposite camp so as to justify themselves to be called 'public men.'

"Apart from few irreconcilables the majority of the population forming 90 per cent. of the Punjab would welcome the Bill and thank the Government for so many gracious acts done during the period. The Martial Law Commission of the Judges of the High Court and some other experienced men were provided to administer justice for the heinous crimes instead of first or second class Magistrates which was a great improvement on the ordinary machinery of justice. They acquitted large numbers of people who were guilty and convicted only those against whom there was sufficient evidence. The extraordinary kindness shown by His Honour the Lieutenant-Governor of the Punjab in commuting the sentences and their further reduction by your Excellency's Government has caused further satisfaction.

"Though in ordinary circumstances things would have ended here, it is gratifying that two Judges have been appointed to investigate into the cases in order to minutely sift the various facts over again which may be called an unprecedented kindness. In case the Privy Council accepts the appeals of the wealthier men who have approached it, the announcement by the Government that all the poorer accused will get the benefit of the above under the same circumstances is another thing of far-reaching importance. The Government has also kindly given assurances that no one appearing before the Committee will be liable to be molested by any authority or police, and their promise that all those will be released whose cases do not fall under the ordinary law, has further helped the accused. And last but not the least the grant of not only the one Indian member which was asked for but also the appointment of another Indian member in the shape of an Englishman. We call him Indian as his community has got vested rights in the country the welfare of which, I am sure, is the nearest to his heart.

"I think by all the above the Government has gone to an extent that no Government in History would have done so far for the breakers of law and order. I hope when all the above is finished, it will result in wholesale clemency except for some such whose release will amount to letting loose wolves in the flocks of sheep.

"My Lord, those of us who have been saved from a great catastrophe pray that Government will take precautions that such a thing may never recur, because if it again does so there is danger of its coming in a more complete form. This time those responsible for the Egyptian and Indian troubles and foreign invasion not being in possession of cables and having no proper communication have come one after the other and suppressed in detail but at some next time such may not be the case.

"I also hope that some battalions of Sappers and Pioneers will be trained to work as engine drivers and guards, etc., as this time the wholesale strike of the Railway employees was only just averted. Had it occurred as it was arranged transport of reinforcements, food-stuff and other provisions to the Frontier would have been greatly hampered.

"My Lord, there is a section which believes that this our august assembly was to an extent directly or indirectly responsible for the recent troubles by their utterances. One of the leading arguments of the Council in defence of some of the accused was that their inflammatory speeches for which they were being punished and which roused the public feelings for the acts committed did not go half the way as some of those delivered in your Excellency's presence,

[26TH SEPTEMBER, 1919.]

[Major Malik Sir Umar Hayat Khan ;  
Mr. Sachchidananda Sinha.]

and people wonder whether there is any regulation which could be put in force to moderate such language and, if there is such, what is the cause that this remedy is not applied when certain portions of certain speeches reach the extent of creating hatred among the classes and go a long way to bring the Government established by law into contempt. I think all the above is being governed by the ordinary law of the land.

"The defence of a public prosecutor against the argument of Mr. Hussain Imam that such speeches in the Council were meant for a responsible class, while those of the accused were for the ordinary public, is a poor argument and falls to the ground as the next day a speech here is public property and the extremist papers, like one or two of those we have got in our province, intensify them by their comments on them.

"I have only put forward this as an appeal on behalf of the general rural public of the Province so that such happenings may not recur and the lives of the innocent people, English as well as Indians may not be lost as well as those at the Frontier either in action, or through epidemics.

"My Lord, all the arguments used to-day have been already put forward on the day when the Hon'ble Pandit Malaviya first spoke on this Bill, and though he does not believe in what the other people say, the others have the same right to say that they do not believe in the allegations that he has put forward. For instance, the Gujranwala case was discussed the other day. The railway line was broken and the police and other people at Gujranwala were absolutely helpless till the evening. If troops were sent from Lahore, it is such a long distance, that they could not possibly have reached that day, nor could they come by train, as, I have already said, the railway line was broken. There was no other possible way to help the authorities at Gujranwala that day except by aeroplane. I hear the people were in the act of opening the prison and letting out all the prisoners when the aeroplanes arrived.

"About Lahore, it is said, my Lord, that everything was quiet. I wish my Hon'ble friend the Pandit Sahib was there at the time. Just as he has seen certain things and believes in them, I think he should also believe in us who saw that the conditions were such that if the military were not there, there would have been many other acts committed.

"As the military were there and suppressed the disturbance, we cannot say there was nothing. Of course nothing happened or could have happened because there was force to suppress it, but it was only that force which kept things quiet.

"With these few remarks, I hope the Bill will be passed."

**The Hon'ble Mr. Sachchidananda Sinha :—**"My Lord, I hope this unequal struggle between the official members and the non-official members of this Council will soon be over; for my part, I find it rather too trying for my nerves. The debate has been going on now for three or four days, and almost everything which could be said for or against the measure has been put forward by the advocates of the respective sides. It seems that at the end of the discussion we are as far off from coming to an agreement as we were when the Bill was introduced.

"The motion before the Council now is that the Bill be passed. Under ordinary circumstances I should have held it unjustifiable at this late hour to prolong the agony by making any lengthy observations, but the matter, my Lord, is of such great and grave importance, that I do not think I shall be justified in recording my vote without giving, howsoever briefly, my reasons for the action which I propose to take. When the Bill was introduced and leave was sought for its introduction, some of us felt compelled to oppose that. What has happened since then that the Hon'ble Member should feel justified

[*Mr. Sachchidananda Saha.*]

[25th SEPTEMBER, 1919.]

in asking us to-day to give our assent to the Bill? We tried to improve the Bill to the best of our lights by sending in 38 amendments. Far from feeling grateful to us for trying to improve his Bill, the Hon'ble the Home Member, with that emotional Celtic temperament to which I referred the other day, actually charged us with trying to whittle down the Bill. That, my Lord, was the unkindest cut of all. When we come here to assist him with our experience, with our guidance, those are the thanks which we get in this Council. Now, lest your Lordship and the Council may think that in dilating at some length on the difficulties and the misfortunes of Indian non-official members of this Council, who have to oppose official views, I am at all exaggerating, I shall, with your Lordship's leave, read out two or three sentences, not from an Indian paper, moderate or extremist, but from a well-known Anglo-Indian paper of Calcutta, called 'Looker-on'. This is what the writer in 'Looker-on' says of our most piteous condition:—'I am always struck by the pathetic aspect of the incident when an Indian Councillor gets up on his hind legs'—those are his words, not mine—'and debates a motion eloquently and cheerfully, knowing all the while that the division which he has succeeded in forcing must go against him. It requires a certain amount of assurance, not to say spiritual pluck'—the words are 'spiritual pluck' not 'spirituous pluck'—'to do, as many Indian debaters do, without giving an unmodifying exhibition of temper, spleen and despair'.

"Now, my Lord, under those circumstances, I am particularly grateful, speaking for myself, that of the 38 amendments which were moved by us, the Hon'ble the Home Member was graciously pleased to accept one of mine. Afterwards, he made an observation, however, which deprived his action of its little grace; that he was not sure that he had been wise in accepting my amendment. I ventured to assure him then and there that this was the wisest act he had done, if not in his life, at least in the course of this debate. I am also grateful to him, my Lord, particularly, for accepting my suggestion in my opening speech and amending the words of the preamble by dropping the words 'that it was necessary to declare martial law' and putting in the words 'where martial law was enforced'. My Lord, did he suspect then that the Hon'ble Pandit would take advantage of that to build his argument on that, because he had withdrawn from that position of there being the necessity for martial law being declared, therefore the whole Bill must fall through? Well, my Lord, grateful as I am for these two acceptances on his part, I do not think that the rejection of our 37 amendments justifies him in asking me to give my moral assent to the Bill.

"My Lord, I shall, with your Lordship's leave, refer to one or two observations which have been made by official members in the course of the discussion. I shall first say a word about the incursion of the Hon'ble Mr. Shafi. I confess I do not understand what on earth made him intervene in this debate. I thought he was the Education Member, concerned with the carrying out of educational policy, with certain sanitary matters and possibly also with ecclesiastical affairs, but of this last I am not sure. What he has got to do with the declaration of martial law and an Indemnity Bill, I cannot for the life of me understand. I suppose he was most anxious to support the Government. I believe some of us, when we cross the floor from this side to that, undergo some sudden changes in our views and sentiments, and I dare say that is what made him support the Government. He did so, however, by reading out section 101 of the Evidence Act and sundry old reports of Privy Council cases, and he tried to teach us the A. B. C. of the law of evidence. He said it was surprising that we, lawyers in this Council, did not even know what he called the A. B. C. of that law and he tried to explain it to us as best he could. I was gratified, however, that he did not go on to the D. E. F. and the X. Y. Z., as, otherwise, we might have been here all night. He laid down the proposition that what appears in clause 3 of the Indemnity Bill in regard to the rule of evidence and the burden of proof is a most elementary principle to

[25TH SEPTEMBER, 1919.]

[Mr. Suchchidananda Sinha.]

be found in all the laws and the prophets. Now, if that be so, and the Hon'ble Member's argument be sound, what is the good of having that specifically provided for in this Indemnity Bill at all? If that is the Common Law, if that is the Statute Law, if that is the Privy Council ruling, I suppose my court would set up to it without there being a specific provision. As, however, the Hon'ble the Law Member has taken particular care to put in that provision here, I have a suspicion that it is not after all such a small thing, a mere A. B. C. as the Hon'ble Mr. Shafi was anxious to make out.

"My Lord, I shall, with your Lordship's leave, refer to one or two observations of the Hon'ble the Law Member. I most gratefully acknowledge that, during the debates in this Council, he has been exceptionally kind and encouraging to me, and he has never said a word about me of which I need make any grievance. My friend the Hon'ble Pandit Madan Mohan Malaviya thought that I had been rather severely handled by the Hon'ble the Law Member on the last occasion; but in a debate, as in love and war, I think all is fair, and I make no grievance of that. But he did make one or two observations, not in regard to me personally, but in regard to certain matters, which I think need a reply. May I say that it seemed to me rather an ungracious act on the part of the Hon'ble the Law Member to have made certain adverse comments, in the absence of the Hon'ble Raja Sir Rampal Singh, about his speech, the more so as the Hon'ble Raja Sir Rampal Singh had made that speech not on the motion about the Indemnity Bill, but on a previous occasion in regard to the constitution of the Punjab Inquiry Committee? However, I felt gratified at this reference and the gratification was due to the fact that I did want that some official member of this Council should protest against speeches supposed to be written by friends, because I have a shrewd suspicion that as often as not the speeches made by some non-official members in the Council supporting Government are written by friends. Therefore, I am grateful to the Hon'ble the Law Member for raising the point; and, in future, when a suspicion crosses his mind that some speech on the Government side by a non-official member may have been written for him by a 'friend,' I hope he will not forget to take that fact into consideration in assessing the value of the speech.

"Now, my Lord, I was also amused, as one who is a lawyer by profession, to see the lengths to which some of us, even members of your Excellency's Executive Council, are driven in a debate when harassed from pillar to post, as happened to the Hon'ble the Law Member yesterday. When the Hon'ble Pandit Malaviya quoted once or twice from an Act of St. Vincent, the Hon'ble the Law Member pool-pooled it, as if to refer to an Act of St. Vincent was something like *lese majesté* to Sir William Vincent; but to-day he himself, in reply to the Hon'ble Pandit, referred to the same Act, which he repudiated yesterday as something insignificant and worthless. That is all, my Lord, which I have to say in regard to the observations of the Hon'ble the Law Member.

"I shall now say something, my Lord, about the Hon'ble the Home Member's observation. I think it is but fair to say that his speeches in this Council on this rather controversial measure have been, on the whole, very conciliatory, indeed; and so far as I am personally concerned, I have got no grievance to make against the wording or the spirit of them. But I take exception not to his manner but to his matter. I confess I was very agreeably surprised this morning to hear him quote, of all persons, the great Indian leader, Mr. Gandhi. This was in the same strain in which the Hon'ble the Law Member quoted Mrs. Besant and Mr. Horniman—I do not know if he quoted Mr. Tilak; perhaps he did not. Well, Mr. Gandhi is certainly a gentleman whose observations are entitled ordinarily to the very greatest respect. But the Hon'ble the Home Member tries to make much of Mr. Gandhi's observations as in this particular instance they suit his purpose. It is, I presume, from

[Mr. Suchchidananda Saha.]

[25th SEPTEMBER, 1919.]

*Young India* that he quoted this morning. Is he aware that in *Young India* Mr. Gandhi has been writing week in, week out, on the Punjab situation, taking up the case of each particular person convicted, and saying in terms absolutely unequivocal that there has been a great travesty of justice and that all these persons have been put to very great inconvenience and trouble by the arbitrary conduct of the officials? I only desire to say that I hope that these observations also of Mr. Gandhi will carry equal weight with the Hon'ble the Home Member when he comes to deal with the cases of these persons.

"Now, my Lord, there is one thing more I would like to say. In my opening speech on this Bill, I said that the Indian view was that, whereas Government were fully justified in resorting to effective measures for putting down the riot or disturbance or rebellion, call it what you like, the steps taken for that purpose went far beyond the requirements of the situation, and that in the name of putting down the disturbances and maintaining or restoring order, measures were carried out which were oppressive and tyrannical. This, I said, was the Indian view. I sedulously refused to go, my Lord, into the facts of the case, and I assured you that I had kept an open mind on the subject. But I find that my friend, Mr. Malaviya, on the one side, and Mr. Hailey and Mr. Thompson and General Hudson on the other, have put forward in this Council different versions of the facts. I am now in a better position to make up my mind as to the facts, after having heard both sides. I listened very carefully, my Lord, to the statements of fact of these gentlemen, both on the last occasion and to-day; and making every allowance for an inherent, unconscious bias in my own mind as an Indian, I have tried to place myself in a detached position, and I venture to say that leaving aside every statement of the Hon'ble Pundit and accepting as gospel truth the statements made by the official members in this Council,—Mr. Hailey, Mr. Thompson and General Hudson—there is, to my mind, a clear admission made by these gentlemen that things were done which, to use the mildest language, should not have been done. I shall not say one single word about the observations of Mr. Malaviya. I shall take it that they are incorrect and inaccurate. Let us, however, take the statements made here before your Lordship and this Council by Mr. Hailey, Mr. Thompson and General Hudson as the truth. I shall not traverse the ground in detail; but I shall take one or two instances and the explanations which the official members have offered to this Council. I hope every member of this Council will consider the matter apart from any ideas of race or nationality. Was Mr. Thompson's explanation satisfied the Council that the arrest of Mr. Manohar Lal, a Barrister-at-Law, late Minto Professor of Economics in Calcutta, a distinguished scholar, a favourite pupil of Professor Marshall of Cambridge, and his detention for, I believe, nearly a month, and then his being discharged without being brought to trial, was a right course to adopt? Mr. Thompson said Mr. Manohar Lal was a trustee of the *Tribune*, and it was supposed that as a resident trustee in Lahore he had taken an active part in inspiring the writings in that paper. Well, now, I will ask: Is it fair, is it right that because a man happens to be a resident trustee of a newspaper, assuming even that it is seditious, when once the editor has been brought to trial, the editor who alone was responsible before law, the trustee should be arrested and placed in detention for a month and then let go without any case being started against him? I venture to submit, my Lord, any question of race or nationality apart, that that is not the way of treating a British subject. I am glad that Sir Michael O'Dwyer did not go beyond arresting the resident trustee, and did not order the arrest of the readers of the paper as well, because in that case I might have been arrested too as one of them. I am glad that he drew the line at the resident trustee and did not extend his order to the readers of the paper. I say that just to show, my Lord, that the explanation offered by Mr. Thompson does not satisfy me at all and I have given my reasons therefor.

"I shall now take an instance from the statement of General Hudson. Fortunately in his case I am in a better position, because I find that the *Civil*



[25TH SEPTEMBER, 1910.]

[Mr. Sachchidananda Sinha ; Lieutenant-General Sir Havelock Hudson.]

and *Military Gazette* has published what it calls 'the full text' of his speech. From this full text, I shall take up one point, namely the unfortunate assault on Miss Sherwood and the orders passed in consequence thereof. General Sir Havelock Hudson admitted 'the issue by the officer in command at Amritsar of orders that any persons who wished to pass the scene of the assault on Miss Sherwood should be made to crawl on their hands and knees': as 'something was required to strike the imagination.' He continued 'It is easy to criticize the orders issued by the officer in command at Amritsar, but the circumstances were altogether exceptional and the punishment though humiliating was not such as to cause danger to life or physical hurt.' And he then added; 'No compulsion was brought to bear on any individual to submit to the order. The order remained in force for a period of five days. There is good reason for the belief that except for the party of prisoners already mentioned, those who were subject to the order came voluntarily to submit to it for the sake of notoriety or martyrdom.' That is the explanation that the Hon'ble General Hudson gave. The facts are not denied. The Hon'ble Pandit Malaviya, who among his many virtues does not unfortunately possess the saving grace of humour, complained to the Council in tones of bitter anguish that when that was said by General Hudson a titter of laughter went round the Council. I should think that but for the restraining influence exercised by your Lordship's presence the Council would have indulged in a loud guffaw. Who could, my Lord, accept with equanimity the statement that human beings preferred to crawl on their hands and knees to obtain 'notoriety or martyrdom'? This was ordered, General Hudson said, to strike the imagination.

**The Hon'ble Lieutenant-General Sir Havelock Hudson:**—"I think the passage which was referred to as raising a loud guffaw was not that quoted by the Hon'ble Member. It was the one that the men went on their hands and knees that raised the titter."

**The Hon'ble Mr. Sachchidananda Sinha:**—"There was something about hands and knees."

**The Hon'ble Lieutenant-General Sir Havelock Hudson:**—"The person went three times on his hands and knees."

**The Hon'ble Mr. Sachchidananda Sinha:**—"My contention is that if this explanation did not evoke a loud guffaw, it should have done so. Now, my Lord, speaking seriously, I venture to ask the Council whether it is right to defend this action, whether His Majesty's Indian subjects should be made to crawl on their hands and knees because some other persons had been guilty of committing some nefarious deed. I ask whether such a thing should be sanctioned. Whatever the Hon'ble Pandit may have said, General Hudson said that that was done to strike the imagination. I do not know anything about striking the imagination, but what I do know and feel is, that those who were made to crawl on their hands and knees must have left the place with a bitter sense of rancour rankling in their hearts. If General Hudson meant that this may be called striking the imagination, all I can say is that when he joined the Army the imaginative literature of England lost a great deal."

"Thus there is no doubt, my Lord, that things have been done which should not have been done. My Lord, such being the case and the Government having withdrawn from the preamble the statement as to the necessity of the declaration of martial law, the question is whether the Bill should be passed. Nothing having happened since the introduction of the Bill to induce me to change my mind about it, I believe I am justified in voting against it. Your Lordship will remember that on the last occasion when I ventured to take up the time of the Council, I maintained that public opinion was insistent that the Bill should be either withdrawn or put off for some time. Now when I refer to public opinion, I am afraid of a recurrence."

[*Mr. Sachchidananda Sinha; Sir George Lowndes.*]

[25TH SEPTEMBER, 1919.]

of what happened then. The Hon'ble Mr. Macpherson, in the course of his manuscript eloquence, said that I represented only a small section of the Bihar and Orissa public, while he himself represented a large one. But as I explained the other day, when I talked of Indian public opinion I referred to the classes who alone can at present speak out their minds. I shall not, however, refer on this occasion to Indian public opinion; if I did so I could show that Sir Sivaswami Iyer, who was a member of the Madras Executive Council, has been publishing articles in various papers strongly opposing the passage of the Bill at the present moment. I shall, with your Lordship's permission, quote some passages from an article in a well-known Anglo-Indian paper—the *Indian Daily News*. The article is from the pen of one who has himself been a high official, and has acted as Standing Counsel to the Government of India. The paper is owned and edited by Mr. Graham, and the article in question shows how this debate has struck the mind of an independent European in this country. This is what he says:—

'The debate now proceeding at Simla is a fair sample of the way India has been governed in the past. The Government adopt an attitude and defend that attitude to the last gasp. They accept nothing, listen to nothing and decline to budge. They do not listen to Mr. Cram or Mr. Sarma or the 'resuscitated' Pandit. They get the Associated Press to give a full account of Sir William Vincent's 'testy' speech as *Capital* calls it, which is in their opinion so convincing that it has only to be read to be accepted as Gospel. Of course it is not, for it is merely an angry gabble, but Simla sticks to its opinion and lives on.'

I omit the concluding words of the sentence for fear they may be considered unparliamentary. The writer then proceeds as follows:—

'The main fact that strikes one reading the debate now proceeding about the Indemnity Bill is that the bureaucracy and the Government of India are playing the same old game, namely, absolute inability to yield to suggestion, to accept compromise, and eagerness to play all the trumps, which they have dealt themselves. This is the spirit that invited the Reforms, this imperiousness to reason, this contempt for opposition and this extreme use of every controversial weapon they had helped themselves to in the past. This debate has once more shown the Government of India in its obdurate and obstinate condition and in its best form of stolid opposition.'

I do not say, my Lord, that I accept every word of it, but it shows how this debate strikes a European critic of the Government, a man who has occupied the high position of Standing Counsel in the Calcutta High Court. Therefore, my Lord, I venture to submit that we are not so unjustified, as some of the official members would like to make out, in asking your Lordship's Government to postpone this measure for the time being, at any rate till the Punjab Inquiry Committee submits its report. But as your Lordship's Government are unwilling to accede to our request, I feel justified in recording my vote against the Hon'ble Member's motion that the Bill be passed."

**The Hon'ble Sir George Lowndes:—**"My Lord, if the only speech against the Bill to-day had been that of the Hon'ble Mr. Sinha, it would not have been necessary for me to trouble the Council for long. His speech was made in the lighter vein that I am afraid carries us a very little way. But we have had a long and powerful speech from his leader Pandit Malaviya. He gave us a bountiful display to-day, but we sitting in this Council Chamber cannot be swayed by beautiful words or impressive sentences.

"We are here as the responsible Government of a great country, and we have got to carry on that Government not with our hearts but with our heads. I will only say for myself,—it may be a rash thing to say,—that not one word of that extremely eloquent speech carried conviction to my mind. I said on the last occasion when I addressed this Council, that it was necessary for the Hon'ble Member as a preliminary to certain proceedings outside this Council to make a great display, and it may be that that is again the explanation of the necessity for to-day. But I venture to suggest that nine-tenths of what my Hon'ble friend said, had no bearing whatsoever on the question before this Council. Let me reiterate it again. It has been said, almost to weariness already, that what we are considering here is not whether acts which are

[25TH SEPTEMBER, 1919.]

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

alleged to have been unnecessary, which are alleged to be *mala fide*, are to be protected, but whether indemnity is to be granted in respect of acts which were *bona fide* and which are held to have been necessary. It is no good to get up and reel out a string of so-called facts which the speaker pretends are outside the principle of the Bill. If they are, we are not concerned with them. They will be judged in another place. What we are concerned with here is simply the case of a man who has acted *bona fide* as a servant of Government or under the orders of a servant of Government. If he has done what was necessary for the maintenance or restoration of order, is he to be indemnified? I venture to think that I did not exaggerate when I said that nine-tenths of the Hon'ble Pandit's speech had nothing whatever to do with that point. But here again, as on a previous occasion, I am glad to be able to follow the lead of my Hon'ble friend Mr. Sinha, and I need do no more than quote his words, which I hope, I have taken down accurately. 'I shall not say a word about Mr. Malaviya's statements. I shall take them all as inaccurate.' Those are the words which Mr. Sinha used just before he sat down and they suit me down to the ground.

"But let me turn to one or two arguments in the remaining tenth of the speech which, I think, necessitate some answer. There were in the Hon'ble Pandit's speech, many, no doubt unconscious, perversions of fact. Let me refer to one of them at least. The Hon'ble Pandit said that the Bill seeks to validate all the acts that were done,—he put it in two parts—prior to the 13th April, and subsequent to the time when the disturbances had ceased. But this Council has been told over and over again that we are not proposing to validate any of those acts. It was, if I may say so, a confusion which has run through the Hon'ble Pandit's mind from the very commencement of this debate, a confusion between validation and indemnity. I explained just now what the proposed indemnity is and how far it goes. Validation is something quite different. The English Acts which my Hon'ble friend has quoted, the South African Acts which he has quoted, validate all acts which were done under Martial law. We do not propose to do this. Validation in this Bill, let me repeat once more, is confined to the validation of the sentences of men who are now in jail and whom we, as a responsible Government, consider that we cannot in the public interest release. That is the utmost extent to which validation goes under this Act, and it is no good to try and pervert facts and put forward to the public that we are trying to validate every act which has been done under Martial law; to say so is a perversion of facts . . . . .

(Here the Hon'ble Pandit got up to interrupt the Hon'ble the Law Member.)

**The President:**—"The Council has listened to the Hon'ble Member with unexampled patience. It is now his business to exercise that same patience towards the Hon'ble the Law Member."

**The Hon'ble Pandit Madan Mohan Malaviya:**—"May I explain a fact?"

**The President:**—"I think the Hon'ble Pandit has had 6½ hours of this Council's time and should now let the Hon'ble the Law Member have a little time of the Council."

**The Hon'ble Sir George Lowndes:**—"Let me explain another thing which seems not to have struck the minds of many lawyers in this Council. My Hon'ble friend Mr. Sinha suggested that he knew all about law and there was no necessity for my Hon'ble Colleague in this Council to lecture him,—I think that was the word he used,—on the law. I do not doubt that my Hon'ble friend knows all about it; though it is sometimes convenient to forget what one knows. Now let me remind him what is the position with regard to validation. We propose to indemnify only the officers of Government against the consequences of acts they have done, and not to validate the acts themselves."

[*Sir George Lowndes ; the President.*]

[25TH SEPTEMBER, 1919.]

We leave any remedy there may be against Government entirely open. If there is any complaint to be made in a civil action, any claim to damages open, let the man who complains sue Government, let him take his chance in the courts; we all know how the Government is sued,—in the name of the Secretary of State. Have we attempted by this Bill to preclude actions against the Secretary of State? Are not we responsible? Have not we from the very first as a Government taken responsibility for what we have thought to be necessary? Any act that has been done unjustly, contrary to orders, *mala fide*, unnecessarily, the man who did it must answer for; it was outside the scope of his agency. But for any act done under our orders Government must be responsible. We are the principal, he was merely our agent; such remedy as there may be, must be against the principal. There are many lawyers in this Council besides my Hon'ble friend Mr. Sinha, but I feel certain that even he must be well acquainted with the maxim, *Responsa superior*. Let Government answer; it is we who have ordered these things to be done. If they were reasonable, in accordance with the necessities of the case, we must be responsible. We have not attempted by the Bill to preclude any possible action against Government. So far as validation goes, we are, as I said, validating nothing but existing sentences. One would also have thought that it might have been worth while for one or other of those who have spoken to-day to refer to the pledge that has been given that everybody who is now in jail merely for a breach of a martial law regulation and nothing more, will be released. That is, it appears to me, a concession which answers a great deal of the most eloquent portion of the Hon'ble Pandit's speech.

“But my Hon'ble friend began with one of the most astounding arguments I have ever heard in any law court or even in this Council. He is much in love with the preambles of Acts, and he quoted from the preambles of the English Acts about acts that were necessary, and recitals that the putting in force of martial law was necessary; and he said that this is the only foundation for an indemnity. It is only justified if you can assume that martial law has been necessary. My Hon'ble friend went on to point out somewhat disingenuously I thought, that we had, of course at his request, omitted the word ‘necessary’ from the preamble. Then came the astounding argument that because we had omitted the word ‘necessary’ from the preamble, therefore Government must give up the whole Bill. That is an argument which is solemnly addressed to a Council of some half a hundred reasonable men. Will it carry conviction to any man in this Council or outside it? I think the Hon'ble Pandit did not even refer to the reason why the recital of necessity which was in the English Act to which he referred was omitted here. Is it that he does not understand the reason for it, the reason why we have omitted the word ‘necessary’ from the preamble? Even the Hon'ble Mr. Sinha did not venture to suggest that Government does not believe martial law was necessary. I can only say that, speaking for myself as a responsible member of this Government, I have not the least doubt that it was necessary. But why did we leave out the recital of this at the request of the Hon'ble Pandit? Because it was said that there is a Commission coming out to examine that question and it would not be fair to prejudice it by putting this into the preamble . . .

(The Hon'ble Pandit Malaviya rose to make a remark.)

**The President:**—“Order, order, the Hon'ble Member must sit down.”

**The Hon'ble Sir George Lowndes:**—“That is the reason why the reference to necessity was omitted from the preamble, and not because we have had the least doubt that it was necessary. In the case of the English Act of 1789, to which the Hon'ble Pandit referred, there was no commission coming, and the conclusion of reasonable men was that it

[25th SEPTEMBER, 1919.]

[*Sir George Lowndes.*]

was necessary and therefore the recital of this appeared in the preamble of the Bill. But my Hon'ble friend's predilection, if I may so put it, for preambles was so great that he proceeded in the course of his argument to tell the Council that you do not find any recital of necessity in the South Africa Acts. I am glad that I am able to say that the Hon'ble Pandit in this respect is absolutely correct. The Council will perhaps be amused to know why it is correct,—it is because no South Africa Act ever has a preamble. But in dealing with the South Africa Acts it was much more convenient for the Hon'ble Pandit to quote from the operative part of the Act, which he proceeded to do, without saying that he was doing so. In this case he quotes from the operative part of the Act because it suits him. When he is dealing with the English Act of 1789, as I pointed out on the previous occasion, he quoted only from the preamble and not from the operative part, because the operative part of this 1789 Act validated all acts done, whether they were necessary or not. Apparently, the—what shall I say—the necessities of elocution produce this unfortunate result, that when it pays the Hon'ble Pandit to quote one particular part of an Act, he quotes it; when it does not pay to quote that, he quotes the other part. I protest that is not a scheme, either of argument or logic to which I have been brought up.

“Then my Hon'ble friend went on, with a magnanimity which I admire, to defend his absent friend,—I hope I did not err again in that expression—his absent friend Raja Sir Rampal Singh. No one regrets more than I do, and I said it on a previous occasion, that the Hon'ble Raja Sir Rampal Singh has not been able to stay for this debate. But I am afraid I cannot recognise the fact that an Hon'ble Member is not able to stay for the whole of the Council proceedings as discrediting me to reply to arguments he has used. The Hon'ble Pandit tells us that he has taken the trouble to send Raja Sir Rampal Singh a telegram asking him whether he had written that speech (of course it was a written one, we know that) and Raja Sir Rampal Singh has unblushingly admitted that he had. I accept the statement; I have no doubt that it is true, and I do not doubt that his was the hand that wrote it, but I am still inclined to think that though the hand was the hand of Esau, the voice was the voice of Jacob. But let me give that point up. But what does the Hon'ble Pandit's contradiction mean? It was not a statement of fact on my part. The Council will no doubt remember that all I said was that I thought the most charitable interpretation of Raja Sir Rampal Singh's speech was that it had been written for him by a friend. I always like to be charitable, but the Hon'ble Pandit now has told me that there is no room for charity and I must now take what the Hon'ble Raja said in all its baldness as a statement of fact by a gentleman from Oudh (who is not here to tell us anything more about it) as to the condition of the Punjab at a particular time. The Hon'ble Pandit went on to suggest that I was quite unjustified in referring to Mr. Chanda having come from Assam. Well I doubt if there was anything particularly unparliamentary in that reference, but the argument was a very simple one, and I will repeat it for the Hon'ble Pandit's benefit. I was not arguing that the Punjab wanted this Bill; that has been sufficiently explained by one of my Hon'ble friends opposite. All I was dealing with was the question ‘was there or was there not at the time we put martial law into force a state of affairs in the Punjab that the ordinary civil arm could not cope with?’ And I said that it was a remarkable fact that, with all these members here from the Punjab, men of weight, men of standing, men of honour, men of truth, that there was not one who could get up in this Council and say the situation was not one of that sort, and that it was only Hon'ble Members from Assam, from Oudh, and from Madras, who made that statement? We have plenty of members in this Council who come from the Province where those things were taking place and who knew—it was not the case of having an opinion—who know for certain whether it was necessary to put martial law in force for the restoration of order or not, and I would still ask the Council to judge whether that is not an argument of some weight.

[*Sir George Yerrinder.*]

[25TH SEPTEMBER, 1910.]

You have them all here; do you believe they are untruthful, do you believe that they do not know what was going on in the Punjab? And yet I say there is not one who knows the facts who states that there was not a situation such as the civil arm could not deal with. And I repeat, it wanted a gentleman from Madras, a gentleman from Assam to say it—perhaps I must not say again the Special Commissioners from the United Provinces because that appeared to arouse some indignation on the part of my Hon'ble friend the Pandit. I really thought he was a self-constituted commissioner at that time, but he has told us he was a constituted commissioner by some body (I do not mean some person, but some body) of which he gave the name though I was unable to catch it. I am quite willing to assume that he was appointed a special commissioner by some body to inquire into the facts in the Punjab. But there again it does not affect the argument. The argument is that the Punjab people who know do not say this; the only people who say there was no rebellion there are people from outside who have only second-hand information. I apologise sincerely to the Hon'ble Pandit if I have over-stepped the bounds of courtesy by referring to him as a special commissioner for this purpose, and I am the more anxious to make the apology in that I understand from what he has told us to-day that a considerable portion of his duties was merely sanitary! The Hon'ble Pandit also referred to my having mentioned Mr. Sinha in this connection. There, I think, he is mistaken. I think he is confusing his two allies in this Council, Mr. Sinha and the Hon'ble Mr. Ayyangar. I do not doubt that he will offer suitable apologies afterwards. But I did not refer to Mr. Sinha in this connection. My Hon'ble friend Mr. Sinha had made no statement whatever on the subject of the situation in the Punjab; he very carefully abstained from doing this, and if I may say so, wisely. And here again, the larger part of the Hon'ble Pandit's speech on this point was a mere perversion of my argument. I was not dealing with the question whether this Bill was necessary. I was dealing solely with the constitutional question whether, when martial law was proclaimed, a situation had arisen which necessitated its use, nothing else.

With regard to the second portion of my Hon'ble friend's argument which dealt with certain questions of law, we know that under my Hon'ble friend's auspices a number of cases have gone to the ultimate court of appeal of the Empire, the Privy Council, and are lying there for decision. I do not propose to answer my Hon'ble friend on these legal points. I will only say let them be urged in the Privy Council. As no doubt they will be; and let their Lordship's attribute what weight to them they deserve. I am content at all events that they should judge upon them between him and me.

"The real point which the Council have got to consider,—I venture to reiterate it once more, but for the last time I hope—is 'Do Hon'ble Members regard it as the first duty of Government to enforce law and order in this country and to protect the lives and property of its citizens?' If they do recognise that that is the duty of Government, if Hon'ble Members wish that their lives and their property should be protected, and wish Government in cases of emergency to employ the ultimate force of the Army for that purpose, then they must, at the first possible opportunity, indemnify those who in carrying out the orders of Government have acted *bona fide* and in the belief that what they have done was reasonably necessary for the purpose. If Hon'ble Members think that it is not the duty of Government to protect their lives and property, if they do not wish that done, then let them refuse an Indemnity Act. But if they do that, they cannot expect protection when these great emergencies, these great crises, arise.

"Some reference was made by the Hon'ble Pandit to martial law in Bombay. Have Hon'ble Members forgotten the ghastly fate that overtook an Indian in connection with those disturbances? Have they forgotten how the mob seized one of their own community, a *mamlatdar*, soaked him in kerosine, set fire to him and burnt him alive? That is a fate which overtook,

[25TH SEPTEMBER, 1919.]

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

not a European bank manager, not a European lady missionary, but one of their own community. If they do not wish their lives and their property protected by Government, I venture to suggest that that is a fate that may overtake any one of them on the next occasion.

Then the Hon'ble Pandit referred to the legal position of soldiers under martial law and he read us out quotations from law works on the point which, I am afraid, did not appeal to me very much, because the answer is so obvious. It is because soldiers may find themselves in this extraordinary position, of having on the one hand to fulfil the orders of their Commanding Officers on pain of being tried by court martial, and on the other of being tried by the civil courts, it may be for murder, if they do,—it is because of this extraordinary position in which the soldier may find himself, that it is necessary to indemnify them. That is the reason and the object to a great extent of indemnifying them against actions, indemnifying them against suits and against criminal prosecutions. It is perfectly immaterial for the Hon'ble Pandit to read out long citations about the legal position of soldiers. I hardly cared to listen to them,—the answer is so clear. It is because of that position that it is necessary to pass an Indemnity Act and has been so held in the other cases where martial law has been enforced throughout the Empire.

“There is much more to which I should have liked to reply in many passages of the Hon'ble Pandit's speech; but we are now on the second day of this debate nearly at eventide; and, I think, it would be kinder if I left the rest unanswered. I do not want the Council to think that it is because there is no answer to the points that have been made by him, but only because it seems to me at this hour not to be worth attempting.”

**The Hon'ble Rao Bahadur B. N. Sarma:**—“My Lord, we have listened with rapt attention to the powerful speeches which have been delivered by the Law Member in defence of the policy of the Government. All the points that have been raised have been threshed out for two days, and I do not propose to go into the facts at any length in order to justify the vote that I have to record on this motion. All that I ask is, that the Government Members should not be uncharitable, in interpreting the attitude that some of us have had to take and have, still to take with regard to this Bill on the facts which have been so far placed before us in this Council. I allude to that for the simple reason that, during the course of the debate, more than one reference has been made to the opposition of a few individuals in this Council to the introduction of this Bill and, later on, to their attempting to whittle down the measure, when they did not succeed in effecting their original object.

“My Lord, if there was opposition to the introduction of the Bill, there were ample grounds therefor; it is not necessary to repeat them. What we were entitled to do after the Bill was introduced was to make it, if possible, one which would be acceptable both to the Government as well as to the people. The primary object, we were told, of this Bill was to protect, not the Government, not the higher officials who initiated the policy, but the officers who executed, who carried out, the objects of the policy which was enunciated by the Government. I agree that the object is one to which no general exception can be taken. I said that these officers should not be allowed to be sued during the interval which may elapse before the Legislative Council is in a position to make up its mind as to the exact form the Bill should assume. Therefore it was that, both at the introductory stage, as well as when the Bill was brought up for consideration, I suggested the enactment of a provision that no suit should be entertained until the inquiry was over and a reasonable time elapsed, when the Government and the public would be in a position to sift the facts for themselves and arrive at fairly accurate conclusions. I felt, my Lord, that the object of the Government would be achieved without at the same time offending the susceptibilities, the reasonable susceptibilities of the people, and



[*Ugo Bahadur B. G. Sarma.*]

[25TH SEPTEMBER, 1919.]

I made the suggestion in the hope that we should re-establish the Government in the confidence of the people.

“My Lord, the law need not be stated over again. In the absence of an Indemnity Bill it is acknowledged on all hands that the officers who may be put on their trial would have to show that there was a necessity for the particular measures that they took. Judicial Courts would be the proper tribunals to dispose of that question and also of the question as to whether martial law was necessary. That is a question of fact. But in all civilised countries these martial law proceedings have been followed by Indemnity Acts making it unnecessary for judicial tribunals to consider the question as to whether martial law was necessary. Therefore, when we render it unnecessary for the judicial tribunal to go and ascertain as a question of fact whether martial law was necessary, it is necessary that we as the Legislative Council should come to some rational conclusion on that subject. It is all the more necessary in a Council of this description, where the Legislative Council is virtually the Executive Government. That is the reason why, my Lord, we, as the representatives of the people, thought it was our bounden duty to defend the rights of the people to the utmost in so far as it was compatible with securing the necessary objects the Government had in view, namely, the protection of its officers before the facts were thoroughly sifted. My Lord, that course was not allowed to us. Then, accepting the position that we should have to protect the officers and the soldiers, the question that we had to consider was as to whether on the facts that were placed by the Hon'ble Pandit Madan Mohan Malaviya before the Council and controverted to a certain extent by the official members, on those facts as I say accepted for the time being as correct, was there any alternative for the Members of Council but to ask the Government to stay their hands and not to afford protection to all and sundry alike ?

“The Hon'ble the Law Member says we do not want it, we only raise the presumption in all these cases but leave it open to the persons aggrieved to show that the presumption is unreasonable. My Lord, I venture to say that no such presumption should be raised especially in the case of certain acts which have been the subject of discussion in this Council. If people grumble and are dissatisfied that undue presumptions have been made in favour of such actions, I do not think we can say that such grumbling or dissatisfaction is unreasonable. We felt it would be wrong to do so and that, my Lord, was the reason why we prayed, we begged, we implored that all actions prior to the proclamation of martial law should be excluded from the purview of this Bill.

“The Government wish to cover every act that cannot be justified in this Council to the satisfaction of some of us by raising this presumption. Therein lies the difficulty of some of us seeing eye to eye with the Government. The Government cannot believe that our object was merely to whittle down the measure so as to make the protection nominal, illusory and absolutely meaningless. Allusion has been made more than once to the circumstance (and the elucidation of the facts here is a sufficient answer) that people from other provinces should come forward and build up theories and enunciate principles, and advance facts which they can only know second-hand. Whatever justification there may have been for the charge before this debate, I venture to say that everyone, whether he comes from the Punjab or from outside, is now in a position to express his opinion. We now know what took place in the Punjab if we did not know before. I venture to reiterate what I said before, that members from outside the province of the Punjab should have been grossly remiss in the discharge of their duties if they had only looked upon this as a Punjab problem. It is rightly regarded as an all-India problem. It is true that we here who represent the people are at the present moment in a hopeless minority. Of the 18 non-official members elected by Provincial Legislative Councils we have only 4; of those who are elected by



[25th SEPTEMBER, 1919.]

[Rao Bahadur B. N. Sarma.]

communal bodies there are 7, of those nominated only 2, of whom one was nominated by the Punjab Government after the disturbances. It is true that public opinion outside the Council Chamber is not adequately represented here and has never been. My Lord, there is one significant argument that has been used by the Law Member now and on a previous occasion by the Home Member, that some of the matters dealt with by the Hon'ble Pandit Malaviya would afford a good electioneering cry, but that they were hardly relevant to the subject under discussion. The significance of the admission is this, that any member who does not defend the position as we defend it would have no chance with any constituency, and therefore that in advancing the arguments which have been used, we are really voicing public opinion. The Government seems to be therefore aware that what has been stated by us represents faithfully sentiments which rightly or wrongly are cherished by the people throughout the country. My Lord, there were certain passages-at-arms between the Hon'ble Pandit and the Hon'ble Mr. Thompson and the Hon'ble the Law Member. We have listened with some pain to the debate on these points. We have tried our level best to base our judgment on the material facts practically admitted by both sides. Nothing has been said either now or before this which really controverts the facts as stated by the Pandit. On relevant questions there has been no substantial contradiction. There may have been some trivial incidents, some matters not of essential importance which may have been inaccurate. Such being the state of things we have tried, we have asked the Government to stay their hand in protecting all their officers until the public inquiry sets the matter at rest. The main line of the argument of the Hon'ble the Home Member, as well as the Law Member, was: 'Do you want the Government to uphold order or not; if you want the soldiers to protect your life and property, then you cannot expect them to do so unless you protect them.' We do not quarrel with the premises. The Hon'ble the Home Member particularly appealed to the aristocracy. But even the professional classes have a stake in the country, and I do not therefore think that that was a very happy appeal, made as it was to a particular section of this legislative assembly. Everyone here has a stake in the country and is expected to look at the problem in a proper perspective and in just proportions. We know we should do nothing to weaken the hands of the Government especially in a country like India; but what we want is justice to all alike; we do not want any officer to be harassed by vexatious and unnecessary actions; but, my Lord, at the same time the golden mean has to be observed; where certain facts have been divulged which necessitate an inquiry, all I say is the protecting cloak should not be cast on all alike equally. It is because vital constitutional principles are at stake that we have taken so much trouble to weary the Government and the Legislative Council. We feel that this Council should not pass a final Act of Indemnity unless it is satisfied that there was necessity for martial law in the Punjab. We think that this Legislative Council should not lend weight of its authority to the proposition that the executive Government, whenever they feel that the civil arm is unable to cope with an emergency, should call in the aid of the military and allow them to do what they like. We do not want an extension of the martial law doctrine to cases which occurred in peace and before the proclamations thereof. We do not want to accept here as a body the doctrine that martial law can be enforced or can be kept in force one minute longer, for the suppression of rebellion, whether armed or unarmed, the moment the rebellion is suppressed. Martial law cannot and ought not to be used for the mere purpose of maintaining order in the community. No Government is worth the name of Government if it cannot maintain order, by the civil power, once violent dis-

[Rao Bahadur B. N. Sarma ; Sir William  
Vincent ; Mr. K. V. Rangaswamy  
Ayyangar.]

[25TH SEPTEMBER, 1919.]

turbances are suppressed ; and it would be a dangerous doctrine to uphold that we may indemnify all the acts of Government the moment the Governor of a province says that he cannot maintain order, not merely without the aid of the military, but without the enforcement of martial law. That question, my Lord, is one of essential importance as to how long martial law can be kept in force, and here we have grave reasons for thinking that although the Government of India might have been justified, on the representations made by the Punjab Government—and when it was not in a position to ascertain the accurate position—and I am sorry that the Chief Justice has dragged himself in here, although it may be that the Government of India might have been justified in issuing its preliminary orders, there was no justification for keeping it in force for three months, and more, and most of the trials held in that period should not be upheld and ratified by this Council. We are thankful to the Hon'ble the Home Member for conceding to us that all those found guilty of infractions merely of Martial Law Ordinances would be released, provided they do not at the same time come under some provision of the Penal Code, special or local law . . .

**The Hon'ble Sir William Vincent** :—"My Lord, the Hon'ble Member said Martial Law Ordinances. I think he means Martial Law Regulations."

**The Hon'ble Rao Bahadur B. N. Sarma** :—"I beg your pardon, I meant Martial Law Regulations. We are thankful for that concession, and it is a real concession and the other one is that the cases of those who have not appealed to the Privy Council would also be governed by the principles and grounds of the Privy Council decision. It cannot but be acknowledged that that to a certain extent obviates some of the objections we had to the passing of the Bill. But, to my mind, the constitutional principles that are at stake, especially in a country like India, are of such vital importance that we as a legislative body would not be justified in passing a Bill of this description finally, pending the inquiry into the necessity for the enforcement of martial law its duration, the measures adopted and as to the acts of individual officers who *prima facie* on the evidence before us here must be presumed to be guilty until the contrary is shown."

4-48 P.M.

**The Hon'ble Mr. K. V. Rangaswamy Ayyangar** :—"My Lord, if the views of people like us, residents of even distant parts, though we may be, should be agreeable to Government, then these will be said as emanating from people with a stake in the land and all that. But now as they are not quite agreeable the Hon'ble Raja Sir Rampal Singh is said to come from a distant talukdari village in Oudh in the United Provinces, and I come from the distant religious regions of Madras, far away from the Punjab, the scene of tragic action. The presentation of the case by the official apologists, my Lord, only goes to confirm the popular view that a very grave crime has been committed in the Punjab. If for the reasons put forth by the Official Members we are asked to give our assent to indemnify the officers, then we have to say we are sorry, we cannot give our consent.

"Our friend the gallant member, Hon'ble Lieutenant General Sir Havlock Hudson, said the other day in defending the Jallianwala Bagh incident.

[25TH SEPTEMBER, 1919.]

[Mr. K. V. Rangaswamy Ayyangar.]

" On reaching the Bagh his force was confronted by a vast assembly some thousands strong, who were being harangued by a man who was standing on a raised platform. It was clearly the duty of the Officer in Command to disperse this unlawful assembly. Realising the danger to his small force unless he took immediate action and being well aware of the inadequacy of the measures taken to restore order on the 10th of April, he ordered fire to be opened. The crowd was dispersed and the force was withdrawn. I cannot do better than commend the views which have been so beautifully expressed by the 'Leader.' It questions :—

' How simple and innocent do these words sound? But a world of tragedy lies hidden behind them. Did the officer in command ask the crowd to disperse? Did he inform the meeting that it was an unlawful assembly? Did he inquire what the meeting was about? Did he notice that any one carried any arms? Did the meeting show an attitude of defiance or hostility? Did any section of it advance in a menacing manner against his force? Did he ascertain whether any seditious speech was being delivered to incite the people to revolt? These questions must be answered in the negative, for if the General could have urged any one of them in the affirmative he would not have failed to do so in defence. The officer realised the danger to his small force. Was he under the influence of a hallucination, or of some strong passion which clouded his reason and distorted his judgment? He ordered his men to open fire. How many volleys were fired? One, two, three or more? He is silent. He gives no information. Were they fired in quick succession or at intervals to see what effect they produced? No information. Was the firing continual even after the crowd had begun to fly wildly? Was the avenue of escape left for such a huge crowd? The dark deed was done, and the force was withdrawn. What became of the dead and wounded? That was no concern of the General. Were the dead and wounded counted? Was any ambulance provided? It was after four months that the Government took into its head to inquire how many were killed.'

" Then with regard to the crawling incident in Amritsar, Lieutenant-General Hudson tells us that men crawled voluntarily!! Does he expect any one to believe this? This is not so. People were forced by soldiers to crawl. It is certainly an act of intentional degradation. Then comes the question of bombing in Gujranwala. This has no justification. Bombing continued for two days over an area of several miles. This has been compared to bombing in war time! In war there are aircraft guns which fire against aeroplanes, and therefore aeroplanes have to fly high. In Gujranwala aeroplanes could fly very low and could aim. Yet they hit all sorts of distant objects, including a college hostel.

" I come from distant Madras and I am minimising the situation. There are so many respectable people in the Punjab and its neighbouring places who would bear testimony to the cruel actions committed in the Punjab. It is too late for me to read what so many have to say, and I will read only one portion of the account given by Mr. Alfred Nundy :—

' By 8-30 p.m. on April 10th, that is within an hour of the so-called riot all were quiet in Lahore, and no further disturbances occurred after that. It was on Tuesday, the 15th April, that martial law was proclaimed in the whole of Lahore district, and it is therefore necessary to record if anything took place between the evening of the 10th April and the 15th April to warrant the resort to such an extreme measure. An official Communiqué mentions an incident on the 12th, when it is alleged brickbats were thrown at the troops marching through the city. But no mention of this is made either by the 'Civil and Military Gazette' or the Associated Press correspondent. Anyhow, considering quiet was restored on the evening of the 10th April, and there was no disturbance after that, was there any justification, apart from the desire to terrorise the people, to pass through the crowded and narrow lanes of the city, especially as all the vantage grounds were occupied by the military? Was it meant that women or children who throw the brickbats and what was the age or sex of those killed or wounded? No information is vouchsafed on these points, and has it struck the Government that it was thus laying itself open to the imputation that it was callous or indifferent to the

[*Mr. K. F. Rangaswamy Ayyangar.*]

[25th SEPTEMBER, 1919.]

feelings of the people? But surely the throwing of a few brickbats in the city could not have endangered the safety of Government or of the people, or of their property so as to justify the introduction of martial law. Thus we come to see what the open rebellion was.

“ Perhaps this is the reason why open rebellion is left out in the preamble of the Bill and the word ‘ disorders ’ is substituted.

Again Mr. Nundy says :—“ The Punjab Government Proclamation dated April 26th stated that martial law was declared only where heinous crimes, murder or arson had been committed. What were the heinous crimes committed by the people of Lahore between the 10th and 14th of April? None has been published. But Sir M. O’Dwyer wanted martial law, not because of any open rebellion, but because he was very keen about paying off old scores and teaching a lesson to men who had been a thorn in his side, who were guilty of the grave crime of political agitation, which he thinks should have no place in the Punjab, if not in the whole of India. The ordinary courts were slow and unsatisfactory, but martial law courts with their summary procedure were just adapted to deal with such miscreants, and they did it all with a vengeance. And yet Englishmen profess to be shocked when an old man indignantly tells them they are not quite as civilized as they imagine themselves to be. Why was the mob at Lahore going from the city to the Civil Lines? The official Communiqués ignore this matter. This is a very important matter which should be gone into by the Committee of Inquiry. Then Mr. Lloyd George said in the course of a speech that his heart thrilled with pride on hearing the greatest Labour Orator of Europe state at the recent Labour Conference: ‘ There are two methods of dealing with the labour situation, one is the Russian method, and the other the English method.’ Will his heart thrill again with pride on reading the exploits of Sir M. O’Dwyer, the latest exponent of the English method in India? ”

“ Let me say what Mr. Norton, an impartial Englishman opines about martial law trials :—

“ The authorities are making it difficult for the Indian to retain his faith in the wisdom of his rulers of the senseless of their programme. Journalists and lawyers primarily unconnected with an act of violence during the riots have been relegated to trial to what is practically a drumhead court-martial and there refused the privilege of being defended by counsel of their own choice. . . . Though martial law had been proclaimed at Lahore the Civil Tribunals were still left open and no legitimate argument has been or in my view can be raised in defence of a policy which tore batches of men away from the protection of the established courts of the country and handed them over to the mercy of the tribunal from whose summary methods there was no right of appeal. He asks why citizens of education and position physically unconnected with the riots in the north have been snatched from the court of municipal law, and subjected to summary courts of procedure; why the ordinary safeguards have been denied them; why such counsel were forbidden to take notes of evidence; why the accused has been deprived of the usual protective accompaniment of an appeal; why they were not permitted to be represented by the counsel of their own choice; why a barrier was created in favour of the professional men residing at Lahore; why those who have been convicted have been subjected to sentences which are brutal exhibitions of superior force unredeemed by one tinge of judicial balance. The punishment adjudged is indicative of the mental frame and intellectual attitude of the judges to whom these unfortunates were confided. ”

“ Even the ancestors of the present bureaucracy in India, as was pointed out by my friend and colleague the Hon’ble Mr. Tej Bahadur Sapru, by a Statute of Henry IV had fully recognised the right of freedom of choice by the accused and of the persons by whom he wished to be represented legally. Yet in the 20th century we hear of the accused being denied the choice of their own counsel; while the sentences, as observed by Mr. Norton, ‘ are such as those which mark the ferocity of the Huns, and which no English judge would dare to emulate even against the Germans in England.’ ”

“ Serious allegations have been made against individual officials of callous excesses, such as gratuitous acts of insolent provocation, indiscriminate firing

[25TH SEPTEMBER, 1919.]

[*Mr. K. V. Rangaswamy Ayyangar ; Sir William Vincent.*]

of men, against whom no case of rioting has yet been made out. So long as these charges are not disposed of by a competent and impartial Commission of Inquiry, any attempt to exculpate the alleged offenders will be regarded by impartial observers and the aggrieved Indian public alike as an act of flagrant injustice, undertaken and executed in contemptuous defiance of public sentiment. It will violently outrage the feelings of hundreds of bereaved families to alleviate whose sufferings and to soothe whose afflictions no attempt of any sort has yet been made by the Government.

"No one denies that in cases of civil wars and rebellions the duty of no one is more onerous than that of public servants, and if they are led by conscientious considerations of high morality, law and order, to commit excesses of law, it is the duty of the Crown to protect them. But if misguided, misinformed and possibly prejudiced public servants get themselves excited, or wilfully and wantonly exaggerate the dangers of the situation and thus plead plausible justification for using the powers of a giant, it is equally the duty of the Crown to protect its subjects against such flagrant abuse of the authority with which such servants are invested.

"It is one thing, however, to exonerate officers. It is quite a more serious thing to deny innocent sufferers the ordinary remedy that the law of the land provides. It is not easy to see what good purpose the Bill will serve beyond emphasising the already existing suspicions of the public that the authorities have become conscious of the guilt of their agents, and they are compelled to rush to their rescue, as accessories after the fact.

"The Bill before the Council is taken as giving the crowning touch to the many acts that have been done to defy public opinion in the country during the last few years. The Government knows the feelings of the country fully well about this Bill, and I need not enlighten them any more.

"I cannot but close my speech without repeating what Lord Morley wrote: 'Your mention of martial law in your last private letter really makes my flesh creep, but martial law is only a fine name for suspension of all laws, and would not snuff out murderous clubs in India any more than the same sort of thing in Italy, Russia and Ireland.' And he added, 'it would be neither more nor less than a gigantic advertisement of national failure.' Quite true, it is a gigantic national failure now. Evidently there seems to have been, since then, a change of principle in those responsible for the administration of the country."

**The Hon'ble Sir William Vincent:**—"My Lord, before I address myself to the main motion, I should like to reply to two remarks of Mr. Sinha. I regret that he is not here, but it is not my fault that he is absent. The Hon'ble Member began by complimenting me, perhaps undeservedly, on the moderate tone I had adopted throughout the debate. He went on immediately afterwards, however, to cite with approval, with gusto, if I may say so, an extract from some paper, which condemned in no measured terms, the whole of the substance and language of my speech. This does not seem to me reasonable.

"I am content, however, to leave the matter to the decision of Council. I do not think that any Member here can say that I have been intemperate in my language in this debate.

"The Hon'ble Mr. Sinha then went on to suggest that, as I had quoted Mr. Gandhi in regard to the Indemnity Bill, I should remember also that Mr. Gandhi had repeatedly found fault with the convictions and sentences of various persons. My Lord, we are having these cases examined, but may I point out to the Council that, although Mr. Gandhi condemned these convictions, in spite of his feelings on that point, he has still supported this Bill? That is a fact which many Members of this Council might do well to remember. I did not quote him as an authority for whom I myself had any very great respect, but the Hon'ble Pandit Madan Mohan Malaviya having cited him frequently in this Council, as a man of the greatest weight and

[*Sir William Vincent.*]

[25th SEPTEMBER, 1919.]

almost inspired, I hoped that I might use the name of Mr. Gandhi in appealing to him and to other Members of this Council to support the Bill.

“Turning to other speakers, my Lord, may I say that in my opinion the whole debate on this motion to pass the Bill has resolved itself into an occasion for a discussion of totally irrelevant matters? All kinds of details have been brought up which really are not before the Council at this stage at all. Many Members have indeed taken the opportunity of the motion to answer criticisms that have been made of their speeches on previous occasions, and a part of the day at least was spent in recriminations. Statements of fact made on one side were almost inevitably answered by others, and the result has been, however, that the Council has been invited indirectly by some Members, like the Hon'ble Mr. Malaviya, and almost directly by others, such as the Hon'ble Mr. Thompson, to come to definite conclusions on inadequate information and *ex parte* statements, as to particular incidents during these risings. You have one member saying one thing; another saying something quite different; on many occasions neither of them speaking from first-hand knowledge; and on their statements this Council is asked to condemn or justify the conduct of individual officers. I use the word ‘condemn’ deliberately—I took down one statement used by the Hon'ble Mr. Madan Mohan Malaviya when he said that a particular officer was guilty of criminal dereliction of duty—I put it emphatically to the Council that such a statement is neither fair nor reasonable. These are matters for the Committee. I will take one incident which has been repeatedly referred to, this unfortunate Jallianwala Bagh affair. My Lord, no one deplors the loss of life on that day more than the Government. It has been, and must be to all of us, a source of great distress, and it does not really make so very much difference from this point of view whether the number killed was 300 or 500. In either case the loss of life is serious enough in all conscience and greatly to be regretted. But we have no right in this Council either to justify or condemn that action. It is not part of our duty; it does not come within the scope of the Bill. General Hudson has, it is true, put before the Council certain considerations relating to this occurrence, but as I understood him—he was merely attempting to put the matter as it might have appeared to a military officer at the time and was not in any way putting his personal views before the Council. That is the way I understood his remarks. I mention this because his statements have been made the ground for attacks on him; and it was suggested he sought to justify what was done. I do not think that the Council, when they have considered the position, will for one moment accept that as a fair presentment of his intention. What I ask the Council to do now is, not to prejudge this matter in any way, neither to condemn nor to justify any action, neither to say a man is innocent nor to say he is guilty until the proper time for such a decision shall arrive. Does this question come within the scope of this debate? Is there anything in the Bill that justifies a man or condemns a man? I maintain there is nothing. All that the Bill enunciates is a principle. It does not say that a man is justified or blameworthy for his conduct on any particular occasion. It leaves that to the Court to decide from a legal point of view. In so far as administrative action is concerned, that is also a question outside the Bill altogether, which can be decided, as I have repeatedly explained to this Council, only after the Report of the Committee is received. What could be fairer? The question whether an officer acted *bona fide* or not is left to be decided from the legal point of view by the Courts save for this provision, that there is a presumption that he has acted *bona fide* and reasonably. Let me take the case again of Jallianwala Bagh. What is the position? If the action of any particular officer is found to be unjustifiable, if all the allegations made to-day are true, what will be the result? It will be a matter for the Court, either the Court will find it justifiable and reasonable or unjustifiable and unreasonable, in which latter case the normal legal results will follow. Similarly, so far as administrative action is concerned, if the action was unjustifiable, then undoubtedly the Committee will condemn it. But is it fair to any officer to condemn him behind his back,

[25TH SEPTEMBER, 1919.]

[Sir William Vincent.]

unheard and without his having an opportunity of making a statement and offering his explanation? Is it fair to him to come here and make statements which affect his character, his honour, his sense of justice, and his sense of humanity?

"My Lord, the Hon'ble Pandit Madan Mohan Malaviya made an admittedly powerful speech; many parts of it were very powerful, but I submit that it was, as I have tried to point out to the Council, both irrelevant to the motion before us now and unjust to many who are not here. The Hon'ble Member in the course of the debate made more than one reference to the Almighty and to his conscience. I wish, my Lord, that it would induce him to be fair to others. I regard the whole of his speech, however, as a desperate attempt by creating prejudice to recover a position that was really lost. The whole principle of this Bill had been accepted by the Council on the understanding, as I say, that the question of *bona fides* or *mala fides* was to be decided by the Courts. When that principle has been accepted, the Hon'ble Member again attempts to prejudice the minds of the whole Council by citing specific incidents, the merits of which are really not before this Council at all.

"My Lord, the Bill has however been attacked as premature for more weighty reasons than these. It was said—at least if I understood the argument correctly—it was said 'you should pass no Indemnifying Bill because the Legislature has had no opportunity of satisfying itself as to the actions taken.' The answer to this argument seems to be very simple. We are not dealing with individual actions or specific actions at all. We are dealing with principles, that is, the principles upon which a man in such circumstances ought to be indemnified. If Council will not give a Government officer even this qualified indemnity, then he is liable in the courts for any action which is not legal or justifiable by the strict law though it may have been proper and necessary. Such an argument, namely, that you should not pass an Act of Indemnity until you are satisfied as to the character of the act indemnified, would be of some weight and more could be said in favour of it, if we were here granting complete indemnity and completely validating all that has been done. My Lord, that is exactly what we are not doing, and the reason we are not doing more is because we do not think it would be right to ask for more complete indemnification at present. If Council will look at the older Acts, either the English Acts or the Indian Act of 1860, they will see that these Acts give complete indemnity to everybody for any acts done in suppressing disorders irrespective of any question of *bona fides*. The indemnity we propose to give is however definitely qualified, for reasons I have given, namely, because we cannot with the Committee coming on ask Council to pass a more comprehensive Act. By taking our present course, we leave it to the Courts to decide whether a particular action was *mala fide* or wrong from the legal point of view; and from the administrative point of view, we await the report of the Committee of Inquiry. My Lord, it is said that the words 'reasonable belief' mean nothing; to my mind the meaning is perfectly simple. The only legal definition of the term, I know, is in the Indian Penal Code, where reasonable belief is defined as belief for which there is sufficient cause. I will read the exact words 'A man is said to have reasonable belief if he has sufficient cause to believe it, but not otherwise.'

"Another objection taken to the passing of the Act now is, that the preamble has been altered since the Bill was introduced. This point has been dealt with so ably by my Hon'ble Colleague, that I really do not think I need dilate on it at any length. But I should like to put one aspect of it to the Council. First, we were told that by retaining the original words in the preamble we were making this Council admit that martial law was necessary. Well, we said 'All right; we will alter the preamble; we do not want to

[25th September, 1919.]

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

commit you to any such admission'; and we modified that portion of the preamble to which objection was taken. The next day two new objections are put forward, the first by the Hon'ble Mr. Malaviya who says 'You cannot pass the Bill because you have withdrawn that statement from the preamble,' though we did so to meet objections of non-official Members. The second was by the Hon'ble Mr. Sinha who said 'Oh, you have now admitted that martial law was not necessary.' Hon'ble Members have heard the whole of the discussion, and I leave it to them to decide whether they think that either of these arguments is of any weight.

"My Lord, it has been repeated more than once in this debate that martial law was not necessary. The facts are before the Council, and I do not want to reiterate anything which has been said already; but I have here a short statement of some of the leading outrages that occurred in the Punjab which, I think, will be interesting. There were 7 murders of Europeans, 15 serious assaults, some of them murderous; there were 44 cases of arson; there were 34 cases of serious tampering with railway lines, any one of which might have caused a grave accident—I am quoting from information supplied to me—and there were 132 cases of cutting telegraph wires or destruction of telegraph posts and insulators. I think that with this additional information before it, this Council will conclude that there was some reason at least for supposing that this was not a case of ordinary disorder, for crimes of this kind are not committed in cases of local rioting.

"The Hon'ble Mr. Ayyangar (I wish I could make myself heard by him), indeed, went so far as to suggest that martial law was instituted merely because Sir Michael O'Dwyer wished to pay off old scores. I have read out to the Council the telegram that we received from the Punjab; the Council have heard from Mr. Hailey and from others well acquainted with the facts including my friend; the Hon'ble Major Umar Hayat Khan, what the actual position was. Is it generous, is it fair, is it honest, in these circumstances, for an Hon'ble Member of this Council to come forward and make or quote an allegation against Sir Michael O'Dwyer of that character, to stab him in the back in this way? For myself I may say that I have heard many unfair things said in this Council—but I have never heard a more cowardly attack in the whole course of my experience.

"Then we had another allegation by the Hon'ble Pandit Malaviya to which I wish to make some reference. He made what was to my mind a very serious statement. An allegation that the telegram from the Punjab Government to the Government of India did not state the truth . . . . .

**The Hon'ble Pandit Madan Mohan Malaviya:**—"The whole truth, I said."

**The Hon'ble Sir William Vincent:**—"The Hon'ble Member said 'truth' first, though he subsequently corrected it. I took down the words . . . . .

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Hon'ble friend did not take the words down accurately. I said 'the whole truth.'"

**The Hon'ble Sir William Vincent:**—"I maintain that what the Hon'ble Member first stated was 'truth'; he corrected it later. I submit in any case that there was no justification for such an allegation against the late Lieutenant-Governor of the Punjab. There is nothing whatever in the speech of the Hon'ble Member which can be held to be justification of such a serious accusation as that. Whatever were the exact words used—the truth or the whole truth the insinuation is that Sir Michael O'Dwyer deliberately withheld facts from the Government of India, and I maintain that there is no information before Council to lead us to think that there is any basis at all for such a suggestion.



[25TH SEPTEMBER, 1919.]

[Sir William Vincent ; the President.]

"Then it was said that the declaration of martial law was really due to unsympathetic treatment of the people by the Punjab Government. If that statement is correct, my Lord, what was the case in Bombay? Was Sir George Lloyd unsympathetic? We have heard nothing but praise of Sir George Lloyd's conduct throughout, yet we know that martial law was enforced in parts of Bombay for a short time, at any rate, and we do know that the most deplorable excesses were committed there. The Council has heard of this unfortunate Maraldar who was burnt alive.

"The fact is, my Lord, that in many of these cases where martial law is declared, it is easy to criticize the action taken and often the measures taken deprive the authors of evidence of the necessity for them. This is very well put in the Report of the Commission on the Jamaica Rising—in the following words: 'how much easier it is to decide such a question after than before the event, and sometimes the success of the measures adopted for the prevention of an evil deprives the authors of those measures of evidence they would otherwise have had of their necessity.' I maintain that this has been a great deal the position in the Punjab. The very success of the measures taken has deprived the authorities of evidence of their necessity.

"But, my Lord, we are not now deciding whether martial law was necessary or not, but whether in any case to protect our officers when they have acted *bona fide*? It was for this reason I deprecated the discussion of the necessity for martial law in this Council altogether. I asked the Council then to forbear from discussing that question, because it necessarily must come before this Committee of Inquiry. The position I have always taken up is, that we believe that martial law was necessary, but whether it was necessary or not, we must protect our officers who have acted *bona fide*; and I have never yet heard any argument which has satisfied me that I was wrong on that point. We do not seek to indemnify our officers for specific acts; we are not doing so either administratively or in respect of legal liability; we are only laying down principles on which indemnity should be granted. I am told, however, that officers need no such protection, and that they must depend on their protection under the common law. This point has also been dealt with by the Hon'ble the Law Member, and I will only say to Council that these references to legal dogmas leave me cold. The real question is a simple one on which any man of sense can judge for himself. Each Member of this Council must judge whether a soldier or any officer of Government who carried out the orders of his superior or did his duty in suppressing these disorders *bona fide* and honestly is or is not entitled to be indemnified against legal liability for his action. There is no good citing legal dogmas and constitutional theories in such circumstances. The question is 'are you going to afford the men reasonable protection or not?'

"Well, my Lord, I have placed all the facts relating to the Bill before the Council. I maintain now that it is a perfectly fair and reasonable measure, that it is entitled to receive the support of this Council, and I now leave the issue with all confidence in the hands of Hon'ble Members."

The motion that the Bill, as amended, be passed was put and agreed to.

**The President:**—"The Council has now come to the end of another Session. It is usual for the Viceroy to address Members of Council both at the beginning and at the end of the Session; but I think that, in the circumstances of this particular Session, especially in the circumstances of these last two days, Members would prefer on this occasion to adjourn and not to be kept here a moment longer than the necessity demands, and as a matter of fact it is only three weeks since I addressed the Council most exhaustively on all the various subjects which have been of public interest during the past few months since the last Session. Since that date no new subject has come to the fore, nor has there been any development in any of those matters with which I dealt

[*The President.*]

[25th SEPTEMBER, 1919.]

very fully on that occasion. It only remains for me this evening to thank Hon'ble Members for the work which they have done during the present Session and to wish them God-speed and a safe return to their homes.

The Council will now adjourn *sine die*."

SIMLA ;

The 9th October 1919. }

H. M. SMITH,

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