

*Thursday,
18th March, 1915*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LIII

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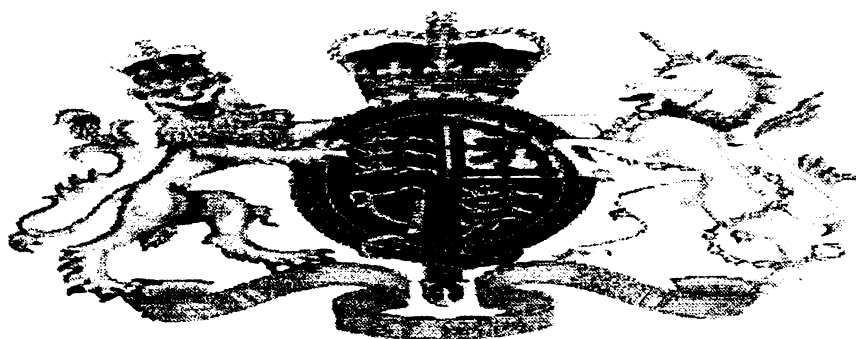
ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

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VOLUME LIII



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1915



GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861 to 1909
(24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on
Thursday, the 18th March, 1915.

PRESENT :

His Excellency BARON HARDINGE OF PENSHURST, P.C., G.C.B., G.C.M.G., G.C.V.O.,
G.M.S.I., G.M.I.E., I.S.O., Viceroy and Governor General, *presiding*,
and 56 Members, of whom 48 were Additional Members.

HIS EXCELLENCY THE VICEROY'S SPEECH.

His Excellency the President :—“ I duly forwarded to the Secretary of State, for submission to His Majesty the King-Emperor, the following loyal resolution unanimously adopted at a meeting of my Legislative Council held at Delhi on the 24th February, 1915 :—

‘ This Council recommends to the Governor General in Council that His Excellency in Council may be pleased to communicate to His Gracious Majesty the feelings of sincere gratitude, devotion and loyalty with which the immense population of India have heard of His Majesty's gracious personal attention to Indian soldiers in the theatre of war and in hospital and the unswerving resolution of Indians to support the honour, dignity and prestige of the Empire regardless of the sacrifice it may entail on them. ’

“ On the 16th March I received the following reply from the Secretary of State :—

‘ Please inform Council that it has given me much pleasure to lay loyal resolution before His Imperial Majesty the King, who has read it with great satisfaction. ’

[*The President.*] . [18TH MARCH, 1915.] .

“ I also received the following message from Field-Marshal Sir John French :—

‘ I am glad to be able to inform Your Excellency that the Indian troops under General Sir James Willcocks fought with great gallantry and marked success in the capture of Neuve Chapelle and subsequent fighting which took place on the 10th, 11th, 12th and 13th of this month. The fighting was very severe and the losses heavy, but nothing daunted them. Their tenacity, courage and endurance were admirable and worthy of the best traditions of the soldiers of India.’

“ I then sent the following telegram to General Sir James Willcocks :—

‘ I have just received from Field-Marshal Sir John French a telegram informing me of the great gallantry and marked success with which the Indian troops under your command fought in the capture of Neuve Chapelle and subsequent operations which took place on the 10th, 11th, 12th and 13th of this month.

‘ I shall be glad if you will be so good as to convey to the Indian troops on behalf of myself, the Commander-in-Chief, the Government and people of India our warm admiration of their gallant behaviour and our confidence that they will ever maintain before the enemy the best traditions of the Indian Army.’

“ Before the formal introduction of the proposed Bill to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences, I would like to address a few words to Hon'ble Members of my Council.

“ In a speech that I made to you in this Council Chamber on the 12th January, I informed you of the desire of my Government that so far as might be possible the discussion of all controversial questions should be avoided during the course of the war. I pointed out that, in adopting this course, we should be following the example of the British Parliament where all political controversy has been suspended during the war, and where the leaders of the Opposition have refrained from any action which might tend to embarrass the Government. In consequence of this decision, my Government have deferred the consideration of a number of important measures of a more or less controversial nature already introduced in Council, as well as the introduction of other Bills. In maintaining this decision, my Government have been loyally assisted by Hon'ble Members, and I should like to take this opportunity of expressing my appreciation and gratitude for your attitude.

“ In the Bill that is before you to-day, I do not attempt to disguise the fact that it is a measure that presents openings for controversy, and I would have been very pleased to think that we could have done without it, but we have felt that a precautionary measure of this nature has become necessary in order to ensure public peace and tranquillity. You will observe that it is a war-measure, to last during the period of the war and for six months afterwards ; that on enactment certain important clauses do not apply automatically to the whole of India, but only to those districts or provinces which upon the advice of Local Governments may be notified by the Governor General in Council. It rests with the people of India to decide how far it may be necessary to put those clauses into force. The fact that such a Bill has become necessary in India as a precautionary measure cannot be regarded as in any way a slur on the people, since it follows in general outline the Defence of the Realm Act passed in both Houses of Parliament and now in force in the United Kingdom, but in so far as trial by court martial is replaced by trial by special Commissioners is of a less drastic nature. Law-abiding England accepted this measure without a murmur, realising that in such a situation *salus populi suprema lex*. You may possibly ask what is the reason for this legislation. To that I would reply that there is cause for precautionary measures and for quickening up the procedure of justice. You may yourselves have heard rumours of attempts to disturb the public peace ; I know that some of you have heard them ; and although I do not want to go into details, you may take it from me that Government are in possession of information that proves conclusively that a precautionary measure of this kind is absolutely necessary to meet an emergency that may arise. There is no one in this land more jealous than I am of the honour of India and of the striking reputation for loyalty that India so rightly deserves, and I am not disposed to allow the honour and fair fame of India

HIS EXCELLENCY THE VICEROY'S SPEECH; DEFENCE OF 473
INDIA (CRIMINAL LAW AMENDMENT) BILL.

[18TH MARCH, 1915.] [*The President ; Sir Reginald Craddock.*]

to be tarnished by the criminal acts of a few ill-balanced minds at a moment when India's sons are shedding their blood on the battlefield for the King-Emperor and country.

"It is a fact that I might have elected to promulgate an Ordinance embodying the provisions of the Act that is before you, but for political and other reasons and in view of the fact that my Legislative Council is in session, I have preferred to take my Council into our confidence, to place the matter before you, and to invite your help and co-operation in enacting a measure so essential to the public weal, and I am confident that you will not refuse.

"I will now call upon Sir Reginald Craddock to move for leave to introduce the Bill."

**DEFENCE OF INDIA (CRIMINAL LAW AMENDMENT)
BILL.**

The Hon'ble Sir Reginald Craddock:—"My Lord, I move for leave to introduce a Bill to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences.

"As the Council is aware from the printed List of Business for to-day, I shall presently have to ask Your Lordship to suspend the rules of business so as to allow of this Bill being considered and passed at a single sitting of this Council, and it is therefore expedient that I should at once explain to the Council both the circumstances which have determined the Government to bring forward this measure and the nature and scope of the measure itself.

"In the first place, My Lord, it is a great tribute to the loyalty of India and the peaceful behaviour of the vast majority of her people that, while the British Government passed a Defence of the Realm Act at the outbreak of the war, we are now in India half way through the eighth month of the war before we have found it necessary to enact a similar measure in India, for, though under another name, it is really a Defence of the Realm Act to which we are to-day inviting the assent of the Council.

"The powers that we are now asking for are the powers which in our opinion are required for the purpose of securing the public safety and the defence of British India, and we require these powers only during the continuance of the war and for six months after;—that is to say, until the excitement and disturbance of the general calm, which the state of war engenders, have had time to subside. These powers are primarily required in the military interests of the country, since in ordinary times of peace it is unnecessary to arm the military authorities with such special powers for the protection of property of military value, and for the prevention of injury to such property, or to the interests of the Army generally as are required when the country is at war.

"So far as the internal situation is concerned, Your Excellency's policy has been throughout to preserve conditions in as normal a state as it was possible to do, and to keep the current of the administration of the country flowing in its ordinary tranquil channels; to take no action of any drastic kind until necessity for such action was plainly manifest. That the Government consider that the present measure has now become necessary need cause no alarm to the country at large; apart from the military interests involved, it indicates nothing more than that there are in some parts of the country sporadic manifestations of disorder which require to be nipped in the bud lest they should grow and spread. Just as we deal vigorously with early cases of a contagious disease lest the disease should become epidemic, so we must deal vigorously with the early manifestations of a turbulent spirit before they have had time to become epidemic.

[*Sir Reginald Craddock.*] · [18TH MARCH, 1915.]

“ This is the stage at which we are now. Certain disturbers of the general tranquillity in a few parts of the country have taken advantage of the opportunities which the state of war has created to break the peace. It is no news to the Council that there has existed for sometime past on the Pacific Coast of America, and in the Far East, a party of anarchists and revolutionaries who have been engaged in scattering revolutionary seed first among Indians in those countries, and secondly within India itself by private communications, by despatch of emissaries, and by the dissemination of anarchical and revolutionary literature. This party, which may be conveniently described as the *Ghadar* party, saw in the Great European War their best opportunity for attempting to translate their doctrines into action. Large numbers of deluded men intoxicated with this poison have been returning to India during the last few months, and though the Government of the Punjab have been able under a War Ordinance to put under restraint a number of the leaders of this movement among the returning emigrants and many others of them who appeared to be dangerous, yet the great majority about whom nothing was known were allowed to return to their homes, as the Government had no desire to be strict with possibly harmless people. But some of these, together with their sympathizers already in the country, have been committing or attempting to commit acts of violence, and it is therefore of the greatest importance that this mischief should be most promptly suppressed.

“ Closely akin to this movement is the anarchist movement in Bengal. That we have had with us for a long time: sometimes it has been temporarily quiescent, and sometimes it has recrudesced, and at the present time there has, as the Council is aware, been a severe recrudescence, and the crimes committed have become increasingly daring. These two movements in the Punjab and Bengal are more closely connected than might be supposed. They may attract different kinds of followers and they may pursue slightly different methods; but their ultimate aims are the same, and the security of loyal India requires that they should be suppressed.

“ Thirdly, we come to a class of disorder which has characterized recent disturbances in the Western Punjab. This is of a different kind and has no definite political object when it starts;—it is simply lawlessness, partly induced by economic unrest. Men break out against the restraints of the law to plunder their weaker neighbours, and if this lawlessness is unchecked, it soon assumes the aspect of rebellion against all constituted authority, or it may take on the complexion of racial or religious rioting. In some of the Western Punjab districts, indeed, it is rapidly becoming a movement among lawless Mohamedans, under the stress or pretext of high prices, to loot and plunder their Hindu neighbours, to wreck the shops and houses of banias and burn their bonds and books. Violent mobs of this kind rapidly swell in numbers: any success draws in fresh adherents, or produces imitators, and the danger may become a very serious one if it is not effectively dealt with at the very start.

“ At a time of a war, like the present one, which has extended from Europe into Asia, there must always be wild rumours flying about, and potential disturbers of the peace may excite the people at large more easily than in ordinary times, calling to their aid economic unrest, or religious fanaticism. It is therefore particularly incumbent on the Government to take all precautions against breakers of the public tranquillity, or mischievous excitement of popular feeling.

“ These, My Lord, are the causes which have led the Government to introduce this legislation. The disturbances have developed rapidly during the last few weeks, and power to check them, and to stamp out at once this lawless spirit has become a matter of great urgency. Hence it is that the Council are being asked to pass this measure at a single sitting.

“ I will now turn, My Lord, to the measure itself. The first two sections of the Bill will come into force throughout British India at once, the remaining sections of the Bill only in those provinces or parts of the provinces to which they may be extended by the Governor General in Council.

“The first of these two sections refers only to the short title, duration and extent of the Act. The second section will give power to the Governor General in Council to make certain rules for the purpose of securing the public safety and the defence of British India, and particularises, without prejudice to the generality of this power, a number of specific purposes for which the power may be exercised.

“Section 2 is generally adopted from the English Defence of the Realm Act and the regulations which have been issued thereunder. Thus sub-clauses (a) and (b) very closely follow the corresponding provisions of the English Act, as also does sub-clause (c) read with Regulation No. 27, although the prevention of the promotion of feelings of enmity and hatred between different classes is more directly connected with the special circumstances of this country. Sub-clause (d), which enables measures to be taken to secure the safety of means of communication, of the usual municipal services, and of specified areas, deals again with one of the principal objects of the English Act, and the regulations under the latter extend to the taking of possession, the right of entry and the prevention of trespass, injury and approach to specified works. As an example of the wide powers assumed in England as to the taking possession of property and directing the disposal of property, which is covered by clause (e), we find English regulations enabling the removal and destruction of property to be ordered, and factories and workshops to be taken over. Sub-clause (f), which permits of control over the movements and acts of individuals, is paralleled by English regulations which allow of the removal of the inhabitants of whole areas as well as individuals, the direction to them to remain within doors within specified hours and to extinguish lights and the taking of census of private goods. After the enumeration of various specific powers one clause of the English regulations gives a general right to do any other act involving interference with private rights of property which is necessary to secure the public safety or the defence of the Realm. The control of explosives, inflammable substances, arms and all munitions of war, which is the subject of sub-clause (g), is very strictly controlled by the English regulations, and the preservation of discipline among His Majesty's Forces, which is dealt with in sub-clause (h), is naturally both in the English legislation and the Bill an important object of a war measure. Sub-clauses (i), (j) and (k) deal with the powers of search, arrest and prevention, and with the harbouring of offenders, and all have their English counterparts.

“The contravention of any of these rules, or of an order issued under the authority of these rules, is made punishable with imprisonment up to seven years and fine, and only if the intention of the person contravening the rule or authorised order was to assist the King's enemies, or to wage war against the King, will the offender be liable to the highest penalties that the ordinary law of the land allows. When the Empire is in a state of war, the rebellious subject and the alien enemy must necessarily fall within the same category.

“The Council will observe that offenders contravening these rules will (except where section 3 and the succeeding sections of this Bill are put into effect) be triable by the ordinary Courts and by the ordinary procedure.

“I will now turn to the third and following clauses of the Bill, which will only be in force where specially extended by the Governor General in Council. This prescribes a special tribunal of three Commissioners for the trial of acts which constitute offences under clause 2 of the Bill, as well as for other offences known to the existing law, which are punishable with death, transportation, or imprisonment for seven years, including conspiracy to commit such offences, or attempt or abetment of such offences.

“In connection with this specially constituted tribunal, I must draw the attention of the Council to the points in which we follow and the points on which we diverge from the method of trial provided by the English Act and the Regulations thereunder.

“In the first place, as Your Excellency has pointed out, in England all serious offences against the Regulations are triable only by courts martial and only minor offences may be relegated to courts of summary jurisdiction.

[*Sir Reginald Craddock; Lieut.-Col. Raja Jai Chand.*] [18TH MARCH, 1915.]

In our new measure, as I have stated, special courts to deal with offences under the rules will only be constituted in special areas. In this, therefore, we are much milder than the Regulations which have been our model. Under our Bill (again only in those special areas), the jurisdiction of the Commissioners may be extended in cases of necessity to particular serious offenders, or particular classes of offenders under the ordinary law. This, it is true, has not been found necessary in England, because ordinary crime there has largely diminished, and the ordinary Courts are therefore easily able to deal with it. Nowhere in India, not even in areas specially notified, are we making offences triable by courts martial. We are indeed shortening the criminal procedure by dispensing with committal proceedings and by withdrawing the right of appeal; but in its substance the trial before the Commissioners will not differ materially from the trial before Magistrates and Sessions Judges. For a right of appeal, we substitute the safeguard of trial by a Court of three Commissioners, of whom at least two shall be persons who are judicial officers of experience, or are persons qualified under section 2 of the Indian High Courts Act for appointment as Judges of a High Court, or are advocates of a Chief Court or pleaders of ten years' standing. It is not intended anywhere to supersede the ordinary criminal courts in respect of the ordinary crime of the country; but merely to provide a speedy tribunal for particular cases, or cases of a particular class, with which the ordinary courts are unable to cope. The Judges of the Chief Court of the Punjab have themselves authorised the Lieutenant-Governor to say that, in the opinion of the Judges, the ordinary judicial machinery will not be equal to dealing with the heavy cases which the outbreak of lawlessness in parts of that Province has entailed. Furthermore, the greatest check upon the spread of crime of this kind is the prompt punishment of the offenders. It is only the procedure that we are shortening; the law of evidence is not affected, except in the one particular specified in clause 9, which finds a parallel in the Act of 1908. The Council will readily recognise that the ordinary machinery of law and order in this country is based upon the average volume of crime; when crime increases considerably, that machinery is strained; if the increase is still larger, the machinery may break down. Justice is proverbially slow, and the system which has grown up in this country by its nature interposes so large an interval between crime and its punishment that the ordinary procedure is quite unequal to the suppression of violent crime whenever crime threatens to become of an epidemic character.

"Although, therefore, the special procedure which is created by the Bill may extend to more offences than is the case in England, yet that procedure is in itself much less drastic than that adopted in England. It will extend only to limited areas and to limited cases in notified areas. Except for these limited cases in limited areas, the ordinary courts will continue to deal over the whole of India with ordinary crime, including even such stray offences against the rules which may happen to be committed in other parts of the country. It will be obvious that no Local Government will wish to refer more cases to special Commissioners than is clearly necessary. If they were to swamp the special courts with cases, they would be frustrating the very objects of these special sections.

"I submit, My Lord, that this procedure in no way goes beyond the necessities of the case, and that no loyal and peaceful citizen need feel any alarm at the introduction of this legislation. If there is any alarm at all felt in this country, it is the alarm caused by the manifestations which I have already described, and the taking of any measure that may be calculated to secure the suppression of those manifestations is likely to diminish that alarm.

"I move for leave to introduce this Bill in the confident hope that it will receive the full support of this Council."

The Hon'ble Lieutenant-Colonel Raja Jai Chand:—
 "My Lord, I fully realise the necessity of this Bill and have not a single word to say against it. I accordingly support it with all my heart."

The Hon'ble Sir Gangadhar Chitnavis:— “ My Lord, I was glad to hear from Your Excellency this morning an account of the gallant deeds of our countrymen in the war. We are all proud of them and their loyalty to their King and Empire, and hope that they will continue to display the same heroism that they have hitherto shown and return back to this country with full laurels of victory.

“ Coming to the Bill now before us, drastic though the proposed legislation is, I must support it. Exceptional circumstances justify extraordinary measures. In times of the utmost gravity to the whole Empire like the present considerations of individual rights have to be subordinated to the higher considerations of the good of the State. The greatest good of the largest number is the active utilitarian idea which underlies all legislation and all rules of ordered society. The Bill should be judged by this principle. The whole question is one of utility, of expediency; and Government must be in the best position to decide it. And when they deliberately come to the conclusion that the assumption of extraordinary powers is necessary, we may accept it as correct; we hold Government responsible for the peace of the country and for our safety, not only from foreign aggression, but from internal disorder. If for the due discharge of that responsibility larger powers be necessary, they cannot in fairness be withheld. It is possible, of course, to hold different views about the expediency of the particular measures suggested, but in view of the exceptional situation, it is, in my humble opinion, to our interest not to stand out for the methods that appear most agreeable to our personal ideas. I would accordingly support this legislation, although it means a serious, if not a dangerous, addition to the restrictive laws we have enacted during the past few years, subject to the modification as regards details suggested below. It must, however, be remembered that this is mainly a war measure based upon the peculiar circumstances of this country, and that in these times in the United Kingdom also special legislation of this kind has been found necessary. These all are points in favour of the Bill.

“ But, My Lord, it causes one a pang to think that such legislation has at all become necessary. When in September last I moved in this Council the resolution, expressing our unswerving loyalty to the Throne and our determination to participate in the cost of the war, little did I dream that the situation in any part of India would ever be so bad as to cause anxiety to Government. My Lord, only the other day we reiterated our protestations of loyalty in this very Council, and our sentiments were as genuine as earnest then as in September last. The whole country was with us on the second occasion as on the first. And yet before three weeks are out, disquieting reports have been received about the situation in certain parts of the country. I would fain distrust them, I would fain believe they are greatly exaggerated. But, My Lord, we are passing through critical times, and sentiment has to be put aside. If Government do err, it is much rather they should err now on the side of over-caution. Despite of my support to the Bill, I would, however, request Your Excellency to note that I do not for a moment concede that the great heart of the nation is anything but sound.

“ My Lord, though I support the principle, yet I think that some amendments in some particulars are essentially necessary, and may be wisely made without detriment to its main object. I would recommend that in summary trials capital punishment should, as far as possible, be avoided whenever the object of Government can be served by imprisonment or transportation. It would have also been much better if the Government could have seen their way to eliminate from the Bill trial of certain minor offences regarding life and property now included in the Bill.

“ Another recommendation that I wanted to make was that the law should not have retrospective effect.

“ I would have pressed these amendments, but with the assurances given by Your Excellency this morning, it will ill-become me to press them. We were all glad to hear from Your Excellency this morning that there is no one more zealous to maintain the honour of India than yourself. Your Excellency's

[*Sir Gangadhar Chitnavis; Sir Fazulbhoy Currimbhoy.* [18TH MARCH, 1915.]

past career has shown that you have been India's best friend, and I am sure that India's interests are safe in your hands.

"My Lord, the details of the Bill, apart from its principle, as I have already made it clear, has my support. We cannot forget that even after that dastardly attempt upon your life when Your Excellency suffered terrible agony, Your Excellency commanded that you would not like people to be harrassed on suspicion only. This must bring home to the people that if this legislation is found necessary by Your Lordship, it is because the situation is quite exceptional, and should be treated in an exceptional way. We doubt not that this new law, as said by Your Excellency this morning, will be put into operation with as much care and thoughtfulness as the other repressive laws have been in Your Excellency's time. I hope my countrymen will also so conduct themselves as to enable the authorities to allow the law to remain a dead letter and to enable Government to withdraw the measure from the Statute-book as early as possible. My Lord, I regret the urgency of the measure prevents its being sent to Select Committee.

"With these few words, I beg to support the Bill."

The Hon'ble Sir Fazulbhoy Currimbhoy:—"My Lord, I rise to support the Bill now before the Council. I do so, not that I particularly approve of drastic enactments and retrograde laws, much less that I like to see my countrymen deprived of the right of trial by the ordinary courts, or of their heritage—a trial by Jury. My Lord, the Bill has my support for the sole reason that I feel honestly convinced that at a moment of grave national crisis like the present one, political rights of the individual must give way. The one desire of every Indian is to help the Government to the fullest extent to prosecute this war to a victorious termination, and any support that this Bill may receive here to-day is, I am sure, the result of that sincere desire.

"I will not go so far as the noble Marquess of Lansdowne in his speech in the recent debate in the House of Lords, on Lord Parmoor's Bill to amend the Defence of the Realm Consolidation Act, in maintaining that I would be 'prepared rather to risk even an occasional miscarriage of justice', but I am entirely at one with his Lordship in thinking that emergency measures like the Bill now under discussion 'must involve some interference with the privileges to which the country attached the greatest importance and which it venerated and cherished very dearly, and that in times like these we must be prepared to part, if necessary, with some of these privileges for the public interest required it'.

"It might be argued that we are far from the seat of War. As a matter of fact we are. But it must not for a single moment be forgotten that the fortunes of Great Britain in this war are our fortunes, and this is a time, above all others, when it must be right that the troubles and anxieties of Government should be looked upon by my countrymen as their very own.

"My Lord, I have listened with deep interest to the lucid pronouncement just made by Your Excellency, and I hope I am indulging in no idle hyperbole in assuring Your Excellency that your cares and your worries are shared by all right-thinking Indians and have our unstinted sympathy. The gallant deeds of our Indian soldiers in the field and the willing sacrifice of their lives amply prove this.

"My Lord, I admit that sub-clause (1) (c) of clause 2 and clause 3 have occasioned in my mind no small measure of anxiety. They appear to my lay mind of far too sweeping a nature, but I feel confident that even at the moment of greatest emergency and excitement the Executive and, more especially, the Judiciary may be fully trusted to preserve a balanced and dispassionate mind and not to mix up purely civil offences, and that great care and the utmost hesitation will be exercised in putting these clauses into force where there is the remotest trace of the offence being of an essentially civil nature. Clause 3 appears to cover many common crimes which come at present within the purview of the Code of Criminal Procedure and the Indian Penal Code, but

I have full faith that under Your Excellency's argus eye none of these will be permitted to come under the scope of the Bill. Capital punishment also, especially in case of a difference of opinion among the Commissioners, appears unnecessary. The purpose of the Executive can be served by transportation of the accused. I do not think everything has been said or can be said of the reasons which have impelled Government to introduce this Bill, but I hope that, if without impairing the efficiency of the measure in the least, Government can in any way, modify the clauses likely to operate harshly on the people they will do so as of all things I should like to see the Government assured of the co-operation of the people in an unprecedented enactment of this nature. I give my support all the more willingly as we are assured that the Bill is to have currency during the continuance of the war and only for six months after.

“ One word more and I am done. One dreadful thought has obsessed my mind all throughout yesterday and to-day. My Lord, I earnestly trust that this Act, in after days, will not be used against us as an argument by interested parties when the time for granting the promised concessions to India arrives. I view with dismay the opposition already presented in the House of Lords to the proposed concession of granting an Executive Council to the United Provinces. My Lord, your opening remarks have greatly relieved my anxiety, as Your Excellency assured us that this Act will in no way mar the good name of India, and we implicitly trust to Your Excellency's statesmanship to save us from that. With these few words I support the Bill. ”

The Hon'ble Mr. Dadabhoj :—“ My Lord, I feel I should not give my silent vote in favour of this most unwelcome Bill, and yet I find it difficult to express my feelings adequately on this occasion. I am weighed down with an overpowering sense of duty, duty to my constituents and duty to Government. By my oath of fealty and allegiance I am bound to exercise all my influence and all my power for the promotion of considered schemes of legislation designed to strengthen the position of Government. At the same time I owe it to my constituents, I owe it to my beloved country that I should be watchful of the interests of the people as well, and not be a party to any measure which has the effect of interfering unnecessarily and to an inconvenient degree with their constitutional rights, rights secured to them by Royal Proclamation and despatches, and a long series of benevolent legislation. Ordinarily, there need be no conflict between the two interests, but occasions do arise at times when the faithful discharge of both the duties is a matter of exceptional difficulty. My Lord, the present is one of those occasions, and the action of a non-official Member is liable to be misconstrued.

“ The Bill marks another stage, and a stage of grave moment, in repressive legislation. We have already a number of special Acts of this Council, more or less comprehensive in scope, which one would think sufficient for all executive purposes. Two of them, at any rate, the Indian Crimes Act of 1908 and the Indian Conspiracy Act of 1913, are of a drastic nature, and we have yet to learn that they have failed in their purpose. Another law on the top of them all, still more drastic and still more restrictive, certainly justifies a searching examination of the whole position, and the non-official Members of this Council would in ordinary circumstances have reason to hesitate to associate themselves with it. But the present is an exceptional situation. With war raging in Europe with the British Empire as a belligerent party much against her wish, and in view of the unscrupulous methods of the enemy, Government has got to be trusted about the expediency of exceptional legislation of a temporary character. My Lord, I do not feel myself competent to judge of the exigencies of the situation. Government has serious information which is necessarily withheld from the public, and if upon such information Government claims additional powers, I would not take upon myself the heavy responsibility of withholding my support. From the necessities of the position, the whole responsibility of the fresh legislation practically lies with Government, and the non-official Members share in it upon trust. We must confide in Government in the times of

stress and emergency, we only act upon trust, in implicit faith and the purity of the motives and the judgment of Government, with the sole intention of maintaining Government in sufficient strength to deal adequately with the situation. It is stated that a new situation has been created in certain areas which cannot be promptly and effectively dealt with under the existing law. We do not know much about it ourselves even after the somewhat exhaustive statement made by Your Excellency and the Hon'ble Home Member, and we are not competent to form any decisive opinion one way or the other. We have not got here a Government like the one they have in England, and no legislative measure, however emergent, is passed by Parliament in such great hurry. But, as it is, we are ignorant of the true state of the facts, and this is not the time for speculation. I feel myself thus bound to accord my support to the general scheme of legislation proposed, in the belief, founded upon the official statement, that it is absolutely necessary in these exceptional times in the interests of law and order and for the good of the country.

"My Lord, my action on this occasion has another, and a more powerful, spring. We have had during Your Excellency's regime two legislative Acts of a repressive character, and the care with which they have so far been worked induces the hope that the proposed law will be enforced only when such enforcement becomes unavoidable. Your Excellency's presence at the head of affairs affords an ample guarantee that the large powers now assumed by the Executive will not be misapplied. My Lord, it is this conviction, it is this belief, that has influenced my vote to-day more than anything else.

"But all said, My Lord, the legislation cannot be agreeable to any Indian. I am glad as Your Excellency said to-day it will not be regarded as a slur on the people. It is a matter of melancholy reflection that, after our loyalty has evoked the admiration of the world, any of our countrymen should have been guilty of any conduct which has created in the country a serious situation, so much so that the responsible Government feel themselves powerless to cope with it satisfactorily except by an abnormal extension of powers and by the supersession, by a court of extraordinary jurisdiction, of the ordinary courts of law. But, my Lord, it is only human to err, and it is sincerely to be hoped that the errors of the few will not be visited upon the whole nation. In the hour of victory one can afford to be generous, and I fervently pray that when success has finally attended British arms and the war is over, this legislation will not be used to frustrate our legitimate hopes and aspirations.

"My Lord, I do not for obvious reasons subject the provisions of the Bill to a critical examination, but before I resume my seat I beg to point out some of the features of the Bill which appear to me unnecessarily severe. We must never forget that the court that will be constituted under the new law will be final, and have extremely summary powers. It is only fair therefore that its jurisdiction should be limited to only such offences as are likely to jeopardise the State. But a careful perusal of the Bill will show that almost all offences of a more or less serious nature, even though not having the least bearing upon the war or upon the conditions introduced by the war, will be triable by the Commissioners, in supersession of the jurisdiction of the ordinary courts. Offences like theft even, if aggravated by previous convictions, rape, dacoity, forgery, and defamation come within the purview of the proposed legislation. It may be that it is not intended that the law should be put into operation in such cases, but when there is the chance of its operation being so extended to offences which can be adequately dealt with by the ordinary courts, all principles of legislation justify the observance of greater strictness in drafting. Every enactment should express clearly and unambiguously the intention of the legislature, and every word in any provision must be taken to have been used deliberately. Clause 3, sub-clause (1) requires therefore considerable modification, with a view to prevent the Commissioners from assuming a jurisdiction which it is intended they should not have. Any assurance from Government that the operation of the law would be limited to particular offences or classes of offences will not cure

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the defect I have just pointed out. Surely, the ordinary courts cannot be supplanted by this extraordinary court.

“ My Lord, I have a few small suggestions to make. In clause 2, sub-clause (1) (h), the intention of Government seems to be to prevent effectively all attempts at interference with recruiting for the Army and the Police, but the language is capable of a wider interpretation. There is nothing to prevent a man being tried by the Commissioners for advising any relation of his not to accept service under Government as clerk. This is obviously not the intention of the legislature. The dissuasion referred to in the clause must expressly relate to military service.

“ I do not also think that powers of this extraordinary nature should be exercised by Sessions Judges of one year's standing. We must have more experienced men to do this sort of judicial work. It is an accepted principle of judicial administration that summary powers should be exercisable by officers of experience only. When the scope of the summary jurisdiction is extended reasons of prudence will counsel even a greater strictness in the matter of the qualification of the judicial officer. I accordingly suggest that Sessions Judges, of at least three years' standing only, should be eligible for appointment as Commissioners.

“ Clause 5, sub-clause (2) provides for the contingency of disagreement in opinion among the Judges, but I submit that it should further be provided that, in the event of such disagreement taking place in the trial of any offence punishable with death, capital punishment must not be inflicted. In such cases at least the benefit of the doubt can be so far given to the accused as to prevent execution. The difference in opinion connotes the existence of a reasonable doubt about the guilt of the accused, and it is the barest justice to him that he should not undergo the extreme penalty of the law. Under the law as it stands at present, capital sentence passed by the most experienced Sessions Judge has to be confirmed by a High Court bench of two Judges, but the decision of the Commissioners is to be final in the Bill. It is therefore all the greater reason that some such safeguard as mentioned above should be put in. My Lord, I also pray that this Act should not have retrospective effect. At a later stage I shall propose some small necessary amendments. My Lord, I offer you our grateful thanks for placing this Bill in our hands a day before its introduction in this Council.”

The Hon'ble Mr. Abbott:—“ I give this Bill my full and whole-hearted support, as I am satisfied that Your Excellency's advisors have just and sufficient reasons for bringing it before this Council. The time has now come for us, the non-official Members, to act up to the loyal resolution we all so heartily supported in September last.”

The Hon'ble Maharaja Manindra Chandra Nandi:—“ My Lord, in view of the fact that this measure is intended to arm the Executive with certain special temporary emergency powers requisite to secure the public safety and the defence of British India, and that it will be in operation during the war and for a period of six months thereafter, I beg to support the Bill before the Council. I recognise that the Government have brought forward this measure to meet a grave emergency, and as such, it is entitled to our loyal support. My Lord, I have no doubt that the greatest care and caution will be taken in the actual application of this measure, and that it will subserve the special purposes for which it is being enacted.”

The Hon'ble Mr. Ghuznavi:—“ My Lord, I have not the least hesitation in supporting the principle of the Bill which has just been introduced in this Council by the Hon'ble the Home Member. At the outset I desire to express my thanks to Government for having postponed the introduction of this Bill till to-day and for having given us an opportunity to acquaint ourselves with the contents of the Bill before we came into this Chamber this morning.

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If I am not mistaken the practice that prevails in England in the House of Commons at an emergency like this is to introduce a Bill in the House without previous circulation to the Members.

“The advantage of the procedure, adopted in this instance I trust, will be fully borne out; for on reading section 1, clause 4, where it is stated that ‘this Act shall be in force during the continuance of the present war and for a period of six months thereafter,’ ought to have the effect of inducing even those of our colleagues who are always ready to criticise any and every Government measure to give their unstinted support to a measure of this kind which at the very outset is purported to be only a temporary one. My Lord, we are in the throes of a most hideous and a terrible war. Ever since the dawn of civilisation, nay, even in pre-civilised times throughout the history of mankind there has never been a war such as this, which has demanded and is demanding an appalling toll of human life, and which has already had the effect of decimating in hundreds, thousands and tens of thousands the flower of civilised manhood in the heart of the boasted civilisation of the West. In this world-struggle our glorious Empire has been plunged and in this *guerre à la mort* England has had to unsheathe her sword in defence of honour and in the interest of a loftier civilisation against the barbarous hordes of the Germanii of the times of Julius Caesar. From all corners of our Empire our fellow citizens have marched forth in defence of England’s prestige and England’s cause. Nearly eight months have rolled by, yet the struggle goes on in terrible intensity and unparalleled ferocity, and no one is yet able to foreshadow the end. No one can therefore deny that the exigencies of the times are such that must call forth extraordinary measures. In England, the Defence of the Realm Act has already been passed, and it is only proper that here a similar measure should be taken and that without delay, and the Executive should be given more power to deal promptly and effectively with circumstances that may arise in the defence of India and the Empire at large.

“Therefore, My Lord, I trust there will not be found a single member in this house who will hesitate a single moment in giving his whole-hearted support to a measure of this kind which has for its justification the needs of the hour in the defence of our realm.

“My Lord, this Act seems to have, however, a twofold object, the first object being as I have already endeavoured to delineate, namely immediate measures that may be necessary owing to the exigencies of the war, and the second object being the stamping out of lawlessness, sedition and anarchy which have unfortunately found their way—may I say from the West—into this otherwise peaceful and peace-loving land of the East to tarnish the fair name of Hind. It should be a matter of extreme regret to all of us that this lawlessness instead of receiving a check from the repressive measures that have already had to be passed, is still growing apace and is still breaking out into various fantastic and undreamt of ways. Well I remember how we all regretted two years ago that during the very first session of this Council in the new Capital of India, this historic city of Delhi which is yet I hope destined to eclipse her former glories, it should have been found necessary to introduce another measure, I mean the Criminal Law Amendment Bill of 1913. During the passage of that Bill, while it met with unanimous support from the majority of all of us, it at the same time met with considerable opposition from one or two members, of whom at least one I am sorry to find is not present to-day. The opposers of that Bill at the time painted in glowing colours what the terrible effects of it would be, and to what an amount of abuse it would be put in the hands of the Executive, especially of the police who have always enjoyed the distinction of being the butt of a considerable amount of adverse criticism. When the police go out of the way and commit an abuse of their powers, I have ever been and always am ready to draw the attention of Government to their misdemeanours. At the same time, I would desire my friends who are habitually opposed to them to remember that they are officers of Government who have to carry their lives in their hands, and whose duties are about the most arduous that can be imagined. Robberies, dacoities, murders are constantly in the air, and it is a matter of great misfortune that a section of our people, how-

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ever infinitesimally small, has become utterly irreconcilable and wedded to the idea that terrorism is the surest way to the progress of the country. I must therefore emphatically assert that amid terrorism liberty only dwindles, and liberalism is doomed to decline, and it behoves every man of education, every true lover of his country, to take his share in the fight against an evil which is small enough at present, but which if it were allowed to grow without being checked, its consequences will lead to most undesirable developments in the future. The recurrence of these deplorable crimes is certainly the greatest evil that confronts the party of Indian reform of to-day. The continuance of anarchical crimes is not less prejudicial to the people than to the Government. It is indeed doubly cursed for it hardens the Government and brutalises the people, and it leads to the gradual decline of liberalism, and it is injurious both to Government and the people. It affects the people perhaps far more adversely and prejudicially than the Government, and therefore it is the duty of our public men and of our public press to speak out and to stem as far as it lies in their power the course of this grave evil. Every one who has the real good of his country at heart must admit that the weapons which have been forged in the legislative armoury have not proved to be sufficiently effective in dealing with this evil. Criminals are apprehended, they are put on their trial, the trial is prolonged from months to years, and in the end the tax-payer's money is wasted, perhaps to no advantage at all. This is an aspect of the question which certainly deserves our careful attention and which certainly calls for some new kind of legislation which might stop this abuse. The country has just lost one of her greatest statesmen, I mean Gopal Krishna Gokhale. The policy which he always endeavoured throughout his career to follow is the policy which ought to commend itself to all our public men, and that policy was association *cum* opposition so far as Government was concerned. If the interests of his country and the interests of good government demanded that he should associate himself with Government in any measures, that association was always generous, frank and whole-hearted; but when the interests of his country and countrymen demanded that he should oppose the Government, that he should draw the attention of Government to an error into which the Government had fallen, then he never faltered for one moment in doing his duty to his country and in raising his voice in no uncertain manner so as to explain to Government where the error was; that, My Lord, in my humble opinion, is the policy which should commend itself to all lovers of our country. Criticism should always be constructive, for nothing is gained by destructive criticism except waste of our time and that of Government.

"In times of war criminals are tried by court martial. In this instance a special tribunal is proposed to be founded consisting of three Commissioners, of whom one is to be a non-official and must be an advocate or a pleader of ten years' standing. This is a safeguard which I heartily welcome. I would only say that with regard to this I wish to suggest that in clause 4 (3) the words 'at least' should be omitted so that in every special tribunal contemplated by this Act, there shall always be present a non-official well versed in law. There are other alterations which I should like to suggest. I would draw the attention of the Hon'ble the Home Member to clause 3 (1) where it says that 'any person accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years' may be tried by this tribunal. My friend, the Hon'ble Mr. Dadabhoy has already pointed out that if this is left as it is, it would mean that offences relating to counterfeiting of coins, voluntarily causing grievous hurt, kidnapping, abduction and mischief and many others of a similar kind will all come under the purview of this new tribunal. I would therefore suggest that offences triable by this special tribunal should be clearly defined.

"I should also like to support my Hon'ble friend, Mr. Dadabhoy, in his suggestion, namely that in clause 4 (3), where it is stated that 'All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of one year,' in place of 'one year' at least 'three years' must be substituted.

[*Mr. Ghuznavi ; Rai Bahadur Sita Nath Ray ; Raja Kushalpal Singh ; Mr. Das.*] [18TH MARCH, 1915.]

“ In conclusion, My Lord, I should like to express the hope that better sense might yet prevail amongst the misguided ones in our country, and though this Bill may be enacted into law, that it may yet remain a dead letter. With these few words I give my whole-hearted support to the introduction of this Bill.”

The Hon'ble Rai Bahadur Sita Nath Ray :—“ My Lord, considering the gravity of the situation and the emergency which has arisen and the dacoities and murders which are being openly committed from day to day, in several parts of Bengal, and even in the streets of Calcutta, I feel no hesitation in giving my humble support to the Bill. I am sure that, under this Act, nothing will be done, no steps not absolutely necessary will be taken which may go to create alarm and stir up public feelings. Considering Your Excellency's broad sympathies, and how jealous Your Excellency has always been not to take any action which may go to cast a slur upon the admitted loyalty of my countrymen and upon the fair name and reputation of India, I am sure that the Act will not be put into operation everywhere and anywhere and unless it becomes absolutely necessary. With these few words, I beg to give my humble support to the Bill.”

The Hon'ble Raja Kushalpal Singh :—“ My Lord, on behalf of the large landholders of the province of Agra, whom I have the honour to represent on this Council, I beg to give my cordial support to this Bill in all its essential features. The speech of the Hon'ble the Home Member leaves no doubt in my mind that effective action of the kind proposed by the Bill is imperatively needed at the present juncture. In the present grave situation which has arisen in some parts of the country it is our bounden duty to lend every assistance in our power towards the suppression of anarchy, violence and sedition. For exceptional circumstances, exceptional remedies are required and are permissible. In view of the serious actually existing evil, the extraordinary powers asked for by the Executive cannot be withheld.

“ Nobody can deny that exceptional times like the present necessitates the adoption of a more summary procedure and sharper methods than what are suitable for ordinary times. We have the precedent of the English Defence of the Realm Act.

“ I sincerely hope and trust that these measures will effectually extirpate sedition and the anarchist propaganda, and that ere long the atrocious acts of lawlessness described by the Hon'ble the Home Member will become things of the past and be nothing more than matter for history.”

The Hon'ble Mr. Das :—“ My Lord, we passed the other day a unanimous resolution, which was intended to be communicated to His Gracious Majesty, in which we gave expression to the determination of the immense population of this country to secure success in the war at any sacrifice, and Your Excellency was pleased to communicate to this Council to-day the fact that this resolution was communicated to His Majesty and read by him with pleasure. We have also just received the news from Your Excellency that the Indian troops are behaving in a manner at the front which has won for them the admiration and praise of European officers. It is really very painful, My Lord, that, at a time like this, this Council should have been under the necessity of passing a Bill which is of an emergent character and which has been demanded on account of the gravity of the situation, the nature of which is known to Government.

“ Those people who at a time like this do anything which casts a slur on the loyalty, the past history and the traditions of the Indians are to be considered as the worst of miscreants and in my opinion no drastic measure ought to be considered as too severe for them. There is also, no doubt, from what has transpired these last few years, that there is a class of men who are gather-

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ing numbers round them, growing in numerical strength and perhaps in influence too. A measure of this nature, as is before the Council, a measure of this character ought not to be considered from our point of view only, but it has also to be looked at from the point of view of that class of men whom I can best call our enemies. From the fact that this class is growing by converts from peaceful citizens and they are using their influence to increase their number, anything in a measure of a legislative character which is ambiguous or which is of such a nature as would give them an opportunity to make people believe that this Government is of an arbitrary character would be an instrument in their hands, which they would use to their advantage. I have looked at the Bill from that point of view; and while I consider it my duty to give my whole-hearted support to the Bill, I should like the Hon'ble Member in charge of the Bill to look at it or certain portions of the Bill from this point of view and see whether it is not likely to be an instrument in the hands of our enemies and used by them as evidence of the arbitrary power of the Government. One section provides that this special Tribunal will try offences which are tried in the ordinary courts and are punishable under the Penal Code. I find that there is a provision for cases in which punishment is ten years rigorous imprisonment and there may be cases of criminal breach of property or ordinary cases of arson, and yet at the same time I find that this clause does not include cases of rioting which are more likely to have a political aspect; consequently, the section ambiguously or carelessly worded as it stands would be considered by our enemies as an instance of Government's object to have an arbitrary power in regard to ordinary offences which are ordinarily triable in the ordinary courts. Another instance to which the attention of Your Lordship has already been drawn is that the judge should be one of longer experience than one year, and also that capital punishment should not be awarded in cases when there is any doubt. But in the circumstances, as I consider that no punishment could be too severe for these men and as we have full faith and confidence that under Your Excellency's Government this Act will never be used in such a way as really to bring under its purview men who are really friends and loyal subjects of the Empire, I do not consider it necessary to repeat amendments which have been made. I do really hope that the Hon'ble Member in charge of the Bill will take into consideration this fact as to whether section 3 might not be amended so as to give no occasion to our enemies to consider it as evidence of the arbitrary power of the Government and at the same time it should include those cases of rioting which are liable to have a political aspect attached to them.

"With these words, My Lord, I give my whole-hearted support to the Bill."

The Hon'ble Mr. Banerjee.—"My Lord, I have listened with attention, I may add with respectful attention, to the speech of the Hon'ble Member in charge of this Bill and to the speeches that subsequently followed, including the lecture which my Hon'ble friend to the left* read to our public men who are members of this Council. I will say this that I am not convinced as regards several of the provisions in the Bill, which to my mind do not seem to be justified by the exigencies of the country or by naval and military considerations. My Lord, we have been told, and I accept the statement in an unqualified form, we have been told that the situation in the Punjab is grave and the situation in Bengal also is serious, though perhaps not to the same extent. The object of the Bill is to improve the situation. The end is one which will commend itself to all, no matter to what school of politics he may belong, for we know that order—stable order—is the fundamental condition of all real progress. But when we come to consider the means to be devised for the purpose of attaining this object differences of opinion arise. My Lord, I say at once that so far as the provisions of the Bill are concerned arising out of the war and relating to naval and military considerations, it is the duty of every patriotic Indian to accord to them his whole-hearted support, and I am sure that this will be the sense of the country.

* The Hon'ble Mr. Ghuznavi.

“ But, My Lord, the Bill traverses ground beyond military and naval considerations, raises issues of a highly controversial character in regard to which many of us will not be able to see eye to eye with the Government. It has been stated by the Hon'ble Member in charge of the Bill that it is framed upon the English Act. Well, in many respects it traverses beyond the English Act, and I will mention one or two points. I am not considering the sections in detail, but section 2 creates an offence which is not to be found anywhere in the English Act, namely, promoting feelings of enmity and hatred between different classes of His Majesty's subjects. That is altogether new in this Bill; it is nowhere to be found in the English Act, and I think the Hon'ble Member in charge recognises the fact.

“ Then, My Lord, there is section 3 which creates a particular tribunal and lays down specifically the offences which are to be tried by that tribunal.

“ My Hon'ble friend in charge of the Bill has said that the tribunal in England is the court martial: here the tribunal is to be a Commission to be constituted by the Local Government. Undoubtedly the provisions of the English Act as regards this matter are far more drastic than the provisions of the Bill that is before us. But, My Lord, an amendment was moved in the House of Lords the other day—and I believe the underlying principle of it was accepted by the Lord Chancellor and the Government,—under the terms of which, when members of the civil population would be affected, they would have the right of claiming trial by a civil court and by a jury. But what I desire to point out is this, that it is only specific offences that are covered by the English Act, whereas we have a large number of offences under the head of Public Safety included in the Indian Penal Code which find a place here and which are to be tried in a summary fashion by a specially constituted tribunal.

“ Therefore, My Lord, the contention that this Bill is framed upon the basis and the model of the English Act is only correct in a qualified sense. It is far more comprehensive than the English Act, and because it is so, I fear there will be a great deal of agitation and controversy in the country regarding its provisions.

“ My Lord, reference has been made to the growth of anarchism in Bengal, to the recrudescence of crimes of violence in our province. My Lord, we, the educated community of Bengal and the leaders of the moderate party, hold anarchism in absolute horror and detestation, and we are doing what we can to put it down so far as it lies in our power. On the 13th of this month we held a Conference in the rooms of the British Indian Association, presided over by the Maharaja of Burdwan and attended by many men of light and leading, including a European gentleman who is the principal of an important college in Calcutta. My Lord, it was the unanimous sense of that Conference that restrictive measures would not be suitable, and that they would aggravate the situation. My Lord, that is the deliberate judgment of the people of Bengal. We feel that the effect of restrictive measures in Bengal would be to add to the uneasiness of the community and perhaps help the breakers of the law, who would welcome them. What is needed is not new legislation, but greater efficiency in the police. I freely admit that the efficiency of the police has been added to and improved in recent years, but a great deal more remains to be done. My Lord, it is the immunity of the offenders and the helplessness of the community who are defenceless and unarmed, that encourage these breakers of the law in the perpetration of their foul deeds. I may remind the Members of this Council that there was a formidable conspiracy soon after the outbreak of Fenianism in London, the object of which was to blow up the public buildings with dynamite. In one year's time the London police shadowed every conspirator, hunted down the gang and the country was purged of the scourge. Of course I know India is not England, but still, what we feel is that if the Government is to deal with the outward symptoms of these unhappy developments, the efficiency of the police has to be greatly improved. With regard to the root causes, My Lord, they have to be dealt with in that spirit of conciliatory statesmanship for which Your Excellency's Government has obtained a name and fame.

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“ My Lord, I feel that in this matter the Government should have proceeded by Ordinance. Your Excellency was pleased to refer to this matter in the course of your speech. We of course bow to Your Excellency's decision, but what some of us felt, what I at least felt, was this, that in this matter the Government could not admit us into their fullest confidence, that they could not perhaps disclose to us, in all their details, the information upon which their judgment was based, and that therefore it was impossible for us to record an intelligent vote. That being so, I felt that it was the clear duty of the Government to have assumed the entire responsibility of these measures by issuing an Ordinance. However that may be, My Lord, we are grateful to Your Excellency for the assurance which Your Excellency has given us to-day, that the crimes of a few fanatics, and this law which Your Excellency's Government thinks necessary to enact for their prevention, will not be regarded as a slur upon our loyalty. I hope and trust that this measure will in practical operation be administered with moderation and self-restraint. I hope and trust that it will not be a weapon in the hands of the enemies of Indian advancement for the purpose of blasting those prospects and frustrating those hopes which have been roused in our hearts by the loyal devotion of our countrymen consecrated by their blood on the battlefields of Europe. For the faults of a few fanatics the millions of our countrymen who are loyal to the core of their hearts should not suffer.”

The Hon'ble Sir Ibrahim Rahimtoola:—“ My Lord, I think Your Excellency will have, with your great gifts, realised the prevailing sentiment amongst the non-official members of this Council in regard to this Bill. That sentiment, Your Excellency, is unanimous in offering to cooperate and assist in the passing of any legislation which Government may regard to be necessary, under present conditions, and I am sure you will appreciate from the views to which non-official members have given expression, how whole-hearted they are in their support of a measure to deal with the prevailing condition of the war. However, we may disguise it, it is painful to reflect that any occasion for legislation of this character should have arisen and that Government should have considered it necessary to bring it forward for the approval of this Council. There is one thing, however, which has clearly come out of the debate that has taken place, and that is that while whole-heartedly in favour of any legislative measure which may be considered necessary by Government to meet existing circumstances in different provinces, the non-official members feel that the provisions of the Bill need some alteration and amendment.

“ It is stated in the Statement of Objects and Reasons that this Bill deals with two distinct classes of cases. The first is in regard to all military and naval matters, or, more distinctly speaking, all matters in connection with the war. Not only the non-official members of this Council, but, I venture to think, the whole of the people of this country are willing to arm Government with all executive powers by legislation which may be considered necessary to meet the naval and military circumstances of the case. The Bill, however, essays to go a little further than that and it deals with certain things other than can be directly brought under the designation of 'war measures.' Even in regard to that part of the Bill there is a consensus of opinion to support Government, to enable them to deal with what the Hon'ble the Home Member referred to, namely, the special circumstances prevailing in the Punjab and in Bengal, but restricted to the lawlessness in the one case and dacoities in the other. If this measure was restricted to all matters in connection with the war and also in regard to the lawlessness in the Punjab and the dacoities in Bengal, I think the whole Council would be practically unanimous in supporting Government and when I see that that is the whole object with which this legislation is introduced, according to the lucid explanation which Your Excellency graciously supplied to the Council, and the speech which the Hon'ble the Home Member has made, it appears to me that, so far as the principle underlying this legislation is concerned, there is no real difference of opinion. It appears to me however, that, in giving effect to the intention which Government have in view in legislating in these two directions, the wording actually employed

[*Sir Ibrahim Rahimtoola; Pandit Madan Mohan Malaviya.*] [18TH MARCH, 1915.]

goes much beyond it, and it is with some feeling of apprehension that I regard the all comprehensive character of the provisions which are embodied in the Bill. Your Excellency will observe that the first part of clause 3, sub-section (1), deals with matters relating to the war, while the second part is worded as follows:—

‘Or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, or of criminal conspiracy to commit, or of abetting, or of attempting to commit or abet any such offence shall be tried by Commissioners appointed under this Act.’

“Your Excellency can appreciate that there are grounds to apprehend that powers conceded in words so wide and comprehensive may be exercised in matters other than those for which the present legislation is being enacted, and the reason why we consider it necessary to restrict the terms of the Bill specifically to the objects with which it is undertaken.

“The preamble to the legislation says:—

‘Whereas owing to the existing state of war, it is expedient to provide for special measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences.’

“The objects of this Bill are here clearly indicated. I have already pointed out, that so far as special measures to secure public safety and the defence of the British Empire are concerned, there is absolute unanimity in this Council. Then as regards the more speedy trial of certain offences, offences which have been indicated by the Hon’ble the Home Member in his speech, there is also a practical unanimity. If that is so, Your Excellency, may I venture to suggest that the wording of the measure be restricted to what Government themselves desire, instead of employing such comprehensive terms as to embrace all such offences as ought to be allowed to be tried in the ordinary procedure of the existing law courts. Your Excellency, though the principle underlying this Bill has been whole heartedly supported, it has been clearly pointed out by many members that there are certain provisions of the Bill which go much beyond the intention with which this legislation has been brought forward. If that is so, I do not know whether it would not be desirable to ask the Hon’ble Member to consider whether he would not agree to so modify the provisions of this Bill as to restrict their application to offences contemplated by Government, and thereby ensure the unanimous opinion of this Council in favour of the measure.

“Sir, it need hardly be said that offenders coming either under the first part of this Bill dealing with the war, or those who fall within the second classification, namely, who are responsible for organized lawlessness and dacoities, can have no sympathy from any quarter whatsoever, and it appears to me that if there is any justification for an emergency measure to be carried at one sitting in this Council, it can only be supplied by the fact that the requirements of peace and order require summary treatment in the trial of special and extraordinary offences. I do not think that it would be justifiable to provide in such special legislation for any class of offences which ought ordinarily to be brought before the existing law courts.

“As I have already said, I wish to associate myself with my Hon’ble Colleagues in supporting the principle of the measure, the object of which is to provide additional powers to the Executive Government for the purpose of dealing with the situation. I do hope that armed with the special powers which the present legislation, with such amendments as may be made, will confer upon Government, they will be able to prevent the lawlessness in the Punjab from assuming epidemic form. I need hardly assure Your Excellency that the people of India heartily desire to co-operate with Government in their efforts to promote the cause of peace and order.”

The Hon’ble Pandit Madan Mohan Malaviya:—“My Lord, in the course of the remarks which Your Excellency was pleased to make at the beginning of this debate, you were pleased to tell us that the measure before the Council is a war measure, and you were also further pleased to assure us that no slur would be cast on the fair name of India by the passing of this measure. In spite of this assurance

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from Your Excellency, some fears have been expressed that the passing of such a measure as is before the Council may throw a sort of reflection upon the loyalty of the people of India in general. I have no such fear. I am certain, My Lord, that the misguided action of a few young men or old men, whoever they may be, will not, cannot, weigh in the balance against the deliberate, deep-seated and pervading loyalty of the people of India throughout this crisis. Hopes have also been expressed that, when the crisis is over, the good that has been done by Indians will be remembered and the evil perpetrated by a few will be forgotten. I do hope it will be so. But I think, My Lord, that at this juncture neither fears nor hopes should guide our action. I would 'trust no future, howe'er pleasant,' would 'let the dead past bury its dead,' 'act firm in the living present, heart within, and God o'er head.' The living present demands from us that in the exceptional circumstances which have been created by the war, we should lend our loyal support to the Government in adopting every measure which is necessary in order to prevent and crush mutinous acts, to preserve public peace and to protect the civil population, the law-abiding people, from the evils of the misguided action of a few ill-balanced minds. We are all agreed, as the debate has shown, to the principle of the measure so far as it is needed by the exigencies of the situation for securing the public safety and the defence of the realm. But, My Lord, while it is the duty of us, non-official as much as official members of the Council, of rendering support to the Government in the emergency measure which they find, in the special circumstances of the country, necessary to enact, it is also the duty of the Government strictly to limit the measure to the requirements of the situation. Mention has been made of the fact that the Defence of the Realm Act received the unanimous support of both parties in the House of Commons and throughout the country in England. It rightly did so, because the provisions of the Defence of the Realm Act were studiously confined to the requirements of the situation created by the war. I am sorry to say, My Lord—I say it with much regret, but I feel it my duty to say so—that in framing the Bill which is before the Council the advisers of the Government have not confined themselves to the requirements of the situation. I am sorry to say, as many previous speakers have pointed out, that the framers of the Bill have travelled much beyond the requirements of the situation; and this, My Lord, is the reason of the dissentient voices which have been mingled in the speeches made before Your Excellency in offering support to the principle of the Bill. My Lord, I will make my meaning clear. In the Defence of the Realm Act it is laid down that 'His Majesty in Council has power, during the continuance of the present war, to issue regulations as to the powers and duties of the Admiralty and Army Council, and of the members of His Majesty's forces, and other persons acting in his behalf, for securing the public safety and the defence of the realm; and may, by such regulations, authorise the trial by courts martial and punishment of persons contravening any of the provisions of such regulations designed—

- (a) to prevent persons communicating with the enemy or obtaining information for that purpose, or any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces, or to assist the enemy; or (and this was added by a subsequent Act) to prevent the spread of reports likely to cause disaffection or alarm
- (b) to secure the safety of any means of communication, or of railways, docks, or harbours; or of any area which may be proclaimed by the Admiralty or Army Council to be an area which it is necessary to safeguard in the interests of the training or concentration of any of His Majesty's forces;

in like manner, as if such persons were subject to military law, and had on active service committed an offence under section 5 of the Army Act; and may by such regulations also provide for the suspension of any restrictions on the acquisition or user of land, or the exercise of the power of making byelaws, or any other power under the Defence Acts, 1842 to 1875, etc.'

"Now, Your Excellency will be pleased to note that the entire power which is given by the Defence of the Realm Acts, 1 and 2, is confined to enabling

the Admiralty or the Army Council to deal with cases where the public safety or the defence of the realm may be endangered and to enable them to remove restrictions on the acquisition or user of land which may be needed for military and naval purposes.

“My Lord, the Bill before us goes, as I have submitted, much beyond the provisions of that Act. I have no doubt not seen the regulations which have been framed under those Acts. Last evening I requested the Hon'ble the Home Member—I hope he will pardon my mentioning it—for a copy of these regulations, but he could not spare it. I quite understand that he could not, and I do not complain of it. I wrote this morning to the Hon'ble the Secretary to the Legislative Department (who, I was told by the Hon'ble the Home Member, had a copy of the regulations) asking for it, but he, too, said he could not spare it. Now, My Lord, we are in this position, that a copy of the Bill was given to us during the course of another debate here yesterday. We have not been given a copy of the regulations on which we are told this Bill has been modelled to enable us to arrive at a judgment in regard to the provisions incorporated in the Bill. And we must, therefore, act according to the light which is within us. I feel that the regulations which have been made under the Defence of the Realm Act cannot go beyond the clear provisions of that Act, and judging from the clearly defined and strictly limited provisions of that Act, we think that the provisions embodied in the Bill before us go much beyond them. If, therefore, My Lord, there is this general note in the speeches of non-official members to-day of a desire to see changes introduced in the Bill, and to have a discussion regarding some of its provisions, I hope it will not be set down to any reprehensible wish on the part of the non-official members, or of those who have raised a dissentient voice or asked for some modification, to unnecessarily oppose the Government. In the special circumstances in which the Bill has been introduced, we are all united in rendering our dutiful support to the Government in all that is needed for the exigencies of the war. But we feel it our duty as well to the Government as to the public to request the Government to strictly confine the provisions of the proposed law to the needs of the situation,—and not to allow, under the garb of a war measure, provisions to be enacted which are not required by the situation and are likely unnecessarily to disturb the public mind.

“My Lord, there are a few points to which I will invite Your Lordship's attention. Beginning with the Hon'ble Raja Jai Chand and the Hon'ble Sir Gangadhar Ohitnavis, and ending with the last speaker, if I am not mistaken, every speaker has asked that certain provisions should be revised.

“The criticism may be classified under three heads: the scope of the measure, the constitution of the special tribunals proposed, and the punishments to be inflicted in certain cases. As regards its scope, attention has been drawn to a provision which has been incorporated in section 3 of the Bill, by means of which any person accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years, has been brought under the purview of the present Act. Now, that practically abolishes the provisions of the Criminal Procedure Code for the trial of these ordinary offences. The Hon'ble the Home Member stated that it is not intended, and I do hope it is not intended, that the ordinary law should be superseded for the trial of ordinary offences. How, then, has this very important provision crept into the Bill, or has been allowed to come into the Bill, which does in clear words supersede the ordinary law for the trial of ordinary offences?

“In other respects also the Bill has been extended beyond the needs of the situation, as some other members have pointed out. I may draw attention to one other such provision. Under the English Act, as I have already said, the King in Council may make regulations, among other purposes, ‘to prevent the spread of reports likely to cause disaffection or alarm.’ In the Bill before us rules may be made to ‘prevent the spread of *false reports* or reports likely to cause disaffection or alarm.’ The words ‘*false reports*’ have been put in. Now, My Lord, in this country, with a population so ignorant as it unfortunately generally is—with the people not trained to such a degree as to be able to discriminate between what reports should be repeated and what reports should

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not be repeated, a provision like this is likely to cause trouble and may possibly lead to injustice. I hope the Hon'ble the Home Member will explain to us why it was necessary, having the precedent of the English Act before us, to introduce the words 'false reports' into this Act. So much as regards the scope of the measure.

"The second point of difference which arises from the debate is the constitution of the tribunals which are to be constituted under the Act. It has been said on behalf of Government that the provision of special tribunals of three Commissioners is a much better measure than leaving Courts Martial to deal with persons to be tried under the Act. That, My Lord, is only one aspect of the question. The other aspect is that Courts Martial could not possibly be expected or called upon to deal with the numerous offences which have been brought under the purview of this Act and made punishable under it, and therefore the framers of the Act found it necessary to provide for special tribunals of Commissioners appointed under the Act. There is reason, My Lord, in support of the view that there is no clear necessity or justification for creating special tribunals of the kind proposed by the Bill, and that special benches, constituted under the provisions of the Indian Criminal Law Amendment Act of 1908, would have inspired more confidence and ensured a more satisfactory administration of justice. The constitution of the tribunals proposed under the Bill is only in one respect, but in a material respect, different from the constitution of the tribunals under the Act of 1908 to which I have referred. Under the Bill at least two of the Commissioners may be of much less experience than a Judge of the High Court, who alone can constitute a Special Bench of three Judges under the Act of 1908. Your Lordship will please note that several Members have expressed the opinion that it would not be right to allow Sessions Judges or Additional Sessions Judges who have served only one year as such to be members of the special tribunals which would deal with special offences under a special and somewhat summary procedure. That much with regard to the constitution.

"The third point to which attention has been drawn is the punishment of death provided for certain cases. A sentence of death may be a proper sentence in certain cases, and no one may object to this punishment being inflicted under certain circumstances upon those who conspire against the King. But when a summary procedure is prescribed for the trial of such cases, it does seem to be a matter for consideration whether a sentence of death should not be omitted from the category of punishments provided in such cases. Section 2 (2) of the Bill says—

Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, or if the intention of the person so contravening any such rule or order is to assist the King's enemies or to wage war against the King, may provide that such contravention shall be punishable with death, transportation for life or imprisonment for a term which may extend to ten years, to any of which punishments fine may be added.

"Now, My Lord, to my mind it is questionable—I may be wrong, I speak subject to correction—whether a person proved guilty of contravening any of the rules made under this section, even with the intention of waging war against the King, should not be regarded as a person deserving of worse treatment than a man who has been openly fighting against the King's forces. A prisoner taken in war is not shot down—not by our Government at any rate, and I thank God he is not. A prisoner taken in war is interned, and will not the ends of public safety and of justice be fully met if an offender of the type we are considering is so interned, or transported for life, or imprisoned for any term which the Court may think proper. My Lord, there is always a danger of irrevocable injustice in the case of a death sentence. Such danger is enhanced where the trial is more or less of a summary character. I may refer here to the Pansey murder case, in which a man was ordered to be hanged by the High Court of Madras, but was acquitted by their Lordships of the Privy Council—a case in which my friend Mr. Hardley Norton rendered memorable service to the cause of justice. There is also another case, the Mahta

[*Pandit Madan Mohan Malaviya ; Raja Abu Jafar ;* [15TH MARCH, 1915.]
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case of Manbhun, where a person who had been sentenced to be hanged by the neck until he was dead, and whose conviction had been upheld by the High Court, and whose appeal to the Local Government and the Government of India for mercy had been refused, was yet saved from the gallows by the truth being disclosed by the very person in whose interest he had been convicted and condemned. These, My Lord, are cases which have occurred in this country. In the House of Commons Lord Parmoor referred to the case of the German Consul at Sunderland, who had been tried for high treason before a Judge and Jury and convicted and sentenced to death, and in whose case the Lord Chief Justice and other Judges had found unanimously that the crime had not been proved. These cases afford us some guide and ought to make us pause to think whether in summary trials it would be right to allow sentences of death to be passed when in such cases the injustice that may be done must be irretrievable.

“ These are some of the points which have been troubling my Honourable friends who have spoken before me, and these are the points which have troubled me also. The result is that while we give our loyal support to the measure as a war measure, in so far as it is necessary to meet the exigencies of the war, we request Government to be pleased to have the measure thoroughly considered in order that those provisions which are not necessary should be taken out of it. My Lord, I see from the Agenda paper of the business before the Council to-day, that it is proposed to ask for leave to have this measure passed to-day. Yesterday we made a representation to the Hon'ble the Home Member that the measure might be referred to a Select Committee in order that it should be there discussed and that points of difference may be better appreciated and understood. I hope that the request will meet with Your Excellency's approval and with the acceptance of the Government, and that an opportunity will be given to the representatives of Government and the representatives of the people to sit down together to retain as much of the measure as is needed, and as much as it is our duty to support at this juncture in view of the war, and to remove such provisions as do not seem to be called for by the exigencies of the situation.

“ With these words, My Lord, I give my support to the principle of the Bill, and I hope that the Bill will be referred to a Select Committee and not passed in its present form.”

The Hon'ble Raja Abu Jafar:—“ My Lord, it is obvious that the present state of affairs has rendered it necessary to provide for emergency measures, and the Bill brought before the Council to-day is one of them. Considering the unusual state of things which has been brought about by the present war, no reasonable person will oppose the principle of this Bill (though there is some difference of opinion as to some of its details). There was not sufficient time for us to think over the details of the Bill in the usual manner, but the Government cannot be reasonably expected to observe the ordinary rules of legislation on such an extraordinary occasion. I believe there are circumstances that justify such a measure. I have full confidence in the Government taking this action, and I trust that the powers provided by the Act will not be misused by the authorities entrusted therewith, and its application to the civil population would be made with the utmost caution and deliberation.

“ It is clear from the provisions of the Bill that it is only a temporary measure taken as a precaution against the exigencies of the existing war, and it will cease to have effect six months after the termination of the war.

“ Taking into consideration the emergency of the situation and the limited duration of the measure, I think myself quite justified in giving my whole-hearted support to it.”

The Hon'ble Raja Sir Muhammad Ali Muhammad Khan:—“ My Lord, I submit my grateful thanks to you for the manner in which you have given expression to your feelings towards my country and my

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*Raja Sir Muhammad Ali Muhammad Khan;
Maung Mye; Mr. Rayaningar; Sir Reginald
Craddock.]*

countrymen. This is not a Bill that could enlist the support of any Indian in normal times. I personally would regard it as a great misfortune if its provisions were considered necessary in ordinary times for governing a loyal and peaceful country like India, for the provisions contained in the Bill are subversive of the wise and beneficent methods of administration with which British rule is associated. It is a serious matter, My Lord, to supersede the ordinary judiciary of the country and to introduce sudden and revolutionary changes in the criminal law of the country without consulting the people. The Bill is highly drastic, and were it not that we are going through critical and abnormal times, and that the proposed legislation is put forward as an exceptional and temporary measure, I would have certainly opposed its passage through this Council. In the peculiar circumstances, however, of the position of the Empire, I recognise that it is not open to us to offer any opposition to the principle of the Bill; but I am gratified that our consent will not be regarded here or in England as an admission that India is disloyal or even lukewarm; for nothing can be more untrue to the real facts. My Lord, I refrain from opposing the principle of the Bill, because our Viceroy, who is beloved and trusted by the Indians and who has unstinted confidence in them, has considered it essential to put forward the Bill as a war measure and a war measure only. My Lord, it is to be hoped that the Empire will soon emerge from this struggle and that the Statute-book will not suffer for long from the disfigurement which this legislation will inflict upon it. I also sincerely trust, since the Bill can obviously be a double-edged weapon, that Your Excellency's Government will use the utmost care and vigilance to guard against any misuse of its provisions by the local authorities concerned. I also appeal to the Hon'ble Mover that he would give sympathetic consideration to the points raised by many Hon'ble non-official Members."

The Hon'ble Maung Mye :—"My Lord, speaking on behalf of the people of Burma, I beg to give my full and hearty support to the Bill."

The Hon'ble Mr. Rayaningar :—"My Lord, I sincerely support the Bill in all its essential features, however much I may regret the circumstances which necessitate its introduction. Though we cannot have an exact idea of the real situation, we have the fullest confidence in Your Excellency's Government and when the Government finds itself unable to cope with the situation, we must co-operate with it in strengthening its hands. My Lord, in a crisis like the present, we may, by showing any reluctance on our part in supporting the measure, be doing more harm than good to our interests. We want peace and order, and if for the maintenance of peace and order an emergency measure is required, we cannot but adopt it. That is the consideration, My Lord, which underlies our vote to-day. We are taking upon ourselves a serious responsibility; our people's interests are in our hands, and when we support the Government in this new measure, we do so in the fervent hope that the new law would be put into operation in as few cases as possible, and that under the pressure of extreme necessity. My Lord, I think the Bill requires modification in a few particulars. I think that the provision which gives retrospective effect to the law is unnecessary. I am also of opinion that capital punishment, except in extreme cases, is too much. I would suggest, for the consideration of Government, if clause 3 can be so amended as to be more acceptable. My Lord, we are deeply grateful to Your Excellency for the assuring words which Your Excellency has given expression to on this occasion."

The Hon'ble Sir Reginald Craddock :—"My Lord, I feel sure that Your Excellency will be gratified by the manner in which the non-official members of this Council have supported the principle of this Bill. Neither we nor they take any pleasure in putting forward and passing any drastic measure of this kind. As I explained in my opening speech, a long period has elapsed before this step was found to be necessary, and Your Lordship has

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stated, to which I need add no words of my own, that you do not consider that legislation of this kind involves the slightest slur upon the loyalty of India. In a country with such a vast population, there must be some lawless elements; as long as they keep quiet no drastic action is found necessary. When they begin to show signs of disturbance, then public safety and security demand that action should be taken to meet that attitude on their part. On the whole, I think that practically every member has supported the principle of the Bill. Even in the case of the Hon'ble Mr. Banerji, I was not able to gather for certain whether he was actually opposing the Bill or merely giving it a reluctant support.

“There were several points of criticism brought forward, and as regards some of these if at a later stage they take the shape of specific amendments, we shall be able to consider whether we can accept any of them, or if we are unable to accept them, will be able to explain the reasons for non-acceptance. As to the objection taken that clause 3 of the Bill extends far too wide the scope of the Bill including, besides offences that would be created under clause 2, all offences punishable with death, transportation or imprisonment for a term which may extend to seven years, in respect to that, the difficulty felt was to find some comprehensive term which would allow offences punishable under various Acts to be referred, if necessary, to a tribunal of this kind, and a long schedule of offences which even with much care might still fail to comprise all the cases that it might be necessary to refer to the tribunal was not considered a satisfactory method, because it is not merely a particular class of offences, it may be the class of offender whose speedy trial is required. Possibly, if some less comprehensive term can be found to include all we want, the objection might be considered, but I am not able offhand to give any assurance in this matter. I may just add a few remarks with respect to one or two criticisms that have been made by the Hon'ble Mr. Banerjee and the Hon'ble Pandit M. M. Malaviya. As regards the criticism against sub-clause (c) regarding the promotion of feelings of enmity and hatred between different classes of His Majesty's subjects, the English Regulation does not of course refer explicitly to that particular class of report. We have generally followed Regulation No. 27, which runs as follows:—

‘No person shall by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication spread *also reports* or make *also statements, etc., etc.*’

“This—*i e.*, in regard to false statements—is one of the objections which the Hon'ble Pandit Malaviya took to the wording of sub-clause (c) of clause 2; but as regards the reference to promotion of feelings of enmity and hatred towards His Majesty's subjects to which the Hon'ble Pandit took exception, I wish to point out to the Hon'ble Pandit that the rules are intended to prevent the spread of false and injurious reports; and power is taken to make rules to prevent the spread of reports which are likely, amongst other things, to promote feelings of enmity and hatred between different classes of His Majesty's subjects. Now, in the circumstances of this country, it is natural that when dealing with the public safety, we should safeguard the spread of reports that are likely to endanger the public safety. The prevention of reports which promote feelings of enmity and hatred between different classes of His Majesty's subjects is essential as they may seriously prejudice the public safety.

“I do not wish, my Lord, to go into further detail regarding the criticisms that have been passed because they will be considered at a later stage; I would only ask that, as we have received such full support to the principle of the measure, Your Lordship will put the motion to the Council.”

The motion that leave be given to introduce the Bill was put and agreed to.

The Hon'ble Sir Reginald Craddock :—“My Lord, I now beg to introduce the Bill and to ask Your Excellency to suspend the Rules of Business to admit of the Bill being taken into consideration.”

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His Excellency the President :—“ I suspend the Rules of Business, and I think that the most convenient method of procedure would be, when the motion that the Bill be taken into consideration has been carried, to put the Bill to the Council clause by clause under Rule 31. Each clause will then have to be dealt with separately, and when the amendments relating to it have been discussed, I shall put the question to the Council whether that clause stand as part of the Bill.”

The Hon'ble Sir Reginald Craddock :—“ My Lord, I beg to move that the Bill be taken into consideration.”

The motion was put and agreed to.

The Hon'ble Sir Reginald Craddock :—“ My Lord, I beg to move that clause 1 of the Bill do stand as part of the Bill.”

The motion was put and agreed to.

The Hon'ble Sir Reginald Craddock :—“ My Lord, I now beg to move that clause 2 do stand as part of the Bill.”

The Hon'ble Mr. Dadabhoy :—“ My Lord, I beg to move a small amendment as regards clause 2 (h). Clause 2 (h) at present reads as follows :—

‘ (h) to prohibit anything likely to prejudice the training or discipline of His Majesty's forces and to prevent any attempt to tamper with the loyalty of persons in the service of His Majesty or to dissuade persons from entering the service of His Majesty.’

“ My amendment, My Lord, is that after the words ‘ entering the ’ the words ‘ military or police ’ be added. The object of this clause, as I understand it, is not to prevent people from dissuading their friends and relatives entering the service of His Majesty generally, but to facilitate recruitment; and as I understand that there is some opposition shown in some parts of the country in the matter of military recruitment and also in the recruitment of the police, this clause is rendered indispensable.

“ My Lord, the non-official members of this Council are as anxious as the Government that the recruiting in the country should not be in any way hampered, or any impediment put in the way of recruitment both for the Army and for the Police. But as this clause stands at present, there is a likelihood of its being extended to other departments. If I have a brother, a son, or a nephew, and he wants to become a munsiff or join the Educational Department, and if I dissuade him from doing that, I may be hauled up and brought within the pale of this law. It is not the intention, My Lord, of your Government to bring these cases within the Act. The intention is, I understand, to prevent undue interference with the question of recruitment for the Army and the Police. The Police is, of course, a civil department, but as this is a piece of legislation of an emergent nature, I am prepared to agree that the word Police be also added, and I am sure the Hon'ble the Home Member will see his way to accept the amendment.”

The Hon'ble Sir Reginald Craddock :—“ My Lord, I may say at once on behalf of the Government that I will accept that amendment.”

The question that in clause 2 (h), after the words ‘ entering the ’ the words ‘ military or police ’ be inserted was put and agreed to.

The Hon'ble Pandit Madan Mohan Malaviya :—“ My Lord, I propose that in clause 2 (1) instead of the words ‘ public servants and other persons,’ the words ‘ District Magistrates, Sub-Divisional Officers or other competent military authority ’ be substituted.

“ My Lord, in the Defence of the Realm Act, as I have already submitted, the special emergency powers conferred by the Act are conferred upon the ‘ com-

[*Pandit Madan Mohan Malaviya; The President; [18TH MARCH, 1915.]*
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petent naval or military authority', and the regulations which have been made under that Act, a copy of which, thanks to the courtesy of Mr. Muddiman, I now have before me, distinctly provide that the powers conferred by them shall be exercised only by the competent naval or military authority. My Lord, the words 'public servants or other persons' used in the Bill before us are extremely wide, the whole object of the war legislation is to secure that the competent naval or military authority—"

His Excellency the President:—"Will the Hon'ble Member kindly let me see his amendment"?

The Hon'ble Pandit Madan Mohan Malaviya:—"Your Excellency will pardon me. We have had to work against time. I have introduced the words 'and other competent military authority' in the amendment I propose".

His Excellency the President:—"You should have given notice of it beforehand".

The Hon'ble Pandit Madan Mohan Malaviya:—"I gave notice of it this morning, as soon as I came here. My object is that the special powers with which the Bill proposes to arm the Executive should be confined to District Magistrates, Sub-Divisional Officers and any competent military authority. The language used in the Bill is very wide, and, as I have submitted, there is no sanction for it in the regulations which have been framed in the United Kingdom in which the competent military or naval authority only is authorized to exercise the special powers conferred by the Act. That is my amendment."

The Hon'ble Sir Reginald Craddock:—"I am afraid that I cannot accept the amendment on behalf of the Government. A reference to the clause will show at once that the Governor General in Council makes rules as to the powers *and duties* of public servants and other persons in furtherance of that purpose. The Hon'ble Mr. Malaviya at the last moment has inserted in his amendment 'or competent military authority' because he has recognized that, but for that, he would be striking at the very root of the Bill which is based on the Defence of the Realm Act wherein military and naval authorities are given such extensive powers. But, apart from that, it is a question of powers and *duties* of all sorts of public officers. District Magistrates and Sub-Divisional Officers may very likely be given powers and duties and so may many other officers; the police and even village-officers may have duties assigned to them; and even private citizens. Therefore it is quite impossible to accept the amendment."

The amendment was put and negatived.

The Hon'ble Mr. Banerjee:—"My Lord, I beg to move that after clause 2 (1) (c) the following proviso be added:—"Provided that the latter part of clause (c) beginning with the words 'or to' in line 4, up to the end, be not given effect to in any province except by a vote of the local Legislative Council." My Lord, I might have moved for the deletion of this part of the clause because these words are a reproduction of the provisions of section 153 (a) of the Indian Penal Code. I need not read that section. Then, as regards offences committed by newspapers, we have a similar section in the Press Act. Therefore, I might have moved for the omission of these words altogether. But I find that there is a desire in the Punjab for a speedy procedure in dealing with these matters. Therefore, My Lord, I have ventured to put in the proviso that I have read out, so that in case local opinion should support the Government in adopting this procedure then only they should be empowered to do so. The object is, to some extent, to have the action of the Executive Government controlled by the authority of local opinion, so that nothing should be done under the provisions of this section except with the consent of the local legislature. In my province the local legislature undoubtedly has a non-official majority; but I am a member of the Bengal Legisla-

[18TH MARCH, 1915.] [Mr. Banerjee; Mr. Wheeler; Pandit Madan Mohan Malaviya; Sir Reginald Craddock.]

tive Council, and I have been there for the last two years and more, and I find that only on one occasion was the Government defeated. During the whole of that time every measure of the Government, every Resolution that the Government supported was carried, and every Resolution which it opposed was lost. Therefore, really, there would be no risk whatsoever, but, on the contrary, some slight association of the local representatives with the operation of a measure like this would, I think, tend to facilitate the administration of this law.

“ With these words, I beg to move the amendment.”

The Hon'ble Mr. Wheeler:—“ My Lord, I venture to think that this amendment is not one which should commend itself to this Council or be accepted by Your Excellency's Government. It overlooks the whole fundamental basis of section 2, and, considering that the conditions which necessitate the passing of these rules do not differ materially in different parts of the country, it would be a most curious and unusual state of affairs to have an act declared to be an offence in one province and not in another. Neither are the particular matters with which the rules will deal confined within provincial boundaries, while there is the third objection that nothing could be more prejudicial to the speedy disposal of offences, which it is sought to secure by this measure, than having to wait until the approval of the Legislative Council in any one province could be obtained before a particular rule was enforced.

“ I would, therefore, beg to oppose the amendment.”

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—“ My Lord, I do not press my first amendment to clause 2 (1) (c) that the words ‘ False reports or ’ be omitted from the first line. I beg Your Lordship's leave to withdraw it.”

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya:—“ My Lord, I move that from clause 2 (c) the words ‘ or to promote feelings of enmity or hatred between different classes of His Majesty's subjects ’ be omitted. I do not think, My Lord, that there is any need for any special provision of this kind in the emergency measure before us. There is already sufficient provision in the existing enactments to deal with a case which might arise under the clause in question. I therefore move that these words be omitted.”

The Hon'ble Sir Reginald Craddock:—“ My Lord, I cannot accept this amendment on behalf of the Government. Before the adjournment I made some remarks on the subject in answering the Hon'ble Pandit's speech. This particular kind of report, viz., one which is likely to promote feelings of enmity and hatred between different classes of His Majesty's subjects, is no doubt not a kind of report which would be very common in England, and, therefore, the English Act did not take cognizance of such reports. But there is no kind of report in this country which is more likely to be spread than the one mentioned in this clause, and there is no kind of report which is likely to do more harm and damage, and possibly excite more serious breaches of the peace than a report which is likely to promote feelings of enmity and hatred between different classes of His Majesty's subjects. Therefore, My Lord, I submit that this is a very proper inclusion in this clause among the reports which we wish to check, and that this amendment therefore cannot be accepted.”

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—“ My Lord, I beg leave to withdraw my amendment to clause 2 (1) (e), that after the word ‘ purposes ’ the words ‘ subject to the payment of compensation ’ be introduced.”

The amendment was by permission withdrawn.

[*Mr. Banerjee; The President; Mr. Wheeler; [18TH MARCH, 1915.]*
Pandit Madan Mohan Malaviya.]

The Hon'ble Mr. Banerjee :—“I beg to move this proviso to clause 2, sub-clause (1) (f) :—

‘Provided that a person feeling aggrieved at such an order may appeal to the Commissioners appointed under section 3, or the District Magistrate or the Chief Presidency Magistrate of Calcutta, as the case may be.’

“The object of this proviso is to give the right of appeal to a person who feels aggrieved—”

His Excellency the President :—“Are those the words in your motion as submitted to the table?”

The Hon'ble Mr. Banerjee :—“No, My Lord, I have added the words ‘Chief Presidency Magistrate or the Magistrate of the District.’ I had a consultation with Mr. Muddiman (Deputy Secretary to the Government of India in the Legislative Department), and I put in these words to meet a legal difficulty. The text, as before Your Excellency, reads as follows :—

‘Provided that a person feeling aggrieved at such an order may, where sections 3 to 11 of the Act have been extended to any area, appeal to the Commissioners appointed under section 3.’

“That, My Lord, is my amendment. The object of the proviso is to give a person feeling aggrieved at an order of internment the opportunity of submitting his case to a competent tribunal in order to have the facts tested upon which the internment has been ordered. And this is only a matter of fair play and justice to an individual who has been subjected to this disability. I understand that this proviso is not in the English Act. But, My Lord, we have not been following the English Act section by section or clause by clause. We have been making some departures in a restrictive direction. I think we may make one in a liberal direction also.”

The Hon'ble Mr. Wheeler :—“I venture to think that there is some misunderstanding underlying this amendment. In the form in which it has been moved, it would not be workable. The Commissioners to whom the Hon'ble Member has referred will be appointed for the trial either of an offence committed by a breach of the regulations or of the other wider offences which have been made cognizable by the tribunal. It might very well happen, and would ordinarily happen, that at the time an order was passed under clause (f) there would be no Commissioners in existence. It is quite contrary to the whole spirit of the Bill to convert the three Commissioners into an Appellate Court against the orders of executive officers, and would seriously impede the passing of those orders, which is the object for which the Bill provides. I would, therefore, oppose the amendment.”

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya :—“My Lord, I beg leave to withdraw the amendment to clause 2 (1) (h), i.e., that the word ‘military’ should be inserted before the word ‘service’, as an identical amendment has, I understand, already been accepted.”

[*cc.*] The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya :—“My Lord, I beg to move that from clause 2 (2) the word ‘death’ be removed. I stated the reasons for this amendment earlier in the day. I think, My Lord, that in cases where there is provision made for a summary trial, it is desirable that the extreme sentence should not be passed; the ends of justice will be met by transportation for life or imprisonment for a term which may extend to ten years, as the section provides.”

[18TH MARCH, 1915.]

[*Sir Reginald Craddock; Mr. Banerjee;
Mr. Dadabhoj.*]

The Hon'ble Sir Reginald Craddock :—“ On the subject of this amendment I think it is very likely that the cases will be rare in which a sentence of death will be passed. But it would be a mistake to withdraw the power of inflicting capital punishment, because there might be cases in which no other punishment could adequately meet the crime. In the remarks that he made in his speech this morning, the Hon'ble Pandit suggested that men who assist the King's enemies or wage war against the King ought to be treated like prisoners of war, namely, enemy subjects who are fighting for their own King and who happen to have been captured. This is a contention which it is impossible to accept. The prisoner of war is a subject of a foreign power who owes no allegiance to the Sovereign of the country in which he is interned. But if a subject be found, in contravention of those rules, to have either assisted the King's enemies or waged war against the King, he is nothing but a rebel or a traitor, and all civilised countries provide that in extreme cases the penalty of death may be inflicted on such persons. Therefore, My Lord, we cannot accept this amendment.”

The amendment was put and negatived.

The question that clause 2 as amended stand as part of the Bill was then put and agreed to.

The Hon'ble Sir Reginald Craddock :—“ I now move that clause 3 stand as part of the Bill.”

The Hon'ble Mr. Surendra Nath Banerjee :—“ My Lord, I move that in clause 3(1), after the words ‘in writing’ the words ‘subject to a vote of the local Legislative Council’ be inserted.

“ The appointment of Commissioners is left to be decided by the Local Government, which means the Executive Government. I am sure Your Excellency's Government would like to have educated opinion associated with them in the appointment of the Commission. If this is done, the work of the Commission, by enlisting public opinion on its side, will be facilitated.

“ It seems to me that no harm can accrue and there is no risk of friction or collision. For in the local Legislative Council the Government will practically have its own way. The views of the Executive Government will nearly in all cases be accepted by the Legislative Council. It would be a distinct advantage if the decision of the Executive Government were confirmed by the Legislative Council. These are my reasons for submitting this amendment to the acceptance of this Council.”

The Hon'ble Mr. Dadabhoj :—“ My Lord, in connection with the consideration of Mr. Banerjee's amendment, I take the liberty to place before the Council a somewhat modified proposal. I would put my amendment in a form which I have no doubt will be acceptable to the Hon'ble the Home Member. We have heard a great deal this morning about this section and the great and sweeping powers that this section allows. I think that, if my amendment is accepted by Government, it will in a way allay the feeling that the Hon'ble Members here as well as the public generally have, and it will also serve as an effective check on the executive. I disagree with my friend the Hon'ble Mr. Banerjee and propose the following amendment, namely, that after the words ‘Local Government’ the words ‘with the previous sanction of the Governor General in Council’ be added.”

The Hon'ble Sir Reginald Craddock :—“ My Lord, I beg to rise to a point of order. This amendment of Mr. Dadabhoj's has apparently no connection whatever with the amendment put forward by Mr. Banerjee.”

“ Mr. Banerjee's amendment, as I understand it, is that in clause 3 (1) the words should run as follows :—‘ The Local Government may, by order in writing

[*Sir Reginald Craddock; Mr. Dadabhoj; [18TH MARCH, 1915.]*
Mr. Rayaningar; Pandit Madan Mohan
Malaviya.]

subject to a vote of the local Legislative Council, direct that any person, etc., Well, My Lord, the whole scope of the provision is that wherever it is in force in a province, the Local Government may, finding disorder gaining ground, direct the constitution of a special tribunal and direct that any person accused of a serious offence which it is considered should be speedily tried, should be tried by that tribunal. It is clearly a matter on which it is quite impossible for us to take the vote of a local Legislative Council. It might not even be sitting, and in any case it is quite impossible to refer individual cases to the consideration of a local Council. Therefore, My Lord, I cannot accept the amendment."

The amendment was put and negatived.

The Hon'ble Mr. Dadabhoj:—My Lord, I now press my objection. I suggest that the words 'with the previous sanction of the Governor General in Council' be added after the words 'Local Government.' I have already said what I had to say on the subject a few minutes ago. I have heard the Hon'ble the Home Member who stated that the object of this legislation is to expedite matters. That is a very important object, but in these days of rapid communication, railways and telegraphs, the Governor General in Council's order could be obtained within a few hours, and I hope, therefore, the Hon'ble the Home Member will see his way to accept this modest suggestion of mine. It will allay public feeling on the subject. The section is of a very drastic character. A lot has been said on it this morning, and I do not wish to repeat what has been said, as it is still fresh in the minds of Hon'ble Members. I therefore request the Hon'ble the Home Member to see his way to accept this, and, as I said before, it will be a very valuable check on the Local Governments, and it will allay public feeling considerably on the subject."

The Hon'ble Mr. Rayaningar:—"My Lord, I support the Hon'ble Mr. Dadabhoj's amendment."

The Hon'ble Sir Reginald Craddock:—"My Lord, I am very sorry, but I cannot possibly accept this amendment. In the first place, the Hon'ble Member seems to overlook that section 3 can only come into force at all by notification of the Governor General in Council. That being the case, the Local Government will have had to establish a case to the satisfaction of the Governor General in Council that this procedure of speedy trial has become necessary within a part or whole of a province. When once that is done, it is surely superfluous to require the Local Government to refer every case, when they wish to send a criminal case to the special tribunal, for the orders of the Governor General in Council. If a Local Government is fit to administer its province at all, it can surely be trusted to see that a special tribunal of this kind is used only for the cases for which this Bill has been designed. It would cause much irritation and it would be quite impossible for the Governor General in Council to dictate all the circumstances that might make a trial of this kind desirable; once the power has been given to the Local Government on good case established, it would be quite unreasonable to require the Local Government to apply for further sanction from the Governor General in Council. I am sorry that I must oppose this amendment."

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to move that from clause 3(1) the following words be omitted:—'or accused of any offence punishable with death, transportation or imprisonment for a term which may extend to seven years.' My Lord, I fail to see why the insertion of this clause is needed in this emergency measure. There is already sufficient provision in the existing enactments of the country to deal with cases, which may arise, of this character, and I hope that the Hon'ble the Home Member will see his way at any rate to omit this clause from section 3(1)."

[18TH MARCH, 1915.] [Mr. Banerjee: Sir Reginald Craddock; Pandit Madan Mohan Malaviya.]

The Hon'ble Mr. Banerjee:—"My Lord, I had the same amendment, and I thoroughly associate myself with the observations which have fallen from my friend. A large number of cases, such as burglary, rioting and so forth, which are included in the Penal Code, will be tried by the Commissioners under this section and under a summary procedure, which I think would be dangerous to the liberty of the subject; there is no occasion for introducing this large class of cases in this clause, and subject to a summary procedure in which there is some chance of justice not always being done, I thoroughly associate myself with the observations of Mr. Malaviya."

The Hon'ble Sir Reginald Craddock:—"My Lord, the Government cannot possibly accept this amendment, because it would strike at the root of the whole object for which these speedy trials are designed. I mentioned in my opening speech the various kinds of lawlessness which it was desired to suppress; and among those were outbreaks of lawlessness in which large bands of men plundered whole villages, wrecked shops and destroyed houses and property. When gangs of men go abroad in this manner they may commit very many different offences under the Penal Code, and of course it would be impossible to make a scheduled selection of offences that might be tried or might not be tried by this tribunal. As a matter of fact although Hon'ble Members have chosen to describe this trial as a very summary one, as if in fact it was a summary one under the Criminal Procedure Code, the trial will differ very little from the ordinary trial of warrant cases before a Magistrate, or a sessions case before a Sessions Judge. It may be that the evidence is not recorded in full detail, but all the other features will be the same; and it would be quite impossible, therefore, to exclude these serious offences from the jurisdiction of a special tribunal of this kind. If we were to do so we should be taking away from a Local Government the power to deal with those very cases for which it is specially asked for powers to be given under this Bill. I have already explained once that it was not intended to withdraw the ordinary criminal business of the country from the ordinary criminal courts of the country. And surely a Local Government may be trusted to send to this tribunal only those cases which it considers the ordinary courts are unable to deal with, either because they are choked with business or because the offences are so serious that the delays incidental to the ordinary hearing of cases would fail to check the outbreak of lawlessness. After this explanation I feel sure that the Council will agree with me that it is quite impossible to exclude these serious offences from this clause. The Government cannot accept this amendment."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, every one of us desires that the wicked gangs to which the Hon'ble Member has referred should be got hold of as early as practicable; but obviously what is needed for that purpose is better arrangements for their speedy arrests; there is not the same need for a speedy trial, for once an evil-doer is arrested his mischievous activities are stopped. But the Act provides for a speedy trial; everything that the Hon'ble Member has said has been in support of special provisions for a speedy trial; but as I have said, once an offender is arrested a little delay in his trial can lead to no injury to the cause of public peace or safety. The Hon'ble Member says that if we take away this clause from the Bill, we shall be taking away the very power that the Local Governments most desire to be given to them. I regret I do not at all see why the Local Governments should so particularly desire to have this clause in the Bill. The Hon'ble the Home Member says that ordinary courts are not able to deal with cases like this, that these courts are choked with business and that the disposal of such cases is unduly delayed. If that is so, that is, if the courts are choked with business, the remedy would appear to be to appoint additional Judges, and not the enacting of a drastic measure like the one before us. If there is no other reason and no other than what has been stated by the Hon'ble the Home Member for inserting the clause in question in the Bill, it seems to me that that object will be better served and can only be served by the provision of a

stronger and better police and not for the speedy trial which has been provided in the Bill.

"I hope Government will reconsider the matter and see its way to drop the clause to which, along with several other Hon'ble Members, I have drawn attention."

The motion was put and the Council divided with the following result :—

Ayes.—7.

1. The Hon'ble Mr. Ghuznavi.
2. The Hon'ble Pandit Bishan Narayan Dar.
3. The Hon'ble Pandit M. M. Malaviya.
4. The Hon'ble Sir Ibrahim Rahimtoola.
5. The Hon'ble Babu Surendra Nath Banerjee.
6. The Hon'ble Raja of Mahmudabad.
7. The Hon'ble Mr. M. S. Das.

Noes.—46.

1. His Excellency the Commander-in-Chief.
2. The Hon'ble Sir Robert Carlyle.
3. The Hon'ble Sir Harcourt Butler.
4. The Hon'ble Sir Ali Imam.
5. The Hon'ble Mr. Clark.
6. The Hon'ble Sir Reginald Craddock.
7. The Hon'ble Sir William Meyer.
8. The Hon'ble Mr. Hailey.
9. The Hon'ble Mr. Gillan.
10. The Hon'ble Mr. Cobb.
11. The Hon'ble Mr. Brunyate.
12. The Hon'ble Mr. Wheeler.
13. The Hon'ble Mr. Low.
14. The Hon'ble Mr. Sharp.
15. The Hon'ble Mr. Porter.
16. The Hon'ble Mr. Kershaw.
17. The Hon'ble General Holloway.
18. The Hon'ble Mr. Michael.
19. The Hon'ble Surgeon General Sir C. P. Lukis.
20. The Hon'ble Mr. Russell.
21. The Hon'ble Mr. Maxwell.
22. The Hon'ble Major Robertson.
23. The Hon'ble Mr. Kenrick.
24. The Hon'ble Mr. Kesteven.
25. The Hon'ble Sir William Vincent.
26. The Hon'ble Mr. Carr.
27. The Hon'ble Sardar Khan Bahadur R. J. Vakil.
28. The Hon'ble Sir Fazulbhoj Carrimbhoj.
29. The Hon'ble Mr. Donald.
30. The Hon'ble Maharaja M. C. Nandi of Kasimbazar.
31. The Hon'ble Raja Abu Jafar of Pirpur.
32. The Hon'ble Mr. Maude.
33. The Hon'ble Mr. Huda.
34. The Hon'ble Mr. McNeill.
35. The Hon'ble Rai Bahadur Sita Nath Ray.
36. The Hon'ble Lieutenant-Colonel Brooke Blakeway.
37. The Hon'ble Raja Kushalpal Singh.
38. The Hon'ble Raja Jai Chand.
39. The Hon'ble Mr. Maynard.
40. The Hon'ble Mr. Walker.
41. The Hon'ble Mr. Dadabhoy.
42. The Hon'ble Sir G. M. Chitnavis.
43. The Hon'ble Lieutenant-Colonel Gardon.
44. The Hon'ble Mr. Arbuthnot.
45. The Hon'ble Maung Mye.
46. The Hon'ble Mr. Abbott.

So the amendment was negatived.

[18TH MARCH, 1915.] [*Mr. Banerjee; Pandit Madan Mohan Malaviya; Mr. Wheeler.*]

The Hon'ble Mr. Banerjee:—"My Lord, mine is the next amendment, but as it covers the same ground, I beg leave to withdraw it."

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya.—"My Lord, I beg to move that in clause 8 (1) for 'Commissioners appointed under this Act' the following be substituted 'Special Bench constituted in accordance with the provisions of the Indian Criminal Law Amendment Act, 1908.'

"My Lord, the constitution of special courts is proposed in section 4 of the Bill. It is said that all trials under this Act shall be held by three Commissioners of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of one year, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or are advocates of a Chief Court or pleaders of ten years standing. The object evidently is to provide a court constituted by men with special qualifications, possessing both experience and ability, and that is right. But I submit that if instead of what is proposed in the Bill, the provisions of the Indian Criminal Law Amendment Act for the constitution of a special Bench of the High Court will be substituted, the Court before which offences made punishable under the proposed enactment will go, will be constituted of three judges of the High Court, who would not merely fully answer the description given in section 4 of the proposed Bill, but who would be much better qualified by experience and ability to deal with cases of exceptional character. I think, My Lord, the constitution of the Bench as I suggest will inspire a great deal more confidence and will remove much of the apprehension which may be felt otherwise over the Act."

The Hon'ble Mr. Wheeler:—"My Lord, the acceptance of the amendment would almost imply that a large portion of this Bill is not required, since the Indian Criminal Law Amendment Act, 1908, already stands in the Statute-book, and these tribunals which the Hon'ble Member seeks to introduce in this Bill can already be constituted. I think it is a matter of common knowledge that the special tribunal of the Criminal Law Amendment Act, 1908, has been very sparingly used, and that when it has been used it has proved a somewhat cumbrous machinery. It would absolutely frustrate the efficient administration of the procedure contemplated by this Bill for it to be requisite to bring the parties and witnesses to the provincial headquarters to be tried by a Bench of three judges of the High Court. There would never be enough judges to sit upon such tribunals concurrently with the discharge of their regular duties, and the expense and trouble to the parties and the delay involved would be tremendous. Also, it would be out of all proportion to the requirements of the efficient hearing of the sort of offences that will be brought before the three Commissioners to hold that they should be brought in the first instance before three judges of the chief provincial Court. I regret, My Lord, that we cannot accept the amendment."

The Hon'ble Pandit Madan Mohan Malaviya.—"My Lord, all that I would say is that the result of the amendment that I propose would be to constitute a Bench of three judges who would be far better qualified by experience and ability to deal with exceptional cases. My friend says there are not sufficient judges at present. Well, you have to appoint three Commissioners under the Bill, I ask that instead of appointing three Commissioners you should appoint three judges who would fully answer the description given in the Bill. If my amendment were accepted, three judges who are qualified to be judges of the High Court or Chief Court would be appointed. It would mean a little extra expense, but a great deal more satisfaction from the point of view of Government and the public that justice will be done and that there should be provision against the miscarriage of justice so far as it is possible."

The amendment was put and negatived.

[*Pandit Madan Mohan Malaviya; Sir Reginald Craddock; Mr. Banerjee.*] [18TH MARCH, 1915.]

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to move that in section 3 (2) the words 'or in respect of persons or classes of persons accused' be omitted. As it stands an order may be passed by the Local Government regarding a whole class of persons to be tried under the Act. There is danger that injustice may in such cases be done to any particular person who may fall within that class, and there would be no difficulty in the Government issuing orders in every individual case as it may arise. If the words are omitted it will result in this, that the Government will be able to pass orders in every single case of a person or persons whom it may be considered expedient to try under the Act. I therefore propose that these words be omitted."

The Hon'ble Sir Reginald Craddock:—"My Lord, it is not possible to accept this amendment because it is unnecessary to require that the case of every individual man shall be reported to the Local Government before it passes orders for his trial by these tribunals. These cases are committed in various districts, there may be large numbers of accused, and it is not a workable arrangement that in respect of every man, some of whom might be arrested at various times, special orders should be required. The wording of the section is necessarily drawn so as to enable the Local Government to pass general orders which would apply to the kind of cases for which it is contemplating this speedy trial. I cannot see how in any way any class of person can be prejudiced because the order is given in a particular form. If, for example, it was stated that all persons of a certain class committing dacoity in a certain district should be tried by the Commissioners, it certainly would not prejudice any of these individuals. It merely enables the Government to deal with a type of case, instead of dealing with every individual one when they find that the state of the district requires resort to this speedy method of bringing offenders to justice. I am, therefore, unable to accept the amendment."

The amendment was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I do not press the second amendment, *viz.* that in clause 3 (2) the words 'or classes of persons' be omitted, because as the first one has not been accepted this will not be. I beg leave to withdraw it."

The amendment was by permission withdrawn.

The Hon'ble Mr. Banerjee:—"My Lord, I beg to withdraw the amendment which stands against my name, that is that in clause 3 (2) the words 'or classes of persons' be omitted."

The amendment was by permission withdrawn.

The Hon'ble Mr. Banerjee:—"My Lord, I beg to move that in clause 3 (3) the words, 'but, save as aforesaid, an order under that sub-section may be made in respect of or may include any person accused of any offence referred to therein whether such offence was committed before or after the commencement of this Act,' be omitted."

"My Lord, the effect of these words is to make this Act retrospective. A man commits an offence to-day: two months hence, a Commission is appointed: he will be tried by that Commission, and he will thus be deprived of those rights which, at the time the offence was committed, he undoubtedly possessed. Those rights were trial according to the ordinary law and a right of appeal if he was convicted as a result of that trial. All those rights will be taken away from him although at the time when he committed that offence the Commission had not been formed. To give retrospective effect to any legislation is a very unusual proceeding, and I do hope that, in the circumstances, the Hon'ble Member in charge of the Bill will see his way to accept the amendment which I have laid before this Council."

[18TH MARCH, 1915.] [*Mr. Ghuznavi; Mr. Wheeler; Sir Reginald Craddock; Pandit Madan Mohan Malaviya.*]

The Hon'ble Mr. Ghuznavi :—" My Lord, I beg to support this amendment."

The Hon'ble Mr. Wheeler :—" My Lord, it might have been possible to accept this amendment had Your Excellency's Government, with great prescience, many months ago, foreseeing that circumstances might arise which would necessitate this legislation, introduced and passed it then. But as was explained by the Hon'ble Sir Reginald Craddock this morning, it has been the policy of Your Excellency's Government to maintain the administration of the country on the ordinary lines for as long as possible, with the result that this measure is being introduced after the circumstances which necessitate its introduction have actually arisen. There may be cases which have already occurred which are of the kind to which it is desired to apply the procedure of this Bill, and for that reason that clause was inserted, and it is submitted that it should stand."

The amendment was put and negatived.

The question that clause 3 stand as part of the Bill was put and agreed to.

The Hon'ble Sir Reginald Craddock :—" I now move that clause 4 stand as part of the Bill."

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, I beg leave to withdraw the next amendment, namely :—

'That from clause 4 (2) the words 'class of accused' be omitted.

The amendment was by permission withdrawn.

The Hon'ble Mr. Ghuznavi :—" My Lord, I desire to move an amendment which stands against my name. It is this, that in clause 4 (3) the words 'at least' be omitted.

" The reason why I move this amendment is as follows. As far as I have been able to judge from reading this Bill and as far as I have been able to gather the intention of Government, I take it that the Government intend to create a special tribunal consisting of three Commissioners, of whom one shall always be a non-official. If therefore these two words 'at least' are allowed to remain, it will be possible in that case on some future occasion to constitute a special tribunal with three official judges or three officials. Therefore, if these two words are omitted, it will go a long way to reassure the public outside this Council as well as perhaps some of my friends within this Council who are of the opinion that I occasionally read them a lecture, although I think that my lecture is always wholesome and on this occasion it will do them good.

" With these words I beg to express the hope that the Hon'ble the Home Member will accept this little amendment which I have moved."

The Hon'ble Pandit Madan Mohan Malaviya :—" My Lord, I beg to support this amendment. Under the High Courts Act there is a provision for the appointment of a certain number of Barrister Judges to every High Court. Parliament has considered it desirable in the interests of maintaining the best standard of justice, that this provision should be in the Act and this has been in force throughout up to this time. The tribunal proposed under the Bill is going to be a special tribunal, and it is highly desirable that there should be provision for the appointment in such a court of a lawyer who had not served either as a Sessions or Additional Sessions Judge, and who would therefore be either a person who is a barrister or a vakil practising independently in the courts. From that point of view, it is very desirable that the words 'at least' should be omitted."

[*Sir Reginald Craddock ; Mr. Dadabhoy ; Pandit Madan Mohan Malaviya.*] [18TH MARCH, 1915.]

The Hon'ble Sir Reginald Craddock:—"My Lord, the insertion of the words 'at least' was intended to insure that two of the three persons who constituted this Court—it might be all three—but at least two should be persons who had some judicial experience, or were qualified as described in sub-clause (3). It may not always be possible to constitute a tribunal in which all three shall be judges who answer to certain tests of service or other qualifications, and the number of judges available at any one time in a Province are not so numerous as to make it possible to constitute a number of these tribunals if all three Commissioners have to have these qualifications. The Government, therefore, considered it to be a very adequate safeguard in the constitution of these courts that at least two of these Commissioners should be qualified in this way, and therefore they are not prepared to accept an amendment of this kind if the intention of the amendment is that all three should have these special qualifications."

The amendment was put and negatived.

The Hon'ble Mr. Dadabhoy:—"My Lord, I beg to move that, in clause 4 (3), for the words 'one year' the words 'not less than three years' be substituted. I have very few words to say in support of this amendment, and I do hope that this amendment of mine will commend itself to the Hon'ble the Home Member who has very extensive administrative experience. I do not desire to say anything more to-day on this subject than is absolutely necessary. I am firmly of opinion that when, under this Bill, summary powers have been given to the three Commissioners, it is necessary that judges of experience should be chosen. In clause 11, the last clause of this Bill, Hon'ble Members will perceive there is a distinct provision that 'no order under this Act shall be called in question in any court, and no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.'

"Hon'ble Members will therefore see what wide and extensive powers the Commissioners will have, and it is only right and proper that judicial officers of experience should be on this Commission. My Lord, I myself have been at the bar for many years; I have come in close contact with the judicial work in my own Province; and I for one would not trust Additional Sessions Judges and Sessions Judges of one year's standing with this great work."

The Hon'ble Sir Reginald Craddock:—"I may save time by intervening to say that the Government are prepared to accept this amendment and provide that the judges shall have these three years' experience which the Hon'ble Mr. Dadabhoy desires."

The amendment was put and agreed to.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to move that in section 4 (2) the following words be omitted,— 'Of whom at least two shall be persons who have served as Sessions Judges or Additional Sessions Judges for a period of one year' (or three years as now).

"The section will then run:—

'All trials under this Act shall be held by three Commissioners qualified under section 2 of the Indian High Courts Act, 1861, for appointment as Judges of a High Court or as Advocates of a Chief Court or Pleaders of 10 years' standing.'

"My Lord, it is not surprising that the Hon'ble the Home Member should have more faith in members of the Service of which he is a distinguished representative than in the members of the Bar. But, My Lord, a more sound rule than the one which appeals to the Hon'ble Member prevails in England, where a large number of appointments of Judges are made from among lawyers who are practising and have practised for some time at the Bar. The result of the amendment which I propose would be to secure a much better class of lawyers as Judges on the proposed Bench. I commend the amendment to the consideration of the Government."

[18TH MARCH, 1915.] [*Mr. Wheeler ; Sir Reginald Craddock ; Pandit Madan Mohan Malaviya.*]

The Hon'ble Mr. Wheeler :—“My Lord, I had hoped that after the acceptance of the Hon'ble Mr. Dadabhoy's amendment, which goes far to secure the experience of the Sessions and Additional Sessions Judges who may be appointed to this tribunal, this amendment might have been withdrawn. Its effect is to further tie the hands of the Local Government, who may have to select Commissioners, to people of particular qualifications, and I think it should be judged largely on its administrative merits. The section, as it at present stands, insures the essential point that on the tribunal the trained judicial element will always preponderate. That being so, it is surely not an unreasonable measure of elasticity to prescribe no special condition in respect of the third member. Should the cases to be heard be numerous it may not always be administratively easy to find the requisite two Commissioners of particular qualifications, and a certain amount of discretion as to the person who can most suitably be appointed as third Commissioner may well be left. With the safeguard of the necessary retention of the judicial majority, the discretionary power as regards the third member can really give little cause for complaint”.

The amendment was put and negatived.

The question that clause 4 as amended stand as part of the Bill was then put and agreed to”.

The Hon'ble Sir Reginald Craddock :—“I now move that clause 5 stand as part of the Bill”.

The Hon'ble Pandit Madan Mohan Malaviya :—“My Lord, I beg to move that from the proviso to clause 5 the following words be omitted, *viz.*, ‘shall make a memorandum only of the substance of the evidence of each witness examined, and’. The result of which will be that the proviso will stand thus :—

‘Provided that such Commissioners shall not be bound to adjourn any trial for any purpose unless such adjournment is, in their opinion, necessary in the interests of justice’.

“My Lord, under section 9 a special rule of evidence is provided. That rule of evidence is very much what we find in the Indian Criminal Law Amendment Act, section 13. The Legislature thought fit in passing the Indian Criminal Law Amendment Act to lay down that ‘notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced, and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused’. This has been practically reproduced in section 9 of the Bill before us. But the Bill goes far beyond this in the proviso to section 5. To lay down that the Commissioners shall make only a memorandum of the substance of the evidence of each witness, is, I submit, unnecessary and dangerous. The Commissioners may hear a case, and if they take down only the substance of the statements of witnesses, they may, when they come to read the evidence as a whole, miss some point which may lead to grave injustice. I think, as no appeal is provided for, as the judgments of the Commissioners are to be final and conclusive, it is desirable that the evidence should be recorded in full as it is required to be recorded under the Criminal Procedure Code”.

The Hon'ble Sir Reginald Craddock :—“My Lord, the procedure provided under section 5 is intended to facilitate a speedy trial, which is the object of this legislation. The detailed record of evidence that is taken down in our courts is taken down in full in order that the appellate court may have the means of judging the facts upon that record. When, however, no appeals are allowed from the decision of the court, it is clear that a very long and detailed statement of evidence is not necessary. It has to be judged in this

[*Sir Reginald Craddock; Mr. Dadabhoj; Mr. Das; Sir Ibrahim Rahimtoola.*] [18TH MARCH, 1915.]

case by the people who hear that evidence and not by people who have not heard the evidence and who have to judge on a written record. Therefore, to provide that the Commissioners should have the whole of the evidence taken down in detail, would be to interfere considerably with the object of the trial, which is to be a speedy one. No doubt, in practice, the Commissioners would record such evidence as they thought proper in order to assist their judgment in the case. But it is in accordance with the whole object of this legislation to give them the option of making a memorandum only of the substance of the evidence, and I think that the discretion as to the exact amount the Commissioners should take down in writing may well be left to them.

"I am unable, therefore, on behalf of the Government, to accept this amendment."

The amendment was put and negatived.

The Hon'ble Mr. Dadabhoj :—"My Lord, I beg to move that in clause 5 (2) after the word 'prevail', the following words be added 'But in no case of difference of opinion shall a sentence of death be passed.'

"My Lord, the amendment which I now press upon the attention of the Council is not purely a sentimental one. It is founded on the traditions of British justice; it is based on the wide principles of British justice; it goes to the root, I say, of British justice. In this case summary powers are given to these Commissioners; they will have powers of life and death; the inquiry which they will have to make will be of an extremely summary nature and character; they will not be bound to observe fully the rules of evidence which the Evidence Act imposes in ordinary procedure. Even under clause 9 of the Bill very extensive powers have been given to use the statement of a person who is dead or, whose disappearance or incapacity to give evidence has, in the opinion of the Commissioners, been caused in the interests of the accused. My Lord, I am perfectly aware that under the Crimes Act the Special Tribunal enjoys a similar privilege; that is, in case of a difference of opinion the judgment of the majority of the judges prevails, even when a sentence of death is passed.

"But, My Lord, you can hardly compare the experience, the profound legal knowledge of High Court Judges with those of the Commissioners that will be appointed; and I therefore contend that it will be not quite safe for people going up for their trial before these tribunals that in the case of a difference of opinion the maximum penalty of the law should be pronounced.

"My Lord, the object of this legislation is doubtless a deterrent one; but will its deterrent effect be taken away if, instead of the maximum penalty of the law, a sentence of penal servitude for life is substituted? My Lord, we are all desirous of co-operating with Government in passing this emergent piece of legislation. We have all shown this morning how anxious we are to help Government in this crisis, in this hour of the Empire's need. But, My Lord, at the same time, I do think that justice should be combined with clemency, and where there is a difference of opinion between the Judges as regards the guilt of an offender, it is in consonance with the principles of British justice, it is in consonance with the ideas of all Englishmen, that the benefit of the doubt in that case should be given to the accused, and the maximum penalty of the law should not be pronounced.

"With these words, my Lord, I request that clause 5 (2) be amended in the way I suggest, which can be done without detriment to the provisions of this Act."

The Hon'ble Mr. Das :—"My Lord, I support the amendment."

The Hon'ble Sir Ibrahim Rahimtoola :—"My Lord, I should also like to support the amendment. When the proceedings under this Act are going to be largely of a summary character, I think it is very desirable

[18TH MARCH, 1915.]

[*Sir Ibrahim Rahimtoola; Sir Gangadhar Chitnavis; Sir Fazulbhoy Currimbhoy; Mr. Banerjee; Pandit Madan Mohan Malaviya; Mr. Ghuznavi; Sir Reginald Craddock.*]

that the extreme penalty of the law should not be allowed whenever there is a difference of opinion among the judicial officers charged with the trial of the cases. I trust that the appeal which we are making to Your Excellency will be accepted and that the extreme penalty of the law will not be awarded in cases in which the Commissioners appointed under this emergency legislation are divided as to the guilt of the accused."

The Hon'ble Sir Gangadhar Chitnavis:—"My Lord, I support the amendment."

The Hon'ble Sir Fazulbhoy Currimbhoy:—"I fully endorse the views expressed by the Hon'ble Mover and the other Members, and I support the amendment."

The Hon'ble Mr. Banerjee:—"My Lord, I have given notice of the same amendment and I thoroughly associate myself with the observations made by the Hon'ble Mover. Here is a man tried under a summary procedure, and there is no appeal for him against the sentence of the Commissioners; and when there is a difference of opinion there is always an element of doubt introduced as to the soundness of a conviction. Under these circumstances, it seems to me to be hard—almost unfair—to pass the extreme penalty of the law upon a man thus situated. I hope, therefore, that the Hon'ble Member in charge of the Bill will see his way to accept this amendment."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I have given notice of a similar amendment, and I beg to support the amendment before us. My Lord, if the amendment is accepted the result will be that where out of three judges one would be in doubt as to whether the accused was guilty or not, in that case the accused will have, and he should have the benefit of the doubt. That is a principle of English law for which Englishmen have justly claimed great credit. We admire the system of English justice because of that principle. I fear, My Lord, that if the section 5 (2) of the Bill stands as it does in the Bill, there will be a very great departure from the aforesaid established principle for which there is no justification. I hope the Government will see their way to accepting the amendment."

The Hon'ble Mr. Ghuznavi:—"My Lord, I desire to endorse every word which has been uttered by my friend Mr. Dadabhoy with regard to his amendment. Justice should always be tempered with mercy in a case of this kind, and I hope that Government will see their way to accepting this amendment."

The Hon'ble Sir Reginald Craddock:—"My Lord, this amendment has received a certain amount of support from several Hon'ble Members of this Council, and I should like to view it sympathetically; but I think there is to some extent a confusion of ideas in this matter. The clause provides that, in the event of any difference of opinion between the Commissioners, the opinion of the majority should prevail. That difference might be in respect of the conviction; but the amendment bears no relation whatever to the question of conviction. No doubt it is possible that in some cases one member of the Court might wish to give the benefit of the doubt to the accused person, and the majority of the Court (*i.e.*, the other two members) might find him guilty. It would be entirely contrary to all the principles on which all tribunals are constituted that the opinion of the minority should decide as to whether the man is guilty or not. Nor does the amendment moved by the Hon'ble Mr. Dadabhoy actually amount to that, although the arguments that he put forward would appear to suggest that that is what he really contemplates. In effect, what the amend-

ment really proposes is that, in the event of a difference of opinion, whether it be of sentence or of conviction, no sentence of death should be passed. Well, there would possibly be some case for that if you took a hasty opinion on it. At first sight it might seem a reasonable proposition. As a matter of fact, under our existing law, a Sessions Judge may sometimes refrain from passing a sentence of death, and it may be enhanced to a sentence of death by a High Court. So that our existing law recognises that there may be a difference of opinion about a sentence in which the opinion in favour of a sentence of death shall prevail. Now, in this particular case, what may often happen may be that there may be a conviction for murder, perhaps of an aggravated kind, and the majority of the tribunal may consider that the capital sentence is the only one which will meet the case. One of the Judges may think that the case might be met by the sentence of transportation. In that case of course the opinion of the two must, in accordance with all precedent, prevail. But there is a very considerable safeguard in such cases, and in respect of that I would draw the attention of the Council to sub-clause (2) of clause 8, where it is made quite clear that the power of the Governor General in Council or the Local Government to make orders under section 401 or 402 of the Code of Criminal Procedure will remain unimpaired by the Bill. Clearly, then, in such a case the accused person who has been sentenced to death would have a strong point in his favour in a memorial to the Local Government and then to the Governor General in Council, that one of the members of the Court had not been in favour of inflicting the death sentence ; and the fact that this third Judge had been in favour of the more lenient course would be on record and would receive due weight from the Local Government and from the Governor General in Council. We consider, my Lord, that these safeguards are ample to ensure that a man for whom the capital sentence might be considered to be extra severe should have ample opportunity of having considerations in his favour given weight to by the executive authority, and that the existence of this safeguard renders it unnecessary to depart from all precedent in the case of these tribunals in such a way as to prescribe that the opinion of the minority shall prevail over the opinion of the majority.

" I hope, My Lord, that the Council will rest satisfied with this explanation of the case, and will feel re-assured that it is improbable that extra severity will ever be exercised in the case of persons convicted of crimes by this procedure."

The Hon'ble Mr. Dadabhoy :—" My Lord, I have heard with great interest what the Hon'ble the Home Member had to say in reply to my amendment, but, with great respect for his opinion, I beg to say that the Hon'ble the Home Member is under some misapprehension as regards the interpretation of sub-clause (2). In that clause a difference of opinion is provided for both as regards the finding of the Court and the sentence to be passed by it. I am not at present questioning the finding of the Commissioners. In the matter of sentence only my amendment will apply. Clause 8 (2), no doubt, gives powers to the Local Government to interfere in this matter ; but my Hon'ble friend has probably not noticed that this inquiry will be of a very summary nature. The evidence that will be recorded will be brief, and the provisions of the Evidence Act and the Criminal Procedure Code will not be rigidly followed. Will the Local Government be in a position to form, on such an imperfect record, their decisive opinion on the case ? Who will be the best judges, the Commissioners who heard the case, who heard the evidence and who recorded brief notes of the evidence, but who also had the opportunity of marking the demeanour of the witnesses, or the Local Government which has before it an imperfect record of the case ? I submit, therefore, that the objection that has been raised to my amendment is neither valid nor convincing. I appeal to this Council, to the Hon'ble Members, in the name of justice, in the name of humanity, to accept my amendment. As you are all aware it is a cardinal principle of British justice that a hundred guilty persons may go off scot-free rather than one innocent man should be hanged ; and I therefore ask you to give your support to this most reasonable amendment. My Lord, I now request you to put my amendment to the vote."

[18TH MARCH, 1915.] [*Mr. Dadabhoy; Mr. Banerjee; Pandit Madan Mohan Malaviya; Sir Reginald Craddock.*]

"The amendment was put and the Council divided with the following result :—

Ayes—16.

1. The Hon'ble Mr. Ghuznavi.
2. The Hon'ble Pundit Bishan Narayan Dar.
3. The Hon'ble Pandit M. M. Malaviya.
4. The Hon'ble Mr. R. R. Venkataranga.
5. The Hon'ble Sir Ibrahim Rahimtoola.
6. The Hon'ble Sir Fazulbhoj Currimbhoy.
7. The Hon'ble Mr Surendra Nath Banerjee.
8. The Hon'ble Maharaja M. C. Nandi of Kasimbazar.
9. The Hon'ble Raja of Mahmudabad.
10. The Hon'ble Raja Abu Jafar of Pirpur.
11. The Hon'ble Mr. M. S. Das.
12. The Hon'ble Mr. Huda.
13. The Hon'ble Raja Kushalpal Singh.
14. The Hon'ble Raja Jai Chand.
15. The Hon'ble Mr. Dadabhoy.
16. The Hon'ble Sir Gangadhar Chitnavis.

Noes—36.

1. His Excellency the Commander-in-Chief.
2. The Hon'ble Sir Robert Carlyle.
3. The Hon'ble Sir Harcourt Butler.
4. The Hon'ble Sir Ali Imam.
5. The Hon'ble Mr. Clark.
6. The Hon'ble Sir Reginald Craddock.
7. The Hon'ble Sir William Meyer.
8. The Hon'ble Mr. Hailey.
9. The Hon'ble Mr. Gillan.
10. The Hon'ble Mr. Cobb.
11. The Hon'ble Mr. Brunyate.
12. The Hon'ble Mr. Wheeler.
13. The Hon'ble Mr. Low.
14. The Hon'ble Mr. Sharp.
15. The Hon'ble Mr. Porter.
16. The Hon'ble Mr. Kershaw.
17. The Hon'ble Mr. Michael.
18. The Hon'ble General Holloway.
19. The Hon'ble Surgeon-General Sir C. P. Lukis.
20. The Hon'ble Mr. Russell.
21. The Hon'ble Mr. Maxwell.
22. The Hon'ble Major Robertson.
23. The Hon'ble Mr. Kenrick.
24. The Hon'ble Mr. Kesteven.
25. The Hon'ble Sir William Vincent.
26. The Hon'ble Mr. Carr.
27. The Hon'ble Mr. Donald.
28. The Hon'ble Mr. Maude.
29. The Hon'ble Mr. McNeill.
30. The Hon'ble Lt.-Col. Brooke Blakeway.
31. The Hon'ble Mr. Maynard.
32. The Hon'ble Mr. Walker.
33. The Hon'ble Lt.-Col. Gurdon.
34. The Hon'ble Mr. Arbuthnot.
35. The Hon'ble Maung Mye.
36. The Hon'ble Mr. Abbott.

So the amendment was negatived.

The Hon'ble Mr. Banerjee:—"My Lord, I beg to withdraw the amendment as regards this particular section, namely :—

'That to clause 5 (2) the following words be added, namely :—'but in such a case sentence of death shall not be passed'."

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to withdraw my proposed amendment to this section, namely, that to clause 5 (2) the following words be added, namely :—'But no sentence of death shall in such a case be passed'."

The amendment was by permission withdrawn.

"The motion that clause 5 stand as part of the Bill was then put and agreed to."

The Hon'ble Sir Reginald Craddock:—"My Lord, I now move that clause 6 stand as it is in the Bill."

The Hon'ble Pundit Madan Mohan Malaviya:—"My Lord, I beg to withdraw the amendment, of which I have given notice, viz., that the words 'and conclusive' be omitted."

"The amendment was by permission withdrawn."

[*Mr. Banerjee; Pandit Madan Mohan Malaviya; Sir Reginald Craddock.*] [18TH MARCH, 1915.]

The Hon'ble Mr. Banerjee:—"My Lord, I beg to withdraw the amendment as to clause 6 that stands against my name."

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I beg to move that the last two lines of clause 6 (1) be omitted, *viz.* :—

'And no order of confirmation shall be necessary in the case of any sentence passed by them.'

The Hon'ble Sir Reginald Craddock:—"My Lord, the last two lines of clause 6 (1) that the Hon'ble Mr. Malaviya wishes omitted are 'no order of confirmation shall be necessary in the case of any sentence passed by them.' My Lord, if this amendment were accepted it would have the practical result of giving a power of appeal, because if the sentence is subject to confirmation it is practically impossible for the question of the guilt or innocence of a man to be left out of consideration. The Sessions Judge can ordinarily pass all sentences except the sentence of death without confirmation, and the Bill provides that in lieu of the sentence of confirmation which is now required you have a Court of three Judges to decide a man's guilt or innocence and the propriety of the sentence. The introduction of a confirmation procedure would therefore strike at the root of the speedy trial procedure which the Bill is intended to provide, and therefore it cannot be accepted by Government."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, after all that the Hon'ble the Home Member has said it yet seems to me that there would not be much loss of time caused by the adoption of the amendment proposed. The accused would have been convicted by the Special Commissioners and if the extreme sentence is carried out after fifteen days, there would not be any loss to the country or to the cause of justice. In the case of a death sentence the accused ought to be given an opportunity of having his case revised by the High Court because it may sometimes prevent a grave injustice. This, as I mentioned before, is what happened in the case of the German Consul at Sunderland, in which the Privy Council upset the decision of the High Court of England who had convicted and sentenced him to death. Cases of a similar miscarriage of justice ought to be provided against. Nothing would be lost by providing for them in this Bill."

The motion was put and negatived.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I move that clause 6, sub-clause (2), which runs as follows, be omitted :—

'6 (2) If in any trial under this Act it is proved that the accused person has committed any offence whether referred to in section 3, or in any order under that section or not, the Commissioners may convict such accused person of such offence and pass any sentence authorised by law for the punishment thereof.'

"Now, my Lord, this Act purports to provide for the trial of certain offences to which a special significance attaches by reason of the extraordinary circumstances of the war. But by virtue of this provision every offence of an ordinary nature, which may be triable otherwise by the ordinary courts of justice is brought under the purview of this Act. Suppose a person has been tried for one of the offences referred to in section 8 and an order is made sentencing him to 5 years' imprisonment; and suppose that there is another offence of an ordinary kind of which he has been guilty. If he is tried for this other offence in the ordinary courts, he will have the advantage of an opportunity of defending himself according to the ordinary regular procedure which the law has provided, but if the Special Commissioners are empowered to convict such an accused person of such an offence not falling under the purview of this special measure, then the man is unjustly deprived of the right of being tried for ordinary offences by the ordinary courts of law, which the Hon'ble Member has told us this Act does not purport to take away. My Lord, I submit that this clause should not find a place in the Bill, and should be omitted."

[18TH MARCH, 1915.] [Mr. Wheeler; Sir Reginald Craddock; Mr. Banerjee.]

The Hon'ble Mr. Wheeler:—"My Lord, the sub-clause merely provides for a point of procedure which may arise and enables it to be dealt without prejudice to anybody. It frequently happens that accused persons are sent before Courts on certain charges; after hearing the evidence and weighing the whole matter the Court considers that an offence, other than that charged, has been committed and convicts of that. If the clause were omitted, and if the Commissioners were able only to convict a person of one of the specific offences mentioned in the Bill, then if they are of opinion that the offence actually committed is not specifically covered by the Bill, the whole proceedings would presumably have to be re-opened, it may be before a Magistrate, and the accused instead of having had one trial before three Commissioners, of whom two must have had considerable judicial experience, would have to be re-tried by a single Magistrate. That would surely neither help the man nor benefit the cause of justice. I submit, My Lord, that the clause is reasonable."

The amendment was put and negatived.

The motion that clause 6 stand as part of the Bill was then put and agreed to.

The Hon'ble Sir Reginald Craddock:—"My Lord, I now move that clause 7 stand as part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir Reginald Craddock:—"My Lord, I move that clause 8 stand as part of the Bill."

The Hon'ble Mr. Banerjee:—"My Lord, I beg to move the following amendment, that in clause 8 (1) for the words 'and no Court' the words 'the High Court alone' be substituted. The effect of that would be to give a right of appeal to the High Court in the case of the conviction of an individual. The section takes away the right of appeal. Under my amendment it is proposed that the right of appeal should be given. My Lord, the sentence in many cases would be so heavy and the procedure so summary that it seems to me as a matter of justice that there ought to be some authority to which an appeal might be preferred. The High Court is the highest authority and, having regard to this consideration, the summary nature of the procedure, and also to the absence of the safeguards which are provided by the ordinary law, I submit that it is only fair to the convicted person that he should have the right of appeal and that that right of appeal, I recommend, should be exercised by the High Court."

The Hon'ble Sir Reginald Craddock:—"My Lord, the amendment moved by the Hon'ble Mr. Banerjee is to substitute the words 'the High Court alone' for the words 'and no Court.' He argued that it was necessary to give the right of appeal to the convicted persons in such cases, although, as a matter of fact, his amendment would not have that effect at all. It would give certain powers of revision to the High Court, and that is all. Well, My Lord, in introducing the Bill and explaining the necessity for a speedier method of administering justice, I dwelt strongly upon the necessity that there was that punishment should follow quickly on the crime, and that all the proceedings which are allowed in ordinary times to pursue their leisurely course, should be quickened up. Therefore to give powers of revision to the High Court in cases of this kind, or powers of appeal as the Hon'ble Member wanted, though his amendment did not convey that, would be merely to once more introduce the same kind of delay which by this legislation it is sought to avoid. I cannot imagine anyone who has voted for the principle of the Bill supporting this amendment. If the principle of this Bill is accepted, then the amendment cannot possibly be accepted."

The amendment was put and negatived.

The motion that clause 8 stand as part of the Bill was put and agreed to.

The Hon'ble Sir Reginald Craddock:—"My Lord, I now move that clause 9 should stand as part of the Bill."

The motion was put and agreed to.

[*Sir Reginald Craddock; Mr. Banerjee; Pandit Madan Mohan Malaviya.*] [18TH MARCH, 1915.]

The Hon'ble Sir Reginald Craddock:—"My Lord, I now move that clause 10 should stand as part of the Bill."

The Hon'ble Mr. Banerjee:—"My Lord, I beg to withdraw the amendment to clause 10 (ii) that stands against my name."

The amendment was by permission withdrawn.

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, I also beg for leave to withdraw my two amendments to clause 10 (ii)."

Both amendments were by permission withdrawn.

The motion that clause 10 should stand as part of the Bill was then put and agreed to.

The Hon'ble Sir Reginald Craddock:—"My Lord, I now move that clause 11 should stand as part of the Bill."

The motion was put and agreed to.

The Hon'ble Sir Reginald Craddock:—"My Lord, I now move that the Bill be passed. It has been a source of satisfaction to the Government to find how hearty has been the support accorded by the Council to this measure. There have been points in it upon which amendments have been suggested, and in one or two cases we were able to accept those amendments. There were others in which I should have been glad to agree to some of the amendments had it been possible to do so without interfering with the efficiency of the new law. I think it is most gratifying to find how heartily, and how loyally—although the task is never a pleasant one—the Hon'ble Members have come to the help of Government in this matter.

"My Lord, in the course of the debate remarks have now and then been dropped which would indicate that some members have rather over-estimated the character of the trial before these tribunals as being of a very summary nature, and I should like to repeat and lay some stress upon it that the law of evidence in this case is not altered except in one particular, for which we have a precedent in the Act of 1908, namely, that when a witness has clearly been got rid of in order to avoid his giving evidence, then any statement of his recorded before a Magistrate may be put in as evidence. With that one exception which, as I have said, has a precedent, the law of evidence will continue to guide these Special Commissioners in the trial of cases, and although the powers given are drastic, yet, as most Hon'ble Members will, I think, readily admit, this criticism has been levelled against many measures that have been brought before our Councils, and in nearly every case—perhaps in every case—many of the fears expressed at the time have been found to have been groundless. In the administration of an Act of this kind they may rest assured that under Your Excellency's direction the action taken will be not more stringent than the necessities of the case warrant, and I think that Local Governments may be fully trusted not in any way to abuse this power of handing cases over to special tribunals. With these remarks, My Lord, I ask that the Bill be passed."

The motion was put and agreed to.

The Council adjourned to Monday, the 22nd March, 1915.

W. H. VINCENT,

Secretary to the Government of India,

Legislative Department.

DELHI:

The 26th March, 1915.