

The Rowlatt Bill.

(Criminal Law Emergency Bill)

Debate in the Imperial Legislative Council.

Delhi—6th February 1919.

On the Motion to Refer the Bill to Select Committee.

The Hon'ble Sir William Vincent—"My Lord, my task in explaining the reasons for introducing this Bill has been considerably lightened by the discussion on the Resolution brought by the Hon'ble Mr. Khaparde last Session and I will endeavour to avoid repeating to-day what I then said. At the same time it will be my duty to place before the Council salient facts connected with this measure.

"As the Council are aware for some time before the war the Government of India were faced with the difficulty of dealing with a number of revolutionary conspiracies of which there were several sub-divisions. The intention of these conspiracies was by dacoity, murder and other crimes of violence to promote a rising against the British Government and to render the administration of this country impossible. Owing to lack of any effective measures for dealing with this conspiracy, the movement gained considerable strength, and either before the war or shortly after the inception of the war, the difficulty of the situation was complicated because it received material assistance from the King's enemies. It attained indeed such serious proportions that it was really subversive of all good government in parts of this country.

"It was impossible to cope with this movement under the normal law, and if Hon'ble Members will read the Report of the Rowlatt Committee, upon which the present legislation is based, they will find confirmation of this not only in the findings of the authors of the Report, but also in the figures which they cite. It will be seen that from 1909 up to the date of the Report there were no less than 311 offences and attempts at offences connected with this revolutionary movement, in which 1,038 persons were known to be implicated.

Out of that number, 64 only were convicted. In 1915, the Defence of India Act was passed, mainly in connection with certain violent outbreaks of crime in the Punjab. It was not however, used to

any great extent in Bengal though it may have been used to a small extent there. The result was that the revolutionary movement gained further strength, and in 1915 and 1916 there were 64 outrages including 14 murders, 8 of the murdered people being policemen.

The Act was then enforced. I think that the specific reason for enforcing it was particularly the murder of Deputy Superintendent Basanta Chatterji. I am not positive on the point as I speak from memory. The result was that the outrages were at once reduced and from January 1917 to February 1918, I believe the total number was 10. I think I am right in saying also that during the last quarter of 1918 there were no revolutionary outrages at all. The obvious conclusion from this is that the measures taken by the Bengal Government (I am citing the Bengal Government because the movement was particularly prevalent there and illustrates the position) have been effective. The Council will see indeed that the Bengal Government has been singularly successful in dealing in this way with revolutionary crime; the success of these efforts may also further be gauged from letters which revolutionaries have themselves written. Here is one :—

“Armed rising was imminent in other provinces. We could not lag behind. Government got the scent and was on the alert. Some of our best men were lost. Unfortunately at last we had to drop the idea of an immediate rising. Those local organisations are still intact and can be developed if required.

“In another letter which I have here, one of these revolutionaries says :—

“The condition here beggars all description. Trusted friends can no longer be trusted with secrets. No one wants to see us. The guardians hate us more than the enemies. (I am not surprised at that.) The students are anxious to avoid us. Those who were eager to talk to us now avoid us.

“I cite these letters and figures to show that the movement was effectively scotched by the Government under the powers conferred on it by the Defence of India Act. I am glad also to say that the Bengal Government have at once taken advantage of the situation to release a very large number of men whom they had under restriction. A recent report of a debate in the Bengal Council indicates that out of 1,062 detainees 677 have already been released on guarantee. Of the rest, 385 are subject to restrictions of domicile only, 125 being domiciled in their own homes.

Confession of failure of Govt.

“Well, my Lord, during the progress of these operations, the Rowlatt Report, as it is commonly called, was published. In it certain recommendations were made for legislation to enable the Government of India effectively to cope with the disorder. The position as it appeared to the Government of India was this. We

had been unable effectively to cope with this movement under the normal law. We had been foiled in all our efforts. We then took restrictive measures, and we have been, or really the Local Government has been, singularly successful in dealing with it. I think if you read the Report the vital propositions are that under pre-war conditions the machinery of law and order was unfitted to cope with lawlessness of a particular type; that the ending of the war with its emergency legislation really saved the peace of India by providing machinery which could deal with this lawlessness; and that it is unsafe for us now to revert to the previous condition of affairs, in which these anarchical forces were allowed unrestricted license to prosecute their designs. It is on the basis of this Report that we have undertaken this legislation. But before I explain exactly what the details of the Bill are, I think I ought to make one point quite clear, and that is, that this Bill is in no sense aimed at political movements properly so called. It is definitely and distinctly intended and framed to cope with seditious crime, and it differs very materially also in its scope from the Defence of India Act. It is not, if I may say so, nearly as wide as that Act; and, so far as I am able to interpret it, it cannot be used against any activities other than seditious activities, even though they may endanger or tend to endanger the public safety. I think it is necessary to emphasise this fact, because there seems to be in some quarters a misapprehension on the point.

Provisions of the Bill.

"The Bill itself is divided into five parts. The first part provides for the speedy trial of offences. It can only be used or brought into operation when the Governor General in Council is satisfied that scheduled offences are prevalent in the whole or any part of British India, and that it is expedient to provide for their speedy trial. Put very shortly, the part enables such offences to be tried by a strong Court consisting of three High Court Judges expeditiously without commitment and with no right of appeal. The first part also makes provision for trials being held in case of need in the locality or near the locality where the offence was committed, and also for trials *in camera*. Another point of importance in this part of the Bill is contained in clause 17, which allows the statements of persons not examined as witnesses to be used in evidence in certain circumstances. We know that witnesses have, after their statements have been recorded, been murdered and we seek to remove at least the temptation to murder these witnesses and to preserve their testimony. Another point of great importance in this part of the Bill is that we now propose to allow accused persons to give evidence on their own behalf. They are not forced to do so. They may do so or not as they like, so that those who are innocent

may have full opportunity for clearing themselves. This last provision of the Bill is in accordance, I believe, exactly with the law which prevails in England.

"Part II of the Bill deals with preventive measures and with Part III is probably the part which will attract more attention. It can only be brought into operation if the Governor General in Council is satisfied that movements which are in his opinion likely to lead to the commission of offences against the State are being extensively promoted. Now if the Members of this Council will look at the Report itself, they will see that it is admitted that punitive measures alone can be of little effect in the repression of this sedition; and it is for that reason that they have recommended these preventive measures. The powers of the local Government where this part is brought into operation can be exercised only in respect of persons reasonably believed to be or to have been actively concerned in such area in any movement of the nature referred to in section 20, that is, a movement likely to lead to the commission of offences against the State. In such cases the Local Government may either order the person so concerned to furnish security or to notify his residence, or to reside in a particular area or to abstain from any act specified or finally to report himself to the police. In order to ensure that the powers of Government are not exercised without reason, the Bill provides for a safeguard in the constitution of an investigating authority which is to examine the material upon which orders against any person are framed. This investigating authority is to include one judicial officer and one non-official Indian. Further, in order that the interests of any person subjected to an order may be adequately protected, the Bill provides for the constitution of Visiting Committees to see to the welfare of such persons.

"Part III is more drastic. It can, however, only come into operation when the Governor General in Council is satisfied that scheduled offences have been or are being committed to such an extent as to endanger the public safety. In such circumstances, the Local Government, where there is reasonable ground for believing that a person, has been concerned in a scheduled offence, may direct the arrest of such person, his confinement in such place and under such conditions as may be prescribed. There are again the same safeguards as under Part II for an investigating authority and for a Visiting Committee. The period of orders under Parts II and III, I ought to have explained, is limited to one year in the first instance and to three years in all.

"Part IV applies the provisions of Part III automatically to persons known to have been concerned in revolutionary crime at present and who are under restriction under the Defence of India Act by reason of that connection-

"I do not think that at present there is anything in Part V to which I need draw attention. It is mainly ancillary and is a matter in great measure, I think, for Select Committee. But if there is any point on which Hon'ble Members seek for information I will do my best to furnish it.

Why Govt. introduces the Bill

"Well, my Lord, I have now explained the provisions of this Bill, and it remains for me to say that the Government have not undertaken this legislation lightly or without anxious consideration. We have no desire to restrict the liberty of persons further than a compelling sense of duty forces us to do. At the same time we are responsible for the public peace in this country, and it is our duty to take such measures as may be necessary to secure that. No other remedy has been suggested in regard to this form of crimes as yet for attaining that object. If, however, any effective remedy is proposed the Government of India will be only too glad to consider it. There seems, however, to me to be some misunderstanding as to the nature of the disruptive forces of this anarchism. There are those apparently who look upon these men as innocent patriots, guilty of nothing save an excess of possibly mistaken zeal. My Lord, I ask the Council to get rid of this delusion. These men are not patriots; they are really enemies of civilisation, they are enemies of progress and enemies of any form of organised government, whether European or Indian. It may be suggested, as it has been suggested before, that all their activities will be reduced by the introduction of the Reforms Scheme. My Lord, I say that these men are as much opposed to the Reform Scheme as to anything else. During Mr. Montagu's visit last year, I myself saw a circular which was addressed to a prominent citizen of Calcutta where it was openly stated that these men were not concerned with Mr. Montagu's coming or going, and that their object was first and last to spread terror and make the Government impossible. My Lord, I think if these facts were more fully realised we should hear less of that veiled sympathy with desperate men which really encourages them to further efforts and hinders the work of many who have the progress of this country at heart; and I suggest that it is the duty of all sober-minded men to combat this dangerous confusion of crime with patriotism, remembering what the effect of any such encouragement is. The Bill which I now seek to introduce is not aimed at patriots; it is aimed at criminals; it is not aimed at the suppression of politics at all; it is aimed rather at the purification of politics. What we seek to do is to prevent anarchy and disorder, and I think that many here will realise the importance at this juncture of combating these forces of disorder so rampant in many parts of the world when they consider the

effect of anarchy both in Russia and in other countries. My Lord, if ever there was a time when it was necessary to check revolutionary and anarchical tendencies, I think it may be safely said that it is the present.

"My Lord, at the same time, if I may say so, I realise very acutely the difficulties in which Hon'ble Members in this Council are placed. I realise their reluctance to accept a repressive law aimed at the suppression of a revolutionary movement. I realise their regret that any such measures should be necessary and their constitutional dislike of any legislation which interferes with the liberty of the subject. Government is exactly in a similar position. We also recognize the constitutional objections to these interferences with liberty, but we realise the danger which has to be combated, and for that reason we are forced, though with the greatest reluctance and only after anxious consideration, to introduce this present Bill. We ask the Members of this Council to face the facts in this matter courageously and honestly.

"If the findings of the Rowlatt Committee are accepted, and I submit that they must be accepted by every reasonable man, there is no getting out of that, that is to say the facts apart from the recommendations, then is it not essential that Government should be vested with some reasonable machinery to deal with this evil? And is it not the duty of the Members of this Council to assist Government in this matter? I ask the Council very earnestly to realise their own responsibility in this matter. There are many here who claim responsible government for the country, some sooner some latter; are they willing to accept the responsibility which responsible government inevitably connotes; are they willing to face the hostile criticism which must frequently be expected when action is taken in the public interest? My Lord, there are many who are watching the conduct of this Council on this occasion with great interest; it will be regarded by many as a test of capacity—whether the Members of the Council have the courage to do what is right in assisting the Government in its first duty, the maintenance of the public tranquillity. Will the Members be found wanting, and give a right to anyone to say that their attitude on this question indicates their unfitness for responsible government? I earnestly hope that no such occasion and no such material will be furnished to those who are opposed to political progress in this country.

"My Lord, with these words I commend the Bill to the Council. The details, if the motion is carried, will be considered in Select Committee, and the Government is perfectly open to consider such modifications as will not render the machinery ineffective for dealing with the evil which they seek to combat.

"I now introduce the Bill and move that it be referred to a

Select Committee consisting of the Hon'ble Sir George Lowndes, the Hon'ble Pandit M. M. Malaviya, the Hon'ble Mr. Shafi, the Hon'ble Mr. Muddiman, the Hon'ble Mr. Sastri, the Hon'ble Nawab Saiyad Nawab Ali Chaudhuri, the Hon'ble Mr. Kincaid, the Hon'ble Mr. Khaparde, the Hon'ble Mr. Banerjea, the Hon'ble Mr. Fagan, the Hon'ble Mr. Patel, the Hon'ble Sir Verney Lovett, the Hon'ble Sir James DuBoulay, the Hon'ble Mr. Emerson and myself, with instructions to report on or before the 6th March, 1919."

The Hon'ble Mr. V. J. Patel :—"Your Excellency, I beg to move,

"That the consideration of this Bill be deferred till six months have elapsed after the expiry of the term of office of this Legislative Council."

"In moving this amendment, I must say at the outset that no sensible Indian could be charged with having any the slightest sympathy with anarchists or anarchism. In every country, my Lord, revolutionary crime is really the outcome of what I may call political and administrative stagnation; if the political advancement of a country is really very slow and does not keep pace with the times, this sort of crime is bound to raise its head and disturb the peace of the country. What is then the remedy? The remedy, I submit does not lie in repressive measures, but I am strongly of opinion that the remedy lies in the removal of the standing grievances which bring revolutionary crime into existence. We are all very glad that the Reforms are coming. The very publication of them has a good deal to do with the creation of a smooth atmosphere to some extent, and I am absolutely certain, my Lord, that when these reforms actually do come, revolutionary crime will almost disappear. The amendment which I have proposed before this Council is that the consideration of this Bill should be postponed for some time. At present, as I have already pointed out, circumstances have entirely changed; even the Rowlatt Committee which made the Report did not contemplate that their recommendations should be put into effect in all and under any circumstances. As a matter of fact, in their recommendations regarding legislation to deal with the difficulties that might arise in dealing with the conspiracies, the Committee say :—

"This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to are encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation and they have not been in operation at the time of our inquiry. When this legislation lapses circumstances may have altered and the position may be better or worse. We do not think it is for us to speculate nicely on these matters. We must of course keep in view that the present war will have come to an end, but we cannot say with what result or with what ulterior consequential effects or possibilities of consequential effects upon the situation."

So the Rowlatt Committee itself did not contemplate that their

recommendations should be put into effect under any circumstances. As a matter of fact, the circumstances have altered. Revolutionary crime had ceased to exist at the time when they made their report, and since then cessation has continued. Then, again, after the Rowlatt Report, the Reforms Report has been published, the functions and the Franchise Committees have met in India; they will shortly, as your Excellency pointed out in your opening speech, submit their Report to Parliament, and a Bill of Reforms will also be passed into law. That being so, I personally think that the passage of this measure at this juncture will materially affect the reception of the reforms in India.

"My Lord, I cannot disguise the fact that the whole country from one end to the other is entirely opposed to this measure, and the passage of this Bill will stir up, in fact the introduction of it has already stirred up, a tremendous and unprecedented agitation in the country at the time when great changes are in sight. Surely Government intends that the reforms should be given a fair trial, and I am afraid that the intention of Government will not be fulfilled if at this juncture this measure is passed. I must say that I am not at all surprised that the Government have thought it proper to introduce this measure at this juncture. It is one of those blunders which a Government not responsible to the people is likely to commit in moments of excitement. What I am, however, surprised at really is that a Bill of this kind should have been brought forward at a time when people really expected the introduction and discussion in this Council of measures which would bring them more contentment, measures which really would conduce to the greater well-being of the people in matters industrial. At a time like this when the war has ended triumphantly for us, at a time when the Peace Conference is sitting to devise measures for the peace of the world, at a time when we are within sight of great constitutional reforms in India, at a time when one of the Indian is made a Member of the British Cabinet, at such a time instead of bringing forward measures which would really conduce to the well-being of Indians, a measure of this character should have been brought forward.

"I may be asked why I want the postponement of the consideration of this measure for the period named in the amendment. My idea is that a measure of this kind should be discussed, if at all, by the Council which would come into existence under the Reforms Scheme. I do not mean to say that this Council is in any way incompetent to deal with this question or will not do justice to it, but I do maintain that so far as this Council is concerned, its very existence is entirely at the mercy of the Executive. You can extend its life or, if you like, you can terminate it. As your Excellency

said in your opening speech, by an executive order without even consulting this Council, our existence has been recently extended till the 20th of July, 1920. So in this country the Executive is all powerful, and Council is so impotent even as regards the question of its existence. In these circumstances, and particularly if the reforms are to be given a fair trial and they are to be well received in this country, I think it is absolutely necessary, particularly when crime is at a standstill, that Government should not press this motion of reference to a Select Committee at this stage, but wait till the new Councils come into existence. As I said, I do not wish to go into the merits of the Bill. It would be sufficient for my purposes to say that we are mightily afraid of it, and we think that all our constitutional agitation for any reforms whatsoever will die if these Bills are passed into law.

The Hon'ble Mr. Surendra Nath Banerjee :—"My Lord, I have given notice of an amendment on somewhat similar lines to those of my friend's amendment, and with your Lordship's permission, I may be allowed to make my observations at this stage of the discussion. My Lord, I confess to a sense of regret and disappointment that a Bill of this kind should have been introduced at this moment. I complain of its inopportuneness ; I complain of the principles which underlie some of its provisions, and, my Lord, in saying this, I do not express my own personal views, but the considered opinions of those of my friends with whom I am accustomed to act in public life. My Lord, it is no use disguising the fact that the Bill has created widespread anxiety, and even alarm, in the public mind of India, and I must say there is abundant justification for this feeling. It is feared that if this Bill be passed, it will cripple our political activities and bring about the stagnation of our public life. My Hon'ble friend has read out some of the provisions of the Bill and as I was listening to them, it struck me that they contained matter which constitutes a peril to the sacred rights of personal liberty which Englishmen value so much ; which I am confident this Council cherish dearly ; which you, our masters in the great art of constitutional government, have taught the people of India to prize. My Lord, one of the provisions—I think it is section 21—which my friend read out, says that in a notified area the Local Government may declare, after an inquiry, executive in its character and complexion, that a person should abstain from any act. If this provision means anything it means that after this executive inquiry, a journalist may be prohibited from following his avocation, that a public man may not be allowed to address public meetings. My Lord, I consider this as a grave menace to public liberty, a serious encroachment upon the rights which have been guaranteed to us and which we prize. If a right of this kind were taken away by a duly constituted court of law, no one would have the slightest

objection, but to place such dangerous, illimitable power in the hands of executive authority, deliberating in secret, discussing in secret, deciding in secret, seems to be an infraction of personal rights which I almost shudder to contemplate... You have, my Lord, in your armoury a weapon, offensive and defensive, which is amply sufficient for all purposes. The Defence of India Act is there, and it is now in force and will be in force until six months after the conclusion of peace. The Peace Conference has just started its sittings. The peace negotiations are going on from day to day. I take it my Lord, that on a moderate computation, these negotiations must last at least for three or four months. That brings us down to the month of June.

"The Defence of India Act will be operative six months after the conclusion of peace. That will take us down to the end of the year. Therefore, at least up to the 31st of December, 1919, no such law as the one that you are now proposing to enact is needed. Then, my Lord, there is the power of ordinances which you have used so freely and so frequently and to such good purpose. You can revive the Defence of India Act by an Ordinance which will continue it till June, 1920. Therefore, my Lord, having regard to the powers with which you are armed, and which can be easily continued, it seems to me that no case has been made out for enacting a law of this kind, at any rate at this stage.

"Nor is this all. You have got in your armoury Regulation III of 1818. It is a part of the permanent law of the land, and you can set it in motion at any time you like. As a matter of fact, I think my Hon'ble friend the Home Member will bear me out when I say that the most dangerous characters have all been interned under Regulation III of 1818.

"Therefore, my Lord, I submit with all deference but with the utmost emphasis that no case has been made out for the enactment of this law at this stage. On the contrary, it seems to me that there are very weighty reasons why you should not proceed with this legislation. By the time that the Defence of India Act expires—by the efflux of time, I will take it on the 31st December, 1919, or the 30th of June, 1920—by that time the Reform proposals will have been introduced in Parliament, and I am sure, I feel confident, that they will be embodied in the law of the land. And, my Lord, let us contemplate the situation as it will then be developed. A new atmosphere will have been created surcharged with the spirit of mutual esteem, of mutual confidence, of mutual co-operation between the rulers and the ruled. A new order of things will have been inaugurated, an order of things. I take it, more favourable than what now prevails, for the consideration of a contentious measure like this. I ask, therefore, is it necessary, is it wise, to go on with

this measure? My Lord, furthermore, if there is one truth which should be burnt in upon the souls of the rulers of men it is this, that no measure, be it administrative or legal, can be successfully worked except with the willing concurrence and co-operation of the people. If a measure alienates popular sympathies, sets up the people in arms against you, gives rise to the fiercest agitation, it is doomed, foredoomed to failure. I very much fear that is the case with the present Bill. The agitation has already commenced; it is growing, and it will grow, day by day. My Lord, I cannot help thinking that by passing these two Bills, or this one Bill, you will be placing a very formidable weapon in the hands of the reactionaries in England who desire to wreck the reforms. This measure will foster excitement, uneasiness and public discontent, and these are the impulses upon which the revolutionary instinct feeds and from which it derives its sustaining and vitalising influence. The revolutionary will say in his secret leaflets which he circulates with strenuous persistency; 'All this talk about the Reform proposals is moonshine. It means nothing; it implies nothing. Here you have got this drastic Act symptomatic of the spirit of the administration.' All this may be grotesque, wild exaggeration, but, my Lord, in a state of popular excitement it is bound to appeal to the popular sentiment. And then what will Lord Sydenham and his followers say. Referring to this Act they will say 'Here the Government of India by the enactment of this law tells you that India is seething with discontent and sedition, and that it is necessary to pass a law of this kind for the purpose of grappling with the situation. Tranquillise India first, and then it will be time enough to talk of Reform proposals. Look at Ireland, What has happened there? Irish discontent, the disturbed condition of Ireland, have indefinitely postponed the prospects of Home Rule. 'Apply the same principle', Lord Sydenham and his followers will say, 'to India.' What then, my Lord, becomes of our Reform proposals? Your Excellency's Government and the authorities at home have staked their credit and reputation upon the passage of the Reforms Bill through Parliament without any attenuation, without any whittling down. The passage of that Bill will be seriously handicapped by the Bill which the Hon'ble the Home Member desires to enact.

'My Lord, I need not detain the Council any longer. I appeal to your Excellency's Government to reconsider the whole situation and to drop the Bill, or at any rate to postpone it until the Reform proposals have become the law of the land. My Lord, the agitation against the bill has already commenced. We are receiving telegrams every hour. Last night, I was awakened at midnight by a peon with a telegram purporting to be the proceedings of a public meeting protesting against the Bill. I am sure my friends

over here are being troubled in the same way every hour of their lives. The agitation has commenced, it will grow. My Lord, we want—certainly an old man like myself wants—peace, freedom from agitation, from conflict and controversy. I therefore appeal to your Excellency's Government with all the emphasis that I can command to save us from being precipitated into the vortex of an agitation which is bound to excite the fiercest passions, which will be the source of embarrassment to your Excellency's Government and will dissipate that atmosphere of peacefulness, of tranquillity, of mutual trust and mutual confidence, which the Reform proposals have helped to create, and which we of the moderate party have tried to deepen, to extend and to promote. I do trust, therefore that my appeal will evoke a sympathetic response in the heart of my Hon'ble friend the Home Member.

The Council adjourned for Lunch till 2 15 P.M.

The Hon'ble Mr. Kamini Kumar Chanda :—"May I inquire the dates of the letters which the Hon'ble the Home Member referred to in his speech?"

The Hon'ble Sir William Vincent :—"I am afraid I cannot give the Hon'ble Member the information he requires."

The Hon'ble Mr. Kamini Kumar Chanda entered a most emphatic protest against this Bill which admittedly aims at curtailing the liberty of the subject—the right of speech and action, and some of the provisions have certainly no precedent in the jurisprudence of any other civilised country. He then referred to the numerous public meetings held in protest all over the country and drew the attention of the Council to the protest made by Raja Kishore Goswami of Bengal, the first Indian member of the Bengal Executive Council, and continued :—

"This is what is at the back of our minds when we oppose the measure. I will not waste the time of the Council by quoting a large number of cases, but I will quote one instance from the Report of the Sedition Committee, on the findings of which the Bill is based—the attempt on the life of Basanta Chatterji, Deputy Superintendent of Police. The case is known as the Musulmanpara bomb case and is referred to in paragraph 66.

The report says :—

'From information now available it appears to be clear that this was the work of the Dacca Samity and that the bombs had been procured from Chandernagore.'

"But what was the judgment of the High Court? A young lad, a student of the Presidency College, was sent up for trial before the special tribunal presided over by the Chief Justice and Justice Sir Asutosh Mukerji. Lord Sinha (then Sir Satyendra

Sinha) who was Advocate-General conducted the case for the prosecution. He was impressed with the innocence of the lad, and he himself called the respected Head of Oxford Mission to prove an *alibi* for this young man who was acquitted in spite of the attempts of the Criminal Investigation Department to swear away his life. The judgment of the High Court stated that "the attempt of the police to connect the innocent lad with a dastardly crime had failed. The Chief Justice and Mr. Justice Mukerji made strong comments, and in fact suggested an inquiry into the police evidence ; but up to now we have not heard that anything has been done. As I said, my Lord, I could quote other cases from this Report, but it would be tiring the patience of this Council. I shall therefore only refer to one more—the Sindhubala case, in which two innocent respectable young ladies were subjected to all sorts of atrocities. They were kept in confinement for days and days. Has any notice been taken of the persons who were responsible for that? My Lord, if it is an offence and a crime to have sympathy with people like the Sindhubalas and the Musulmanpara case's accused, I must plead guilty. But that is what is really at the back of our minds when we oppose the Bill. My Lord, this Bill is admittedly based on the recommendations of the Sedition Committee.

Value of the Rowlatt recommendations

"We shall always speak of their findings and their recommendations with the utmost respect. But, my Lord, I cannot help saying that as I read some of their findings and recommendations I was reminded of an anecdote I read somewhere, probably in Serjeant Ballantyne's Reminiscences. A man was tried on a charge of stealing a horse ; the case against him was very strong and everybody expected that he would be convicted. But his Counsel, a Serjeant-at-Law or Queens Counsel, I forget which, made a strong appeal and the Jury returned a verdict of not guilty. Of course he had to be acquitted, because fortunately or unfortunately—I do not know which—our Criminal Procedure Code is not in force in England. The Judge after acquitting him addressed him "Now that you are acquitted, there is no fear of your being put on your trial again. Will you tell me whether you did not steal the horse?" The man replied 'Well my Lord, I always thought that I did it until I heard the address of my Counsel, and now I begin to think that I did not.' This is my feeling, my Lord, after reading some of the findings and recommendations of this Committee. I shall simply mention this fact that the circumstance that their decision is based upon expert evidence which was not sworn and which was not sifted by cross-examination is bound to detract somewhat from the value of their recommendations. Apart

from that, it appears from the report (paragraph 176) 'that proposals for legislation for the period after the war were, however, drafted and had been under consideration when it was decided to appoint our Committee.' I submit, my Lord, that this must have tinged to a large extent their decisions in this matter."

He then contented that there was no occasion, no reason to proceed with the legislation proposed and contested the statement of the Home member that the Anarchical movement was still in force. He drew the attention of the Council to the statements made in the press and in private by people not hitherto in sympathy with British rule that the new situation created by the war had made them strong supporters of the Government, and then continued—

"Now, my Lord, you are going to give us reforms and side by side with them, and in fact before them, you are going to give us this repressive law. Will that pave the ground for the reforms in this country? If this measure is passed it is bound to create considerable agitation. I read the other day that Mr. Asquith in his election campaign was questioned by a soldier in regard to Home Rule and this is what he said: 'The best way to get rid of the Sinn Fein is to grant self-government to Ireland. This will make short work of Sinn Feiners.' Lord Morley said with regard to the Irish Crimes Act 'if I know anything in this world it is the record and working of Irish Coercion Act since 1881 and the Irish Crimes Act was the most egregious failure in the whole history of exceptional legislation' page 328. What is there to show that what failed there will succeed in this country? Given the same cause the same result will follow whether it is Ireland or Italy or Russia or India. My Lord, our humble submission is that before you pass this measure let us see what will be the effect of the reforms in India. Where is the danger? In the first place there is the Indian Defence force Act and that will be in force for some time yet. Peace has not yet been signed and even after it is, the law will be in force for six months more. Apart from that you have got the 'rusty sword of 1818,' namely the Bengal Regulation III of 1818. If in spite of these measures you find there is an increase of crime which cannot be dealt with by the ordinary law, surely your Lordship can pass an emergency measure, an Ordinance or even an Act in a single sitting as was passed in the time of Lord Lytton and in the case of the Press Act.

"Then I doubt if the Council has got the power to pass this law. In paragraph 200 of the Rowlatt Committee's Report this is what is said: 'In making suggestion for legislation we have not considered at all whether it could be argued that such legislation is in any respect beyond the competence of the Governor

General in Council. We have no authority to lay down the law on any such point, and any provisional assumption as the basis of our proposals would only cause embarrassment. We have proceeded on the basis that any suggestions of ours which it may be decided to adopt will be given effect to by some legislature competent for the purpose'. Reading between the lines is there any doubt that the Committee was sceptical about the competency of the Council? It comes to this, my Lord, that the eminent judges were not satisfied that you have the power. Couple this with the findings of the Joint Parliamentary Committee presided over by Lord Loreburn and there is room for the submission that the matter ought to be considered further.

Hon. Mr. M. A. Jinnah said :—I shall place before the Council the grounds on which I am opposed to these Bills. My first ground is this, that it is against the fundamental principles of law and Justice, namely, that no man should lose his liberty or be deprived of his liberty without a judicial trial in accordance with the accepted rules of evidence and procedure. My second reason is, that this is a wrong remedy for the disease, namely, these revolutionary crimes, although I for one am prepared to accept as correct the findings of facts of the Rowlatt Committee that the crimes of a nature indicated have been committed. My third ground is that the powers which are going to be assumed by the executive, which means substitution of executive for judicial, such powers are likely to be abused and in the past we have instances where such powers have been abused. My fourth ground is that there is no precedent or parallel that I know of in any other civilised country where you have laws of this character enacted. My fifth ground is that this is a most inopportune moment. At this moment I can tell you that high hopes have been raised among the people of this country because we are on the eve of great and momentous reforms being introduced. My sixth ground is that the proposed measures are of a permanent character and not temporary measures intended only to deal with an emergency of a temporary character. And the last ground why I oppose this measure is that, my Lord, I do not wish to state it by way of any threat or intimidation to Government, but I wish to state it because it is my duty to tell you that, if these measures are passed, you will create in this country from one end to the other a discontent and agitation, the like of which you have not witnessed, and it will have, believe me, a most disastrous effect upon the good relations that have existed between the Government and the people.

"Your justification for coming here and asking this council to give you sanction to pass them into law is this; We had these

revolutionary movements and it was difficult for us to cope with them at first, but as soon as the Defence of India Act was passed in 1915 (though the Government for the time being took those powers for the period of the war) you were able to utilise those powers for the purpose of dealing with revolutionary conspiracies and with more success. That being so, the Government is now so enamoured with these powers that it boldly asks the legislature to enact measures of this character permanently, which to my mind is subversive of all principles of jurisprudence. Now, my Lord, there is no doubt, I think it is common sense, that by these powers you can more effectively deal with conspiracies. Nobody will dispute that; you will ask me, why do you object to it; why don't you give us these powers? My answer is this, my Lord, that by these powers of an executive character you may be able to get hold of more real offenders but at the risk and the cost of many other innocent men who will be persecuted and who will have no chance, no opportunity, of a proper trial. You say these powers can be effective, and so they can be. But what guarantee is there for the innocent? Then you will ask, don't you trust the executive? My answer is that I certainly cannot trust the executive, because I am a firm believer,—I do not care how many Rowlatt Committees will decide and recommend,—I am a firm believer that no man's liberty should be taken away for a single minute without a proper judicial inquiry. Now that, to my mind, is the root of the whole question. And what is your answer to that? and I say, my Lord, remember you are responsible; remember, once you have passed this law in the Council, your Excellency's Government is responsible, because these laws will then be put into force; they will be put into force by Local Governments, they will be put into force by officials; they will be put into force in various ways by the police; you are giving this power, and I want you, my Lord, to consider whether such a case has been made out as to enact these measures. I am now dealing only with the preventive measures. The Rowlatt Committee themselves admit it, and they also feel embarrassed; they also recognise the fact that it will involve the infringement of liberty of the subject. Take, for instance, your first clause, the important clause in the Bill, section 21, which reads thus:—

'Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may, by order in writing containing a declaration to that effect, give all or any of the following directions, namely, that such person—

(a) shall within such period as may be specified in the order execute a bond.

- (b) shall notify his residence and any change of residence
- (c) shall remain or reside in any area in British India so specified.
- (d) shall abstain from any act so specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and
- (e) shall report himself to the police at such periods as may be so specified.

‘Where in the opinion of the Local Government there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further by order in writing direct—

- (a) the arrest of any such person without warrant;
- (b) the confinement of any such person in such place and under such conditions and restrictions as it may specify; and
- (c) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be used by any such person for any purpose prejudicial to the public safety.

What is ‘Movement’ ?

I do not know what is the meaning of the word ‘movement,’ the word might mean anything. Well now, who will give the information to the local Government that a person is concerned with a movement of the kind defined? Who will furnish local Government with materials upon which the local Government will make its order? I venture to say, my Lord, it will be some police officer. Who else can it be, except somebody in the Criminal Investigation Department, or the police? It is the police who will furnish the local Government with information; *ex-parte* information and upon that information, furnished by the police, the local Government will say, well here we have got this information, we will make the order’, and the order is made and it is final. After the order is made, after the man’s liberty is taken away, under the second and more drastic preventive measures which are enacted, you have an investigating authority. After the man is either in jail, or has been arrested and is detained somewhere, you have the investigating authority! And My Lord, what is that investigating authority? Here again I am fully alive to the fact that it is suggested that there will be one non-official member on that investigating authority. But what is that investigating authority? It will have the same materials, though it may call for more material, but the inquiry will be anything but a judicial inquiry. The person who is either under arrest or has been detained will not be there. He may be called by the investigating authority, he may be questioned, but he may not be there. The whole inquiry will be *in camera*, most probably behind the back of the person accused and the investigating authority is then to make a report. I

ask you, my Lord, again what is the good of that report, is it worth anything? I venture to say that the Hon'ble the Law Member, for whose fairness I have the utmost respect, if he were there and if 20 statements were placed before him, and if the accused were not called before him, and he was to investigate behind the back of the accused, without the assistance of any advocate or barrister, I venture to say, my Lord, that even he, with his great experience of the Courts, is likely to be misled. How are you really going to come to any decision? You know that even in a court of law, where you have sometimes the ablest counsel on both sides, it is difficult to decide whether a person is really guilty or not, and we know that juries, men of common sense, men of business, have differed. We know that judges have differed. We know that a Court sometimes convicts a man of murder, and you go to a court of appeal and on the same evidence the man is acquitted. This is a very serious matter when you are dealing with the liberty of the subject. How can you expect this investigating authority, sitting *in camera*, behind the back of the person accused, to come to any really useful conclusion? What happens then? This investigating authority will make its report and the Government is bound to accept that report. What is the good of it? The Government will say 'we have considered it.' Now this is the condition this is the most valuable safeguard, the great condition precedent which is made so much of. The same thing will apply in the more drastic preventive measures. Therefore, my Lord, it is no use shirking the issue, it is no use hedging round the whole of this question. It is quite clear and it is obvious that this measure is of a most serious character. It is dangerous. It imperils the liberty of the subject and fundamental rights of a citizen and, my Lord, standing here as I do, I say that no man who loves fair play, who loves justice and who believes in the freedom and the liberty of the people can possibly give his consent to measure of this character. You have got to make out a very very strong case indeed, and then alone you can come to us and then I can assure the Hon'ble the Home Member that I will tell him, 'yes, you have made out this case, I shall co-operate with you.' What is the case you have made out? Because there are some revolutionary conspiracies; because, as the Hon'ble Mr. Banerjee said, you have a small section, a few hundreds, or a few thousand if you like, who have taken to revolutionary methods, who have taken to anarchical methods, you come here and say that we are going to enact laws of this character, permanently placing them on the Statute-book, the result of which would be that no man's liberty will be safe in this country. I shall even go so far as to say this, my Lord, that there will be an end to political life and freedom in this country. No man will be safe. Supposing, my

Lord, in some province some offences are committed. The Government of India is appealed to and the Government of India says 'very well, some offences have been committed'—and mark you I have not dealt with the offences here, but the Schedule of Offences includes grievous hurt, rioting, and all sorts of other offences. If to-morrow, for some reason or another, there happen to be three or four riots in the Bombay Presidency, mind you, nothing to do with politics at all, the Government of India may be asked to apply this Act to Bombay and the Government of India might intervene and make it applicable to Bombay.....

The Hon'ble Sir William Vincent :—Is the Hon'ble Member quite correct in his citation from the Schedule? Will he read it? He has omitted the sentence 'if, in the opinion of Government, such offence is connected with any movement endangering the safety of the State.'

The Hon'ble Mr. M. A. Jinnah :—"I know that perfectly well, but how is this to be ascertained. I know that the draftsman has put it in this way that provided they are connected with any offence against the State, but I say supposing you have offences of this kind I will give you an instance. Supposing we have somebody who is dissatisfied with some individual official and happens to attack him and causes hurt.....

The Hon'ble Sir William Vincent :—"May I point out that section 323 is not in the Schedule at all; the offence of simple hurt is not included."

The Hon'ble Mr. M. A. Jinnah :—"I said 'grievous hurt'."

The Hon'ble Sir George Lowndes :—"No, the Hon'ble Member said 'hurt'."

The Hon'ble Mr. M. A. Jinnah :—"I said 'grievous hurt' just now."

The Hon'ble Sir William Vincent :—" 'Grievous hurt' is also not in the Schedule. Section 326 deals with grievous hurt caused by a deadly weapon."

The Hon'ble Mr. M. A. Jinnah :—"I always understood that grievous hurt is grievous hurt with any kind of weapon. Therefore, I say that you have got a Schedule of offences to which there is no limit. Of course I can go into the whole list and take up the time of the Council unnecessarily. But you will find you have got a regular list of offences. They are not offences really confined to offences against the State. Therefore, what do you find? You find that once you get this Act made applicable to any province, then in that province if there is a particular person who is not liked

or who is supposed to be undesirable, by some official, I say that person is not safe. If he happens to incur the displeasure of a few high officials in that province, I say that man is not safe, and he has got no remedy. I venture to say, my Lord that there is not a single non-official Member that is going to support these measures. There may be one or two exceptions, but, as far as I know, barring one or two exceptions, the rest of them are going to oppose these measures. Not only that. Although the non-official Members in this Council certainly represent a very important volume of public opinion, you have also got the public outside, and I venture to say that the whole of the country is opposed to these measures.

"Then you say of course 'we have got the official block; we have got the official majority; we are going to carry this' Well, of course you can carry it because you have got the official majority. But I ask you, my Lord, and I ask your Government, do you or do you not accept our assurance when we say that nobody condemns these crimes more strongly than we do; nobody is more ready and more anxious to stop them than we are; nobody is more anxious to co-operate with you than we are? Therefore will you not listen to us? Does our opinion count for anything or does it not? I know it counted when you wanted £45 million. Is it or is it not going to count to-day, and, if so, why not? That is the question I ask. My Lord, we have got this question to face. As the Hon'ble Mr. Banerjea has put it, this Act is not going to expire for six months after the peace is signed. You have got Regulation III in your hands. You have got the power of Ordinance; you can enact this very measure, if necessary. And if in the new Councils, when they are formed, if we find—and our conviction is this—that there will be no occasion; we may be wrong, I am not going to be very emphatic on that point, we may be wrong, but we feel, and, my Lord, I feel convinced that this announcement of the 20th August by His Majesty's Government followed up by the visit of the Secretary of State for India and the fact that your Lordship and the Secretary of State for India went all over the country to ascertain the public opinion on the question of constitutional reforms and the publication of your Report which I for one had never any hesitation in recognising as an advance, and I have said so not in this Council but outside, had tremendous effect on the people. And whatever differences there may be between your Government and ourselves with regard to those proposals, if we eventually get those reforms in the substantial form that we expect—and on that point we mean, my Lord, to fight to the end, we will do all that lies in our power, we will do our best, we mean to go further than that Report—but, my Lord, after we have fought the fight, whatever may be the end of it, once these

reforms are introduced, I can assure you, my Lord, that you have got men in this country who will then say this: 'We have fought a constitutional battle, we have done all we could in our power, but we have not succeeded to the fullest, but it is a real and substantial advance now these reforms are introduced, let us make the best of them'. And I hope that the Civil Service, on the other hand, will act in the same way. They may fight now, they may resist us now, they may think that they are going to be endangered and they may think that even these proposals go too far: but once the fight is over, I hope that you and we will work in co-operation and do our best to see that those reforms are made a success. At that time, I can assure you, my Lord, and I can assure the Government, if we find that there still exists these revolutionary conspiracies, and if we find in co-operation with your Government that measures of a drastic character are essential, I assure you that you will find men amongst my own countrymen who will stand side by side with you and will be ready to give their assent to laws however much they may dislike them. Even then I can assure you I shall be loath to give my consent, but I shall do so if it is necessary. Now, therefore, do you think that you will lose anything, do you think that anything serious is going to happen if you accede to this request of ours, namely, to postpone the introduction of the Bill? That is all that we ask. Do you think that you will gain more by carrying this measure by means of your official majority against the will of the people? I say it is against the will of the people throughout the country,—and mark my word, what I say is true and will be proved to be true—against the will of the people. Are you going to do that? And I say your only justification for that would be if you can say this to me: 'The danger is so imminent—after all, we are here as a foreign Government and we have got to protect ourselves and we have got to maintain peace and order in this country—it does not matter whether you like the method or not, we are absolutely driven to this desperation, that against the will of the entire people, against the responsible opinion in this country, we find we are in such great danger that unless we arm ourselves with these powers our Government is in peril.' Is that so? I venture to say No; it is not what is going to happen. You have got already more than ample powers with you, I assure you you have got, I would not care to go so far as to say the entire community—there may be a small section on whom you cannot count—but almost the entire community at your back; because, believe me, we do not wish and nobody wishes, that there should be anything but ordered progress in this country. What have you found? I cannot, my Lord, quote your Excellency's actual words in your speech to-day; but what has India shown during this War? The good sense of India, the

loyalty of India—not loyally in that stupid sense in which it is sometimes used, but free, sincere co-operation—have been acknowledged. Has India failed during these last few years? Then, my Lord, what is the danger, what is the necessity, that calls for pressing on with this Bill at this moment? My Lord, I do not wish to take up the time of the Council unnecessarily. I say, first of all, as I said before, the Bill is really opposed to the fundamental principles of British justice; secondly, I say it is not opportune; thirdly, I say it will create a most disastrous effect on the public mind.....

He then referred to the Home Member's statement that difference of opinion as to details will be settled in the Select Committee, and said that the difference is not so much as on details but on fundamental principles. He was opposed to the very principle of the Bill and so could not support the motion that the Bill be referred to select Committee. He ended by appealing to the Government to reconsider their position before proceeding with the Bill any further.

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, before I proceed to discuss the Bill, may I, under rule 13 of the Rules for the Conduct of Legislative Business, ask that any papers or returns relating to the Bill which is before the Council, any Minute which may have been recorded by your Excellency's Government, and any correspondence that may have passed between your Government and the Secretary of State, may be supplied to me? That rule says—

'Any Member may ask for any papers or returns connected with any Bill before the Council.'

I beg to ask for these papers."

His Excellency the President :—"There are no papers or returns in the custody of the Secretary to the Council."

The Hon'ble Pandit Madan Mohan Malaviya :—"My Lord, my request is that if your Excellency's Government has minuted upon this Bill, and if any correspondence has passed between the Secretary of State and your Excellency's Government, copies of these may be supplied to me,"

His Excellency the President :—"Rule No. 13 says—

'The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for can be given.'

I will give the Hon'ble Member an answer to-morrow."

The Hon'ble Pandit Madan Mohan Malaviya :—"Thank you. My Lord, at the conclusion of his speech in introducing this Bill to-day, the Hon'ble the Home Member reminded us, non-

official Members of the Council, of the great responsibility which rests upon us in dealing with this matter. He went further and he told us that we shall be judged as to our capacity for having a larger measure of responsibility by the attitude that we take up in relation to this Bill. My Lord, I entirely endorse that view, though I do not agree with the Home Member as to his object in making this remark. I hope that not only we non-official Members but that we all of us, official as well as non-official Members, will approach this question with a full sense of the responsibility which rests upon us in dealing with such an important matter.

The rules provide that ordinarily when a Bill is introduced, a motion is to be made in the first instance that the Bill may be published in the official Gazette or Gazettes as the Council may direct. In the present case action has been taken under the exceptional provision contained in rule 23, which says: 'The Governor General, if he sees fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it in such gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill. In that case it shall not be necessary to move for leave to introduce the Bill, and if the Bill be afterwards introduced, it shall not be necessary to publish it again.' My Lord, I take it that this provision has been incorporated into the rules to meet cases other than the one which is now before us. The departure from the ordinary method prescribed has resulted in this; here is a measure of very great importance. If a motion was made for leave to introduce it in the ordinary way, it would have been followed by a motion that the Bill should be published in the gazettes and circulated for opinions. The Bill would have then been circulated in the country and among public bodies for opinion; the opinions of High Court Judges, of other Judges and Magistrates, of the various Local Governments and of public associations interested in the question would have been elicited. These opinions would have been circulated to Members of this Council, considered by your Excellency's Government and possibly also by His Majesty's Government; and after all if this had been done there would have been a motion made in this Council that the Bill should be referred to a Select Committee. But what has actually been done here? The Bill was published in the Gazette, if I am not mistaken, on the 19th January or some date about that.....

The Hon'ble Mr. A. P. Muddiman :—"On the 18th January."

The Hon'ble Pandit Madan Mohan Malaviya :—"Thanks. Now, a fortnight after that the Bill is introduced here to-day under

the provisions of rule 23, without any motion for leave to introduce it.

"The second thing which I complain of is that, while rule 25 provides that 'after publication of a Bill in the Gazette of India, the Select Committee to which the Bill may have been referred shall make a report thereon. Such report shall be made not sooner than three months from the date of the first publication in the Gazette of India, unless the Council orders the report to be made sooner'; here is a proposal emanating not from an ordinary Member, but from the Home Member, who held judicial offices for many years, disregarding that very useful provision and proposing that the Select Committee to which it is proposed to refer this Bill should report on or before 6th March 1919. I submit, my Lord, the Home Member owed it to the Council and the public to explain what reasons of State existed which justified or led the Government to adopt a procedure which violates the ordinary rule which has been laid down for dealing with legislation. He has not done so; I hope he may yet do so. But I submit in the absence of any such explanation, the public have a right to complain. Your Lordship is aware, that these Bills have fallen like bolts from the blue upon the public. Your Lordship is aware, most of us are aware, how numerous are the meetings which have been held and are being held in different parts of the country to send up protest against the introduction of these Bills. Is it fair to the public to hurl such measures as these over their heads without the slightest attempt at justifying the procedure?

He then said that they all hated sedition and have always supported Government against revolutionary crime, as witness the whole-hearted support of the Non-official Indian members of Council when the Defence of India Act,—a war measure,—was passed.

He then traced the history of revolutionary crimes in each province separately and showed that there was no need for legislation of the kind proposed, quoting the very words of the Rowlatt Committee in support of his contention. He then took up the case of the Punjab and of Bengal and traced the causes under which the Revolutionary movement thrived, referred to the callous indifference of the Government in the past towards youngmen who could not find an opening, to the unjust Partition of Bengal, the Gadhri affair and their aftermaths, and lastly the Komagata Maru affair.

He said that the Montford report had in unquestionable terms recognised the loyalty of India and her sacrifices in the War and this bill coming at this time has been a great and deep seated disappointment, and continued :—

I ask that the Government should not lead people to think that all the great sacrifices which they have made during the war have

already begun to be forgotten.* The Government should give no ground, no room for thinking that the magnificent effort of India during the war has already begun to be forgotten. The Government should show by their acts that they still do trust the people, and that what they say about the deep loyalty of the people is a reality which they believe in and not an unreal sentiment expressed to flatter the people. I fear that by taking up the attitude which the Government of India have taken up, they have already to a great extent destroyed—I regret to say it—the excellent results which had been produced by four years of joint effort during the war, four years of comradeship in the war, and all the sentiments of mutual trust and esteem which it engendered. But it is not too late yet to mend, it is not too late yet to rectify the mistake; and I appeal to your Excellency that the Government should, with that sense of responsibility which the Hon'ble the Home Member asked, and rightly asked, us non-official Members to display, I appeal with all respect and deference that the Government of India should reconsider the situation and as a very special measure withdraw the Bill. Now, my Lord, what would be the result if this recommendation is accepted? I know the Government of India, constituted as it is, does not easily go back upon any legislation which it has set its heart upon. We know that to our regret; but I submit that, in view of the very special circumstances of the situation, in view of the very special circumstances which the war has brought about, if at this time the Government should unite with the non-official Members in burying the Bill, no evil will result to anybody, and the Defence of India Act will continue in operation for some six months after the war. The ordinary legislation which stands in the Statute-book provides ample means for dealing with all classes of crime, and if six months after the war is over, if after measures have been introduced to remove the causes which have fed discontent, which have given rise to revolutionary and anarchical tendencies, the Government should still find that there are young men who are working in wrong paths, and the ordinary law is not enough to deal with them, then, my Lord, would be the time for the Government to consider what measures should be adopted—not a measure like the present one—but what other reasonable measures should be adopted.

It is proposed that the bill should extend to the whole of India; the Rowlatt Committee have clearly and distinctly stated that the revolutionary movement was limited to certain provinces and only for a certain period. It is generally subsiding. Another sentence in the Report 'all these plots have been directed towards one and the same objective, the overthrow by force of British rule in India; sometimes they have been isolated; sometimes they have been interconnected; sometimes they have been encouraged and supported by German influence.'

"But the Committee go on to say—'all have been successfully encountered with the support of Indian loyalty.' I ask you, my Lord, I ask whether in fairness, whether in justice to that loyalty, the Government should not say 'No' to the proposals of legislation before us, whether it should not still rely upon that loyalty to curb these evil tendencies and to eradicate it from the land. They go on to say: 'It is not surprising that in dealing with conspiracies so elusive and carefully contrived, Government has been compelled to resort to extraordinary legislation.' But that work has been done; that extraordinary legislation will still be available for six months after the war; let it have its course till then and be done with it. Let us hope and pray that the evil will be dead in the new state of things which will dawn.

"My Lord, in the presence of this report, I cannot understand how the Government could make up its mind to propose legislation of the retrograde and repressive character, subversive of the principles of justice for which England has always stood up, which are the glory of the English constitution, subversive of so many ideas of justice for the protection of the liberty of individuals? How could Government have made up its mind to introduce such a legislation and to propose that it should extend over the whole of India? I shall not be content with a mere general statement of the character of the legislation. I would invite the attention of your Excellency and of the Council to the actual proposals which the Committee have to put forward and show how they themselves looked at this question. In the first instance they have rightly raised a doubt to which attention has already been drawn by Mr. Chanda, about the competence of the Indian Imperial Legislative Council to introduce and pass a measure of such extreme severity and so far inconsistent with the established rules of evidence and justice. In paragraph 200 they say.

In making suggestions for legislation we have not considered at all whether it could be argued that such legislation is in any respect beyond the competence of the Governor General in Council. We have no authority to lay down the law on any such point, and any provisional assumption as the basis of our proposals would only cause embarrassment. We have proceeded therefore on the basis that any suggestions of ours which it may be decided to adopt will be given effect to by some legislature competent for the purpose.

I should like the Hon'ble the Home Member to tell the Council whether any note was taken by the Government of this paragraph in the report of the Rowlatt Committee, and, if so, whether any reference was made to His Majesty's Law Officers in England, to consult them on the question raised by the Committee.....

The Hon'ble Sir George Lowndes:—"I should like to intervene, my Lord, at this stage and state that no reference has been made to the law officers in England. There is no basis upon which

such a reference could be made. If either of the two learned lawyers who have suggested that this Council is not competent to legislate would give us something more to go upon than merely that paragraph in the Report, we shall be glad to meet them; but at present there is not in my mind the faintest shadow of doubt that we have got the power to legislate. Whether we should do so is another question."

The Hon'ble Pandit Madan Mohan Malaviya:—"I thank the Hon'ble the Law Member for telling us that no reference was made. I take that as a fact, but I think in view of the fact that a doubt was raised by a committee which the Government themselves had appointed, a committee that was presided over by a Judge of the High Court of England and consisted of three other gentlemen whom the Government had selected to advise them, this matter deserved to be treated with greater consideration than evidently the Government treated it with. However, I am not going at present—possibly I may do so later—to give my friend all the reasons upon which a doubt has been raised as to whether this Council is or is not competent to deprive any fellow-subject of ours of the safeguards of liberty which the English law provides for him, which ensure that no man's liberty shall be interfered with, that none shall be deprived of it for a day without a regular trial according to the ordinary rules of evidence and procedure laid down therefor. We have heard a great deal of the British character of the Indian administration. We have heard a great deal of the British sense of justice and of fair-play. I ask the Council, I particularly ask my Hon'ble friends who are members of the British community, I ask them to say how they can really reconcile themselves to proposals which are embodied in the legislation we are dealing with. It seems to us impossible, incredible, that the British members of the Government should have without the fullest consideration agreed to such a course being adopted.....

(At this stage His Excellency the President left the Chair and the Hon'ble Sir George Lowndes took the Chair.)

The Hon'ble Pandit Madan Mohan Malaviya:—"May I ask, Sir, whether the Council may not now adjourn? The rules provide that the Council shall ordinarily go on till 4 o'clock and it is now half past four. I have not gone through two-thirds of what I have to say, and I shall not be able to....."

The Hon'ble the Vice-President:—"I am afraid you must go on with the remaining third."

The Hon'ble Pandit Madan Mohan Malaviya:—"I do not know that I shall be able to finish."

The Hon'ble the Vice-President:—"I hope you will."

The Hon'ble Pandit Madan Mohan Malaviya :—"I definitely propose, Sir, that the council should now adjourn. If you will kindly turn to the rules, rule No 3 of the rules for the Conduct of the Legislative Business of the Council says, 'The Council shall ordinarily meet at 11 A.M., and shall not prolong its sitting after 4 P.M., unless the President otherwise directs.' There has been no direction that it should be prolonged, and I submit therefore that under the imperative words of the rules, namely, that the Council shall not prolong its sitting after 4 P.M., the Council should now adjourn.

The Hon'ble the Vice-President :—"If you think it necessary I will direct that the Council shall continue its sitting."

The Hon'ble Pandit Madan Mohan Malaviya :—"I again submit a point of order as to whether that direction should have been given before my motion was made. I submit if the direction had been given before the motion was made, it should have been unquestionable, but as it has been made upon my motion, I request the Vice-President to consider whether my motion ought not to prevail."

The Hon'ble the Vice-President :—"It is not open to the Hon'ble Member to question my ruling. I rule that the Hon'ble Member must proceed."

The Pandit then continued :—"What are the provisions of the Bill to which the Government asks the Council to give its support? Let us look into them. In the first place as I have already said it says—'Whereas it is expedient to make provision that in special circumstances, the ordinary criminal law should be supplemented and emergency powers should be exercisable by the Government.' Now, Sir, to make provision in special circumstances, to supplement the ordinary criminal law is a matter which, I think, is open to exception. If it was meant to pass a special Bill providing for a special procedure, as the Defence of India Act did, we could understand it. It would have been a measure of a temporary character, it would expire by efflux of time whenever that time was fixed. But, in this case, it is sought to make the measure a part of the permanent law of the land; it is sought to incorporate it in the Indian Penal Code and Criminal Procedure Code. My first submission is, that if there was a clear necessity for such a measure, if the Defence of India Act was not in existence, a special measure of a temporary character should have been passed, and this attempt to incorporate the measure in the permanent law of the land should have been abandoned. Then by sub-clause (2) of clause 1 the provisions are extended to the whole of British India.

I submit that in view of the Report of the Rowlatt Committee, there is no justification for passing any all-India legislation of this character. Let us assume that in Bengal tendencies of an evil character will not entirely disappear after the war. In that case it might be left to the Bengal Government to introduce legislation to deal with the crime that may show itself in that province. Does that justify the casting of a slur on the loyalty of the whole of India; the passing of a measure which would lead the outside world to think that India was seething with disloyalty and discontent. The Punjab, the United Provinces, Bombay and the Central Provinces need not be grouped together with a province where revolutionary crime may be shown to exist. That is my second point—Part III says—

If the Governor General in council is satisfied that sheduled offences have been or are being committed in the whole or any part of British India to such an extent as to endanger the public safety, he may, by notification in the Gazette of India, make a declaration to that effect and thereupon the provisions of this Part shall come into force in the area specified in the notification.

• What are these sheduled offences? They include offences which constitute grave charges against the person and honour of people. Is it right that they should be tried in that fashion? You want to provide for a speedy trial of such offences. It is evident to anybody that the Government of this country and of England have provided a most elaborate and careful procedure for the trial of grave offences; summary trials are restricted to ordinary petty offences, trials of a grave character are to be Session Court trials or High Court trials; a very elaborate procedure has been provided, the question of delay has not been overlooked and the mere circumstance that it would cause delay need not lead anyone to propose legislation of the drastic character now before us. May I ask the Hon'ble the Home Member, or any member of the Government, what will be the gain on the one side by a speedy trial of such offences? There are certain offences the speedy trial of which is contemplated. It is not said that there shall be no trial, all that the Act seeks is a speedy trial, there is no suggestion to the contrary. It is not shown that there will be such a large number of offences of the character contemplated that the Courts will not be able to deal with them. The Rowlatt Committee have themselves shown a judicial mind when they state that they cannot say what the state of things will be after the war. In Chapter XVII they say,

The last part of our task is to advise as to the legislation, if any, to enable Government to deal effectively with the difficulties that have arisen in deal-

ing with conspiracies. This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to were encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation, and they have not been in operation at the time of our inquiry. When this legislation lapses, circumstances may have altered and the position may be better or worse.

They have not shut their eyes to the possibility that circumstances may so alter as to make it unnecessary to have legislation of a special character. They say it may be worse, no doubt, no sober, no responsible man can definitely and firmly say that there shall be no crime in India after the war, no crime of a revolutionary or criminal character. England herself has not been entirely free, nor have other European countries, while the bulk of the population has remained loyal. A maniac, a misguided man, one suffering from some aberration of the mind may commit some evil act, but that would not justify the passing for the country as a whole of such drastic legislation.

Then the second thing the Committee say is 'Further, there will, especially in the Punjab, be a large number of disbanded soldiers, among whom it may be possible to stir up discontent.' This, my Lord, is a most unkind sentiment. In view of the sacrifices which the soldiers of the Punjab have made, in view of the deep-seated loyalty which they have shown by sacrificing their lives and everything else that they could in the cause in the Empire, I must say, with due respect, that it would have been well that Government had not taken this view. If the Government will take the right measures to recognise in practice, in reality, with generosity, the sacrifices which they have made, to improve the conditions under which they live, to educate their sons, to find more food for them, to make it possible for them to have more clothing, to provide them with better comforts, to enable them to live lives better than the lives of mere ordinary animals, I am sure no efforts will succeed to wean them away from their loyalty to the King Emperor and the Crown. At any rate, my Lord, sufficient unto the day is the evil thereof. Let us wait in patience. It is only just and fair that we should wait with patience until these soldiers who have fought in the cause of the Empire show any tendency to be carried away by evil counsels, then it will be time, not to adopt miserable measures like the one that is before us now, but to devise measures of a gentle character, the object of which should be to prevent them from falling into wrong hands and to keep them in the path of duty and honour-

"Then, my Lord, the next thing to which I shall invite attention in the report of the Committee is in paragraph 177.

They have said clearly—"The measures which we shall submit are of two kinds, namely, *Punitive*, by which term we mean measures better to secure the conviction and punishment of offenders, and *Preventive*, i. e. measures to check the spread of conspiracy and the commission of crime. We may say at once that we do not expect very much from punitive measures.'

"Now, my Lord, they say they do not expect very much from punitive measures. That being so, it was well that these punitive measures had not been suggested, but they are there, and they rely upon the preventive measures and it is with these that the Council is at present dealing. Now, my Lord, what do the preventive measures recommend and what are the difficulties which the committee felt confronted with in suggesting these remedies. I will invite attention to those difficulties. One great difficulty they have felt has been the want of evidence. In Chapter XVI they say, in paragraph 169 :—

'The main reason why it has not been possible by the ordinary machinery of the criminal law to convict and imprison on a large scale those guilty of outrages and so put down crime is simply want of sufficient evidence.'

That is the conclusion they have arrived at. Now, my Lord they refer to the cases in which this difficulty was felt. Now if there is want of sufficient evidence, the right thing to do is to make provision for getting that evidence in a reasonable, just and proper way, and not by allowing evidence which by ages of tradition of British justice has been excluded as evidence. It is want of sufficient evidence which they are confronted with. It is better that some persons who are guilty should escape or that many men should be exposed to the danger of their liberties, their honour being affected by a wrong piece of evidence being accepted. Evidence which has not hitherto been acceptable to British Courts should not become acceptable simply because a want of evidence has led to the acquittance or discharge of certain persons who are accused. This is not the only country where a number of persons who have been suspected of crime have been discharged or acquitted for want of evidence. There are other countries where the difficulty has been felt. The English lawyers and jurists have jealously guarded against any attacks upon the rules of evidence which constitute the best guarantee that justice, pure justice, shall be administered to every subject of His Majesty. Another difficulty which they have mentioned is the difficulty in establishing proof of possession of arms. They say :—"Where incriminating articles such as arms or documents are found, it is often hard to bring home the possession to any particular individuals. This occurs where the same premises are occupied jointly by undivided families, or even where a house or garden is used as a mess or meeting place for a number of youths.'

"It may be difficult ; it may be regrettable ; it may be that some criminals will escape punishment ; but as the Committee have themselves observed, it is possible that the principle is a sound one, it is possible that this is a sound practice and it is proposed that this practice should be departed from, should be given up, and evidence should be admitted which has hitherto not been treated by English judges and jurists either in this country or in England as proper legal evidence. I submit, therefore, my Lord, that the recommendations of the Committee are not such that the Government are bound to accept them. They felt a difficulty, they did not feel clear that the state of things which would come into existence after the war would be sufficiently satisfactory to make it unnecessary for any special legislation to be continued. They did not feel clear about it. The Government might feel clearer. They have made the recommendations on the basis that possibly the other alternative might come into existence. But, I submit that there is very slender ground upon which to base proposals of the drastic character which have been presented to the Council to-day .

"Now, my Lord, let us examine these proposals in some detail. In Part I it is said that 'if the Governor General in Council is satisfied that scheduled offences are prevalent in the whole or any part of British India, and that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette of India, make a declaration to that effect.' Now, I have submitted before that the attainment of a speedy trial is not a need sufficiently grave, sufficiently serious, sufficiently in the interests of justice and the public interests to justify the introduction of a measure the object of which is to curtail the length of trials. It is not a sufficient justification. Even under the special procedure that is proposed in this Bill a trial may be protracted for several months. There may be any number of witnesses called ; there will be three High Court Judges sitting. They will not record the evidence *verbatim*, but still there will be three High Court Judges sitting, they will take time in examining witnesses, and as there will be no appeal, a person who has the misfortune to be accused will have to do all that he can to strain every nerve, to spend every pice that he has, in order to procure the most excellent counsel's aid, to defend himself. I am not at all sure, my Lord, I say it with confidence, I am not at all sure that really, in practice, the length of the trials will be shortened. It may be that there will not be trials in the ordinary course, first before the Magistrate, then before the Sessions Judge, then before the High Court. Possibly some time may be saved. But I am not at all certain that the time saved will be at all commensurate or at all worthy

of the consideration of being weighed in the scale against the danger of injustice to the accused. Besides, my Lord—I can understand that during the time of war, when there are possibilities of contagion spreading in the country, the Government might desire to have trials speeded up. That may be possible, but when we come to normal times, when the war has come to an end and when peace has been fully restored, I cannot understand why there should be this desire for speedy trials. I ask you, my Lord, to consider what it means. It may mean that while you are following your motor car procedure, there may be some poor innocent soul crushed under the weight of that car, under the speed of that car. To him it may be the end of his life, his liberty and everything he holds dear. It will be no consolation to the State, it will be no gain to the public interests, that a man's trial was finished in 2 months rather than in 6 or in one month rather than in 3; but it may mean the loss of everything that a man holds dear, and I would ask any Member of the Council how he would like to contemplate the matter if he found himself placed in that position. I submit let us not secure a speedy trial at the sacrifice of doing an irreparable injury to a fellow man.

“Besides, looking at it from another point of view, as I have said, if a single Joint Magistrate hears a case and makes a preliminary investigation, if the matter comes into the Sessions Court, many matters and much of the evidence is weeded out, and by the time the case comes before the Sessions Court, both the prosecution and the defence know where they stand. If the matter comes straight before such a tribunal as is contemplated, I am not at all certain that that will not involve longer delay, for the man knowing that he has no appeal from the judgment which that Court may pass, will be anxious to produce every possible evidence that he can and will have to summon all the witnesses that he can, and I therefore apprehend that the trial will not really be a speedy trial but that it will be prolonged.

“Now, my Lord, assuming that this condition for the application of Part I is found to exist, what follows? The Governor General in Council declares that certain scheduled offences are prevalent in the whole or any part of British India. I ask you, my Lord, seriously to ask yourself whether, after the war, it is likely that the offences which are mentioned in the Schedule or which it is proposed to put in the Schedule, are likely to prevail in the whole or any large part of British India? I submit that it is not likely. There may be spasmodic cases; there may be some few instances here and there of misguided young men or other people falling into wrong paths; but it is not likely that offences of this kind will prevail over a large area in any part of the country. Well, sup-

pose that the Governor General is satisfied that such offences are prevalent in any part of the country, then what happens? In this country, my Lord, the Government has to take its information from the subordinate Government. The Governor General in Council is not directly in touch—except in very small parts of the country—perhaps with the local administration. The Local Governments are the Governments which must supply information to the Governor General as to whether scheduled offences are prevalent in the part of the country which is under them or not. The Local Governments must gather their information from the Police Department and from their subordinate officials. Now, my Lord, in this country we know what has happened in the past. While we deplore the evil tendencies which some young men have betrayed, while we deplore the crimes into which some young men have been betrayed, while we deplore the crimes that have been committed, we cannot forget that the Police has not a thoroughly clean record in this country, and the police, my Lord, have been guilty in the past of outrageous crimes which I do not want to refer at greater length. They have been brought to the notice of the Government in this Council, they have been brought to the notice of Parliament in England. Now, I do not want to say that those things will be repeated. I hope and pray they will not be; but is it right to shut out the possibility and to think that the police will always act in absolutely the right way, that there shall not sometimes be mischief created in order to show that in certain parts of the country certain crimes are prevalent? I do not say that it will be—I hope it will not be—but I beg the Government and the Council to remember the possibility of such ideas being circulated. And what will be the result? In that area, under clause 4 of the Bill.

‘Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.’

“Now, my Lord, the clause says ‘where the Local Government is of opinion that the trial, etc., etc.’ I ask you, my Lord, how is the Local Government to arrive at a decision? It must have the fullest evidence before it can come to a safe and satisfactory conclusion that a fellowman should be deprived of the safeguards of justice which the ordinary law provides. I should like to know how many members of Government would like to take that responsibility upon themselves, and I should like further to ask that if such cases should be numerous, is not the danger of their coming to wrong conclusions one which ought to be taken into account in dealing with this legislation? The Local Government being of opinion that the trial of any person accused of a scheduled offence should be

held in accordance with the provisions of this part, it may order any officer of Government to prefer a written information to the Chief Justice against such person. What follows?

No order under sub-section (1) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court, but, save as aforesaid, an order under that sub-section may be made in respect of any scheduled offence whether such offence was committed before or after the issue of the notification under section 3.

“What follows, then, my Lord, is that this man is not given an opportunity before the Chief Justice to show cause why his case should not be tried under the special provisions herein referred to. He is not to be given that opportunity. His fate is sealed. The Local Government being of the opinion that he should be tried under the special provisions of this Bill, any officer can give written information to the Chief Justice and the Chief Justice is powerless. The Chief Justice has not the power to ask the man to show cause why he should not be tried according to the ordinary law, or why he should be tried according to this law. The Chief Justice has no option; he must try the man according to the special provisions of this Bill.

“Now, my Lord, what is the material upon which this order is to be passed? Sub-clause (3) of clause 4 says:

‘The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused,’

The Hon'ble Mr. A. P. Muddiman :—“I desire to draw your Excellency's attention to the fact that this debate is on a motion to refer the Bill to Select Committee, and the general principles of the Bill only should be discussed at this stage, but it seems to me that the Hon'ble Pandit is taking each clause separately.”

The Hon'ble Pandit Madan Mohan Malaviya :—May I explain, my Lord.....

His Excellency the President :—“You are not at liberty to discuss the details of the Bill.”

The Hon'ble Pandit Madan Mohan Malaviya :—“I beg your pardon, my Lord. I want to explain the matter from my point of view for your Excellency's consideration.”

His Excellency the President :—“There are certain rules and principles of debate which are usually observed on these occasions, and on this particular motion the principle of the Bill only is to be discussed, and then subsequently you will be able to discuss questions of detail. I think you are abusing the patience of the Council in pursuing any other course this afternoon.”

The Hon'ble Pandit Madan Mohan Malaviya :—“My Lord, I am sorry that you think I am abusing the patience of this

Council. I think I am doing my duty. I submit for your Excellency's consideration that here is a Bill which it is proposed to refer to the Select Committee; a special procedure has been followed; I can only speak once on this motion; and I am giving all the reasons I can for saying why this proposal to refer the Bill to Select Committee should be defeated, dropped by the Council. I submit, my Lord, with great deference, that I am entitled to give every single reason that I can in support of my proposal; but if your Excellency thinks I should not, I will stop.....

The Hon'ble Mr. A. P. Muddiman:—"I only meant to suggest that the Hon'ble Pandit was taking every individual provision and discussing it separately. I did not suggest that the general principles should not be discussed by the Hon'ble Member."

His Excellency the President:—"No one has suggested that the Hon'ble Member should not discuss the general principles of the Bill; but as the Hon'ble the Secretary to the Council pointed out, you are dealing with each particular provision of the Bill separately. I hope the Hon'ble Pandit will obey my ruling and discuss the principles and not the details of the Bill."

The Hon'ble Pandit Madan Mohan Malaviya:—"I bow to your Excellency's ruling. I shall refer to the provisions of the Bill only in so far as they involve a consideration of the principles. I shall do that and in doing so my reference to the provisions will be only for that purpose and to that extent."

Now, the next point—may I continue, my Lord?

His Excellency the President:—"Proceed."

The Hon'ble Pandit Madan Mohan Malaviya:—"The next point to which I would invite attention as another matter of principle involved is that referred to in section 6."

That section says:—

The Court may sit for the whole or any part of a trial at such place or places in the province as it may consider desirable:

Provided that the Governor General in Council, if he is satisfied that such a course is expedient in the interests of justice, may, by notification in the Gazette of India, direct that the court shall sit for the whole or any part of a trial at such place or places as he may specify in the notification."

"Now, I submit, my Lord, that one of the principles of British justice is that the trial of a person who is accused of a crime shall be held in open Court at a place which is open to the public, and I submit that this provision which gives power to the Court to decide that a trial shall be held in a particular place, is an infringement and violation of that principle. To that extent, I submit, it goes against the principle which is at present embodied in the Codes."

"Then, my Lord, I come to another very important principle which is embodied in section 10. I should be very sorry if I should give the impression by any of my remarks that I am not fully respecting your Excellency's ruling. I am trying to limit myself to questions of principle, and I hope your Excellency will please take it from me that I have no wish to say one word more so far as the details are concerned, except in so far as they refer to principles. Now, my Lord, in section 10 it is said that:

'The court shall be required to make a memorandum only of the substance of the evidence of each witness examined and, subject to the adjournment provided for by section 9, shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice.'

"Now, my Lord, one of the most important principles relating to the recording of evidence has been that the exact words uttered by a man when he was arrested or by other men who were examined at a particular time should be before the court. I myself had the honour of practising the profession of law for many years, and I know, my Lord, how careful, how jealous the Court is in noting down the exact words which have been used by an accused person. This practice has been so strongly insisted on in the United Provinces that the record which is kept of the statement of an accused person, made in the vernacular, is looked into to find out exactly what he said. Sometimes a single word makes a great deal of difference; the insertion or omission of a word may lead to his being deprived of his liberty or to his being able to save his liberty. So I submit, my Lord, that this principle which is proposed to be introduced is dangerous. I submit, my Lord, that anybody who is charged with such serious offences as will be put into the schedule should have the opportunity of having every word of the statement which affects his life or liberty recorded. Now, my Lord, sometimes a trial takes months, sometimes it takes weeks. I have known some Judges who can carry a great deal in their heads of the evidence they have heard; but they can carry after all only a small amount. I do not think that any Judge will take it upon himself to say that he will be able to carry all the nice points that arise in evidence in a long trial in his head, and that, therefore, there is no danger of his being led into error by the exact language used by a witness or an accused not being recorded by the Court. I submit that here is a departure of principle which is worthy of consideration.

"Then, my Lord, I will not go into any more details, but there is one of a cardinal character, namely, that which is embodied in section 17. That section lays down that—

The judgment of the court shall be final and conclusive and notwithstanding the provisions of the code or of any other law for the time being in force of anything having the force of law by whatsoever authority made or done there

shall be no appeal from any order or sentence of the court, and no High court shall have authority to revise any such order or sentence or to transfer any case from such court.....

"I submit, my Lord, that this is a very grave departure in principle from the rules which have been hitherto laid down for the trial of offences, which enable a man to know what the charges are that are brought against him. Then the matter goes before either a Sessions Court or a High Court. There a judge or judges sit to hear and record the evidence and to come to a conclusion. We are all human beings, and judges also are liable to err like everyone else. It is possible that two or three or more judges sitting together to hear a case in the first instance may attach too much weight to certain evidence which they ought not to, and may not attach the weight to some other evidence that they ought to. If they are to try the case from the beginning they start with ideas relating to the accused from the beginning to the end; and there is the possibility, I do not say more, there is the possibility of their judgments not being correct. Where a man's life is concerned, where a man's honour or liberty is concerned, is it fair to deprive him of the opportunity of having his case considered by another tribunal, by another two judges who will be able to bring a more detached mind to a consideration of the circumstances? I submit this is a very great departure from the principles of justice which have hitherto been embodied in our Codes. Then, my Lord, another important thing is that one embodied in section 18. Now, the result of section 18 is that a statement which was hitherto not regarded as admissible in evidence will be regarded as admissible in evidence; and the condition imposed is this: where the statement of any person has been recorded by a Magistrate and such statement has been read over and explained to the person making it and has been signed by him, or the statement of any person has been recorded by the Court, but such person has not been cross-examined (at present this will not be admissible, my Lord, under the existing rules of evidence in the Evidence Act and of the best Codes that we have) such statement may be admitted in evidence by the Court if the person making the same is dead or cannot be found or is incapable of giving evidence and the Court is of opinion that such death, disappearance or incapacity has been caused in the interests of the accused. I submit, my Lord, this is a very dangerous and novel principle introduced in the Bill. Hitherto, the Courts have insisted upon the accused having had an opportunity to cross-examine the man whose statement was to be used against him. If that opportunity was not available that statement was not used against the accused. Now, my Lord, it is urged that if the Court is of opinion that such death or disappearance or incapacity to give evidence has been caused in the interests of the accused—that, my Lord, as my friend

Mr. Jinnah points out, will create a case within a case and that lets in a great deal of danger and injustice being done if this novel principle is accepted. I can at least understand that under section 114 of the Evidence Act if evidence which should have been produced is not produced, there may be a presumption made against the person who does not produce it, or if the Court is satisfied that the accused had had a hand in the disappearance of this evidence it may make a presumption against him and it may take that into account ; but I submit that to admit the statement of a man who out of enmity or out of any other evil motive or under the influence of some enemy of the accused makes a statement, is going too far, the person who got him to make that statement knows or suspects that it is not the true statement. Now if this man by any chance happens to die or is removed, and if some evidence is given which satisfies the Court that the man was removed in the interests of the accused person, the statement of that man becomes evidence. I submit, my Lord, it is very great wrong which lurks there to the accused person; hitherto the Courts have stuck to the principle that the person against whom a piece of evidence is given is to be given an opportunity of cross-examining the man who has made the statement against him, and, this section proposes to depart from that principle. This is wrong.

"Thus, Sir, I have dealt with Part I of the Bill. I will now go on to Part II. Now, my Lord, this is more dangerous than even Part I, and the principles which are involved in it are such, my Lord, that I submit with great respect government should not accept them and should reject them. These are preventive measures 'If the Governor General in Council is satisfied that movements which are, in his opinion, likely to lead to the commission of offences against the State are being extensively promoted in the whole or any part of British India, he may by notification in the Gazette of India make a declaration to that effect, and thereupon the provisions of this part of the Bill shall come into effect in that area.' Now, what does happen? If in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may by order in writing containing a declaration to that effect give all or any of the following directions, namely.' Then follow the directions. I submit, my Lord, that this is a very dangerous provision. Hitherto the principle has been as it is reiterated in the Criminal Procedure Code, that if the Government has any reason to suspect that a man is concerned with offences and the evidence cannot be proved against him, there is a procedure provided to ask him to give security or to bind him over or to make investigations about it, and when material has been found to justify a prosecution being launched against him, to

prosecute him. Hitherto it has been the judicial Magistrate who has been asked to deal with such cases; a complaint is made by the Superintendent of Police or the District Magistrate or by any private individual against a certain man; then the Code provides that the Magistrate shall call upon that man, that he shall record evidence and call upon the man to give evidence against it, and where there is ground to bind him over or to direct him to furnish security or some such thing. The Magistrate would deal with the case, in which case there is an opportunity for a revision against the order of the Magistrate by a higher authority. What is substituted for that is the opinion of the Local Government. Now, my Lord, I will give you one instance. Mr. Tilak was bound over to give security in a certain case a couple of years ago or less than two years ago. The Magistrate asked him to give security. He appealed and had the order revised by the High Court. The High Court set aside that decision and let him free. Now, if this Act comes into force, if in the opinion of the Local Government any person is in that position the fate of the person would be sealed; he will have no chance of going to the High Court. The Local Government's opinion is law; he will have deprived him of liberty, locked him up without giving him a fair chance of having the matter tried in a judicial way. I submit, my Lord, that is a dangerous principle and ought to be eliminated from the Bill. The Bill bristles with principles of a very novel and dangerous character. What the Bill does is this; the Local Government to express the opinion first that a man is of that character and thereupon that opinion being formed, the Local Government has to issue orders what under the existing Code a judicial authority would do. Having done that, the Local Government goes to the investigating authority and that investigating authority has to investigate the matter as to find whether the Local Government's order is right or wrong. I submit, my Lord, that is putting the cart before the horse; it is a preposterous procedure. The right thing to do is to give the man a chance before you shut him up; here you shut him up, you pass that order, create a black mark against him and then constitute an investigating authority to consider. What is it to consider? After the Local Government makes the order under section 21, such Government shall (it is imperative; it is not left to the discretion of the Local Government) as soon as may be, forward to the investigating authority to be constituted under this Act their statement in writing setting forth plainly the grounds on which Government consider it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession in support of its action.

"Then, my Lord, the investigating authority shall hold an inquiry

in camera. That is a departure from existing principles. It is said 'the investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the person a reasonable opportunity of appearing before it at some stage of its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and may make such further investigation (if any) as appears to such authority to be relevant and reasonable.' The right thing is to let the matter go before a Magistrate or before a High Court Bench; why should there be executive officers in place of judicial officers? Is there not a danger of injustice being done when the Local Government arrives at conclusions on materials set before it? This is a principle which is novel and ought to be discarded. Then, my Lord, there is another principle of a novel character which is incorporated in the first proviso which says that 'the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual.' I submit that my liberty is all to me, and unless I am found to be unworthy my liberty must be protected. I submit that this is a wrong procedure. If a man is assaulted or accused, he has the right to know by whom and there is a danger of injustice being done if these facts are withheld. This is another case of the subversion of principles which have been always honoured in the United Kingdom and wherever British Courts have been established. The next sub-clause says, 'subject to the provisions of sub-clause (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry, such authority shall not be bound to observe the rules of the law of evidence.' Now, your Excellency, as a member of the Bar you know what the rules of evidence are and how jealously judges have guarded against any attack upon these rules, and here the Bill lays down on behalf of Government that the investigating authority shall not be bound to observe the rules of the law of evidence. That is connected with the statement of the Rowlatt Committee that many persons were unpunished simply for want of sufficient evidence. If some persons went unpunished for want of sufficient evidence let them go unpunished, the world will suffer less by that than that one innocent person should be punished and deprived of his honour and liberty under a wrong procedure. This Bill wants to put this on the Statute-book. Now my Lord, I come to the third part, the whole Bill is in progresion, the second part is stiffer than the first part and the third part is suffer than the second. Now in the third

part it is said 'if the Governor General in Council is satisfied that scheduled offences have been or are being committed in the whole or any part of British India to such an extent as to endanger the public safety, he may by notification in the Gazette of India make a declaration to that effect and thereupon the provisions of this Part shall come into force in the area specified in the notification.' Then the next clause goes on 'where in the opinion of the Local Government there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence the Local Government may make in respect of such person any order authorised by section 21.' This is a plain and unvarnished attempt to substitute the executive for the judicial. I submit that is subversive of all principles of justice. How is the Local Government to decide whether any particular person has or has not been concerned in scheduled offences without giving him an opportunity of defending himself by the law as provided; no Local Government should be permitted to sit in judgement upon him in the manner proposed. Then the Bill goes on to say that the Local Government may order (a) the arrest of any such person without warrant; (b) the confinement of any such person in such place and under such conditions and restrictions as it may specify; and (c) the search of any place specified in the order which in the opinion of the Local Government, has been, is being or is about to be used by any such person for any purpose prejudicial to the public safety.' I submit that this is arming the Local Government with very great powers; the judicial and executive have been separate departments under British administration, let them continue so. You have claimed, and rightly claimed, a great deal of glory for your system of justice; do not, I pray you, touch that system in the manner in which it is proposed to touch it, let them stand separate; the constitution of England does not contemplate that any executive authority shall sit in judgement on any man or deprive him of his liberty or his honour; that function has been entrusted to the judicial Courts properly constituted. The Bill goes against that principle completely; this is in reality substituting the Local Government for the judicial Courts. The Bill next says 'the arrest of any person in pursuance of an order under clause (a) may be effected at any place where he may be found by any police-officer or by any other officer of Government to whom the order may be directed. Sub-clause (3) An order for confinement may be carried out by any officer of Government to whom the order may be directed and such officer may use any and every means to enforce the same.'

Clause 34 says :—

'Any person making an arrest in pursuance of an order under clause (a) of

section 33 (1) shall forthwith report the fact to the Local Government and, pending receipt of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf.'

"Now, my Lord, I am entitled, if I have erred, to have an opportunity of knowing where I have erred, and of defending myself. The Local Government issues an order and the man is not only arrested but is locked up in custody. I do not know, my Lord, how such a proposal has commended itself to any Member of this Council."

"At this late hour I shall not go into the details which are dealt with in the last part. Now I ask your Lordship to consider whether, in view of the very cautious way in which the Rowlatt Committee has put the case for legislation, in view of the fact that they have accepted one alternative which has been the unhappy and dark alternative, and that they have regarded the bright one, in view of all the changes that have happened and are going to happen, in view of the great part which India has played in the war, in view of the loyalty of the Princes and people of India which has been acknowledged in high quarters, I ask, my Lord, is this the time to introduce a measure of this kind ?

I would remind the Council of what Government did in South Africa. In South Africa General Botha fought against His Majesty's Government in the Boer War. How did the Government treat him ? They established self-government in South Africa and made friends with him, and in this great war the part which General Botha has played and the magnificent services which he has rendered have been acknowledged with gratitude by British Statesmen and the whole world has admired him. That, I submit, is the way to win people who are subjects of His Majesty who may be led into wrong paths ; that is the way to win people by liberal administrative measures. Let race distinctions be obliterated ; let the recommendations which have been made in your Lordship's and Mr. Montagu's Report be adopted with such further recommendations as have been made by public bodies and let the question of the Services be dealt with in the liberal manner in which it has been suggested in the Report. Let Commissions in the Army be thrown open to Indians. Let there be industries multiplied and encouraged. Let there be fresh courses of education and fresh careers provided to young men. Then there will be gratitude in the land ; there will be satisfaction in the land ; there will be contentment in the land, and we shall not hear any more of revolutionary crime. If there should be any crime still lurking anywhere, the way to deal with it will be a much gentler and a more parental way, and not the way which has been suggested here. For these reasons, Sir, I oppose the motion that this Bill

should be referred to a Select Committee. I submit that the Bill should be dropped."

The Hon. B. D. Shukul in the course of his speech said — "My Lord, we stand on the thresh hold of a momentous epoch, we have just emerged victorious from the worldwide war, the greatest of all wars in history, in which Indian soldiers have fought, side by side with their European comrades, for the highest ideal of humanity, for defending the cause of justice and liberty, and for the establishment of the victory of right over might." To-day the ideas of freedom and liberty are pulsating the life of the nations of the world. Is this, I most humbly ask, an opportune moment when the Government should have brought forward a measure for the approval of the Council which marks yet another step in the policy of repression, which has never been known to have succeeded in achieving its purpose? My Lord, whenever and wherever it has been resorted to, it has only served to stiffen the peoples' determination for national freedom and to create a feeling of bad blood between the rulers and the ruled.

"Your Lordship and the Right Hon'ble the Secretary of State have just revived the buoyant faith of the people in the British sense of justice and their spirit of liberalisation by inaugurating a noble scheme of reforms, and it is a sad irony of fate that your Excellency's Government should have thought of embarking upon a policy which would only serve to further feed the glowing embers of political discontent. My Lord, the present moment is a most delicate one. You hold in your hands the future of India. It is for you to mend or mar it, and our best hopes for the future of this great country are centred in your Lordship, and in the steady pursuit of a policy of wise conciliation on the part of your Excellency's Government, which your Lordship has already inaugurated and which I am sure you do not want to go back upon.....

"The evil in itself which we are called upon to grapple with is not an old one. The very cult of anarchism is foreign to the nature of the people of India. The measure proposed, he said "will raise a tremendous storm of opposition and will provoke an agitation of unparalleled magnitude hitherto unknown in the history of India, and I for one shall not advise the Government to take that risk. It is going against the very pledge that the Hon'ble Sir Reginald Craddock gave to the people on behalf of the Government while introducing the Defence of India Bill in 1915. He then assured this Council that those powers were required '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.' In view of

these definite assurances, my Lord, on behalf of the Government, would it be fair to recede from the position when the war is over? Well, all of us are for the maintenance of law and order in the land. Keep order, by all means, but excess of severity my Lord, is not the path to order, to use the words of Viscount Morley. On the contrary, it is the path to the Bomb. We are as anxious as you are that India should have a long spell of peace and prosperity. We do not wish that India should be plunged into a state of anarchy and rapine, bloodshed and chaos. But at the same time, we do not wish that India should become desperate and be forced to play the role of another Ireland in the East. While we are strongly of opinion that anarchy should be suppressed with a strong hand, it is our sincere desire that, in suppressing anarchism, you do not unreasonably infringe the natural rights and liberties of the people and do not frustrate their legitimate aims and aspirations.

“Well, so far as the present Bill is concerned, without entering into the details thereof, I make bold to say there is a real danger, as the people anticipate, that the Bill will seriously threaten the liberties of even the innocent people. You do not only legalise secret inquiries and trials, but you dispense with all rules of evidence. The accused has no chance to prove his innocence before he is arrested; you deprive him of the right of trial by the ordinary Courts of Justice; you deprive him of the right of trial by jury, and above all you withhold from him the right of appeal and revision. The provisions of the Bill on the whole are immensely wide and drastic, and yet they do not go to the root of the evil, and why? Obviously, because they do not affect the causes which helped the propaganda of anarchism to spread. The authors of Report of the Rowlatt Committee state in paragraph 24 of the report that ‘The education which the people receive is generally literary and ill-adapted to incline the youthful mind to industrial, commercial or agricultural pursuits; they have not succeeded in finding fresh outlets for their energies. Their hold on land too has weakened owing to increasing pressure of population and excessive sub-infeudation. Their economic prospects have felt the pinch of rising prices.’

“My Lord, this the crux of the whole situation. These are the real and important problems that the Government have to face and face them boldly. So long as you do not relieve the acuteness of the present situation of economic helplessness, so long as you do not adopt bold measures to make the Indian peasantry happy and prosperous, and so long as you do not improve the system of your education and make the prospects of the educated middle class brighter and more hopeful, and unless and until you satisfy the legitimate demands of the people and set aside all

racial distinctions giving rise to perpetual discontent, rest assured, my Lord, that you may go on, if you will—as you have the power to do—employing measures of more and more drastic nature than those you propose even to-day, till you eventually exhaust your resources of repressive legislation, but you will never be able to achieve the object, which both you and we have in view, namely, the suppression of anarchism, and it is for your Lordship to consider whether it would be fair and expedient to permanently place upon the Statute-book a measure which may prove ineffectual in stamping out anarchism, but may yet cause unnecessary interference with the rights and liberties of those who are innocent. The Bill, I find, has already made the people nervous, protest meetings are being held all over the country, representations and protest telegrams are pouring in daily, and a violent agitation has already been set on foot, and if the people have their own misgivings and fears about the operations of the Bill, the fault is not theirs, but of those who were responsible for indiscriminate administration of the Indian Defence Act in the past. The Hon'ble the Home Member has assured us that the provisions of the Bill will be used against no activities other than those of sedition, but may I ask your Lordship if similar assurances were not held out to the country by the Hon'ble Sir Reginald Craddock while introducing the India Defence Act? We have known but too well what these assurances are worth and we have been forced to the conclusion that the very system which is inseparable from policy of distrust and suspicion underlying this Bill, is responsible for the miscarriage of justice, and it is for this reason above all, that I hesitate to accord my support to this measure. I do so, not in any spirit of opposition, but from a sense of duty as token of the earnestness of my desire to wholeheartedly co-operate with you, in your attempt to prevent and suppress anarchism. Let me tell your Lordship that if you really wish to have our wholehearted sympathy and support, first take us into your confidence, give us full opportunity to examine for ourselves the material available on the subject and enable us to form our own independent judgment about them. Besides enlightening us on the subject, that will give to the country necessary time to think and consider. So long as this is not done, I for one would hesitate to accord my support to the Bill. My Lord I fail to understand why the Government should be in such a great hurry about the enactment of this Bill. The war has been just over. The defence of India Act has yet many a month to run its course. The early prospect of the new constitutional reforms being brought into force has considerably eased the situation. The effect of the release of a very large number of detainees has still to be seen. Why not let the country

enjoy a little respite, and watch the result of the new reforms and the effect of the adoption of such ameliorative measures, as are recommended by the Industrial Commission? First, pursue a policy of trust and conciliation, initiate reforms for which the people have been urging for the last 30 years, meet their legitimate demands, remove their wants and grievances and see how they behave. I am sure, my Lord, you will not have to be disappointed. Should that policy fail, and should you notice a tendency for increase in the number of anarchical crimes, then the time for adopting a policy of stiffer character will certainly come, and we shall all willingly co-operate, but not till then. My Lord, the Government called on us to co-operate with it, and so we did. While the war lasted we supported every measure which the Government thought fit to introduce for the purpose of maintaining law and order in the land, but now when there is all calm and quiet in the land, will it be too much to ask the Government to accede to the wishes of the people in this matter, and as appealed to by my Hon'ble friend Pandit Madan Mohan Malaviya follow the example of that great country England which have served as our ideal, on which are based all our future hopes and aspirations, and I hope and trust that the Government will withdraw the Bill. My Lord, do not forget that the existence of British rule in India is to implant those ideals of justice, law, humanity which are the foundations of your own Western civilization, and let not the Government of India do any act which is not consistent with those noble principles or fall short of the high expectations that India holds of you. If the Government do not heed this and let the Bill proceed, there will certainly follow a violent agitation the like of which India has never witnessed before, and the responsibility for the same will then be yours, my Lord, and not ours."

His Excellency the President:—"As the Hon'ble Pandit Malaviya is now in the Council, I will give him my decision on his request that he might be supplied with the minutes of my Government and my correspondence with the Secretary of State in regard to the Bill now under consideration. I have decided that the papers in question cannot be supplied to the Hon'ble Member, and I will take this opportunity of stating for the information of the Council that in my judgment records of the confidential deliberations of the Executive Council are not papers or returns within the meaning of Rule 13. I may add, for the information of the Hon'ble Member, that the Secretary of State was asked to agree to the publication of the Bill under Rule 23, and that his reply was in the affirmative."

The Hon'ble Sir Verney Lovett:—"My Lord, as a member of the late Rowlatt Committee, I would like to begin by thank-

ing the Hon'ble Members of this Council who have criticised our recommendations, sometimes in unflattering terms, for the courtesy and consideration with which they have referred to our findings of fact and ourselves. I trust that in whatever I have to say I may show an equal courtesy.

There is no need for me to justify our findings of fact. They have not been seriously impugned, and such remarks as I have to make will proceed on this basis. We each did our utmost to ascertain the real facts, and when we had found them, we considered possible legislative remedies and preventives. The Hon'ble Mr. Jinnah says that the present Bills which simply embody our recommendations are "entirely against the will of the people." Do the people really understand what the issue is and have they grasped the facts? In my opinion they have not, in spite of the earnest endeavours of the Rowlatt Committee to state the issue and to detail the fact in such a manner as to admit of no misunderstanding. I do not think that the Hon'ble Members of this Council who have spoken have grasped the real issue, but I will endeavour to make it clear, and if I succeed in doing so, I will ask Hon'ble Members to explain it to their constituents. They are here after all because they lead and not because they follow, however heavily they may be bombarded by telegrams. There is yet time for them to lead wisely. The issue to-day is this. Is the Government to take legislative measure or not to cope with blood-thirsty crime and sedition in India, and to protect from these hideous evils its subjects and loyal servants? That is the present issue. There is no other. The issues before the Rowlatt Committee were first, what do you consider to be the nature and extent of criminal conspiracies connected with the revolutionary movement? Secondly, are you able to suggest to Government new or additional laws by which such violent crimes can be prevented? I would venture to remind Hon'ble Members that the laws do not cease to be the law because it is supplemented or altered in the light of bitter and tragic experience. We are told that the Rowlatt proposals outrage ordinary ideas of British fair play. We were not all British on our Committee. We had the invaluable assistance of two Indians, men of great legal experience and of sterling independence, from whom we parted with the highest respect. They are not men who enjoy newspaper abuse any more than do the Hon'ble Members of this council. I maintain that our proposals violate neither British nor Indian ideals of fair play. I need not discuss them in detail now, as the Bill has to go to select Committee. Our most prominent suggestions were devised to meet possibilities ranging as we said from incipient sedition to incipient anarchy. These possibilities will not be prevented from materialising by cheerfully ignoring them. Dangers are visible. They were visible to the Rowlatt Committee,

and they are visible more clearly now. They are not lessened by the triumph of blood-thirsty violence in Russia, even though that triumph be partial and temporary. We know from the foot-note to page 15 and from paragraphs 90 and 94 of the Sedition Committee's Report that Russian terrorist methods have been already carefully studied by Indian fanatics.

"But apart from such influences there are special perils waiting for impressionable young Indians. Let me read the statement of Narendra Dutta Gupta on page 193 of the Report. After confessing to the murder of a brave and loyal servant of Government he said :—

I make this statement so as not to injure Jatin but as I have come to understand that anarchism will not benefit our country, and the leaders who are now blaming me, now thinking the deed that of a head-cracked boy, to show them that I alone am not responsible for the work. There are many men behind me and Jatin, but I do not wish to give their names in this statement. The leaders who are now blaming me should be kind enough to come forward and guide boys like me in the good ways."

"This statement was made some years ago, but does any reflecting reader or the Report believe that the leaders who first depraved and then blamed this miserable victim have vanished from the earth? The Rowlatt Committee did not think so. And it is clear from the Home Member's speech and from a speech recently made by the Hon'ble Sir Henry Wheeler in the Bengal Legislative Council, that the Committee was right, that such men not only exist but intend to renew their villainous work when opportunity offers. They are even now encouraged and assisted by speeches and newspaper articles instinct with bitter racialism and published broadcast which, every one knows, are only too common. Does past experience show that such speeches and articles produce no fruit? It shows the very contrary. They frequently produce fruits which astound their authors. The Hon'ble Mr. Banerjea in advising Government to withdraw these Bills urged that they violated the principle that conciliation should precede coercion. Has it not in fact done so here? Long before these Bills were projected, before even the report of the Sedition Committee was published, the Reform proposals of your Excellency and the Secretary of State were given to the world. When these proposals were published, your Excellency and the Secretary of State had read the Report of the Committee, but were none the less determined to endeavour to meet political aspirations. Your proposals were hailed with only slightly qualified enthusiasm by that party of Moderates of which Mr. Banerjea is the leader. The Hon'ble gentleman and others have proposed amendments asking for delay in introducing these Bills, but it is plain that their real objections are to the Bills themselves. Failing the withdrawal of these Bills for good and all they

wish the Government to wait and see how the Reforms operate, how far the economic and social conditions improve, and whether the revolutionary movement claims any more victims or not. Now, it is these unfortunate victims who find no place whatever in this specious programme. Not one speaker has considered them at all; we have heard a great deal about the poor young men who may be wrongly condemned by three fallible High Court Judges and subjected to police supervision by the orders of an untrustworthy executive. But what about the persons who have to be protected from the movement of which these young men are the exponents? They too are God's creatures, and they are generally, though not always, Indians. What is to happen to them? We know from the Report what has happened to them in the past. I will give two samples. The first is from the record of the year 1915. The Report says :—

'It remains to mention three murders which occurred in Eastern Bengal this year. On the 3rd of March Babu Sarat Kumar Basu, the Head Master of the Zilla School at Comilla, was shot dead while walking with his servant. The servant was wounded in the stomach. A Muhammadan who pursued the murderers received two shots in the chest and a woman was accidentally struck by a bullet from one of the pistols. Five empty Mauser pistol cartridges were found upon the scene. The Head Master's servant eventually died. The victim of this murder had come into antagonism with political parties in Bengal in 1908, and shortly before his murder had had occasion to report to the District Magistrate about two students concerned in the distribution of seditious pamphlets. None but political reasons can be assigned for this murder.'

'The Report goes on to mention the murder of a Police Officer who was shot with his child by four or five youths armed with Mauser pistols. The second passage which I should like to quote is from the record of the year 1917 :—

'Another dacoity in 1917 remains to be specially mentioned. It was committed in a goldsmith's shop at No. 32, Armenian Street, Bura Bazar, Calcutta, at about 9 P. M. on the 7th May. Two young Bengalis entered the shop and asked to see jewellery. Then four young Bengalis entered the shop and began firing wildly with pistols. Two brothers of the owner who were in the shop fell mortally wounded. There were also in the shop an assistant and a servant, who were both wounded, two women, one of whom escaped and the other hid under a bench, and a Muhammadan who escaped. The dacoits decamped with jewellery to the value Rs. 5,459, and some of them drove away in a taxi-cab that they had in waiting.'

'In neither of these cases was a single conviction obtained. There have been many such cases. The fate of these poor victims seems to me to deserve a little more than conventional regrets from the Members of this Council. My Lord, what has come from delaying and hesitating to grapple adequately with these evils in the past? What has resulted from the absence of laws broad enough to cope with terrorism and revolutionary conspiracy

working together among a simple and heterogeneous population in an enormous country? We know from the Report what has happened. As the Committee pointed out in paragraph 174, it was only when the Bengal conspiracies had enjoyed a two years' run, when two English ladies had been murdered, and as Lord Minto said 'the seeds of wickedness had been sown among a strangely impressionable and imitative people' that the first preventive Bill of these latter years was enacted. Enormous mischief had been done. The Government of India waited then. Again they waited, during that critical period from the 19th December 1914, when the Punjab Government asked for the very early promulgation of a draft Ordinance, in order to deal with the prosecution and suppression of violent crime, waited up to the passing of Defence of India Act in March 1915. Would they have waited had they foreseen the long tale of intervening crime, had they known that within this period conspiracy would almost achieve widespread bloodshed at large centres from Calcutta to Lahore? Why did they wait? They waited because they were reluctant to supercede the ordinary stature law. The Rowlatt Committee did not think that they would have hesitated to employ special preventive laws had such been ready to hand. My Lord, surely the past teaches us that sacred as is the name of liberty, it should never be so interpreted as to cover license to enemies of us all, of the Government and of Society, to work out their plots as they please. I wonder if Hon'ble Members have read those words spoken on the scaffold, in a last hour of awakening, by one of the victims of the French Revolution who had assisted to raise the storm which swept her away. 'Oh, Liberty! What crimes are committed in thy name!' This is indeed a true saying. We are told that the crimes of the Terrorists will disappear before political concessions, that they are merely the product of unsatisfied political idealism. Persons who really think this fail entirely to understand the frenzied and irreconcilable spirit which guides this insane, this inhuman war against Society. It is a spirit which, as the Report shows, burns with racial hatred and spurns political concessions. I am speaking of the spirit of the directors of the movement, men like-minded with the notorious Hardy. The others are their tools. The criminals are comparatively few, but their facilities are great, and their organisation has been elaborate and widespread. Their achievements would, as the Report points out, have been more considerable had these been able to procure a more abundant supply of arms. Their designs have been furthered all along by the absence of anything like determined, persistent non-official opposition to their propaganda of racial hatred. I remember indeed one fine courageous speech of Mr. Gokhale's delivered to the Students' Brotherhood at Bombay on the 9th of October 1909. I

commend it to all true Indian patriots. It should be graven in their minds. Had there been more of such speeches and had such speeches been followed by determined, widespread action and organisation, a number of misguided youths would have been a credit and a joy instead of a disgrace and sorrow to their parents, and there would have been no Rowlatt Committee. As it is, the attitude of too many politicians towards the Terrorist movement has resembled that of a nervous person who hearing a burglar in his bedroom feels happier and safer when he pulls up the blanket over his head. My Lord, things being as they are, and not as we all hope they will one day be, I do not see how without special legislation of the kind proposed by the Rowlatt Committee, revolutionary plotters are to slink back discouraged and loyal subjects and servants of His Majesty the King-Emperor, whose sole offence is wealth or their loyalty, are to receive from the law that protection which no self-respecting Government in the world would refuse them. The Government of India cannot sit down and twiddle its thumbs, as apparently some Hon'ble Members wish it to do, because all judges and policemen are fallible, the Executive is human and prone to err, and high provincial officials are a truculent lot. When the Congress and Moslem League deputations arrive at Bombay *en route* for England, they will not be deterred from embarking by the reflection that 'ships are but boards, sailors but men and then there is the peril of waters, winds and waves.' Perhaps these pessimistic members forget that in future far more of these fail judges and officials will be Indians than are Indians now. This reflection may reassure them. Be this as it may, Indian parents have a right to expect that Government will take as effective steps as possible to prevent revolutionary plotters from depraving and ruining their sons. There are, too, others who have the strongest claim on all of us, non-officials. It is pre-eminently due to the loyal Police Officers of the Crown, British and Indian, to the loyal landlords and peasant proprietors of the Punjab, that India was not disgraced in the first year of the war, despite the valour of her soldiers and her own general loyalty. They frustrated the plots of the revolutionaries; they stood in the van; they bore the brunt. Should the Government of India fail now to do its utmost to shield the homes of its loyal Indian servants from cruel bereavement, would its own roof-tree stand the firmer? It would not. It would gradually totter to well-deserved catastrophe.

"My Lord, I appeal to our non-official colleagues to look at facts that stare us in the face. It is only by recognising existing facts that we can hope to build truly now. As Mr. Gokhale once said 'Life is not like writing on a clean slate. We have to take the words existing on the slate, and add other words, so as to make

complete sentences and produce a harmonious whole.' We must, my Lord, take things as they are, build on what is sound and right, remedy what is horribly wrong if we would indeed rise to higher things and realise the future which your Excellency has so earnestly sought, with infinite labour, for the people of this country."

The Hon'ble Dr. Tej Bahadur Sapru said that no Indian who is worth his salt in this Council would be true either to his own convictions or to the Government if he were to equivocate on an occasion like this. The path of duty being clear, they have decided to oppose this Bill and support the motion which has been put by Mr. Patel. The Hon'ble Sir William Vincent said that we would be judge by the attitude that we adopt towards this measure. In other words, the position is this. If we want to establish our capacity for self-Government, or responsible government, we must be prepared to support the Government in carrying this measure through. We have been hearing this argument for the last several months. But my Lord, let us examine the position. If we do not support this measure, we are not fit for responsible government or self-government. If we do support this measure we are again not fit for responsible government, because admittedly the country is seething with discontent and anarchy, and where there is anarchy there cannot be self-government or responsible government. My Lord, may I ask our critics to tell us on some authority whether, if we were prepared to support this measure to-day whole-heartedly, they would be prepared to give up all their opposition to our claim for self-government and say 'Oh, well, Indians have now established to the hilt their fitness for self-government'. My Lord, the resources of our critics are inexhaustible, and if an argument like that will fail them I have no doubt that we shall be face to face with a multitude of arguments of a different character to show that we have not yet developed character and capacity for self-government.

Sir Verney Lovatt in his very spirited speech just now told us that we had absolutely missed the issue. I may assure Sir Verney Lovatt that we have not missed the issue.....

"My Lord, the Indian politician is somewhat of an unfortunate being. His attitude is seldom correctly appreciated. Throughout the discussion it has been assumed that those of us who are not prepared to support the Government on this occasion have got a soft corner in their hearts for the anarchist or the revolutionary. That is not so. What the Indian politician wants to know is this. Are the measures that you have been taking, is the measure that you propose to take to-day, the sort of step that is necessary, that is essential, for the uprooting of this evil which has grown in this country? My Lord, I have no doubt whatsoever in thinking that these are not the measures which will undo the mischief that has

come about in this country or that will uproot the evil that has grown. You have tried repression during the last ten years on various occasions, and yet you find to-day that you are not in a position to say that you have been able to quell or suppress all these activities, and I venture to think, my Lord, that even this measure will fail.....

* The entire provisions in Parts II and III are so subversive of elementary principles of British jurisprudence, they are so shockingly unlike anything known to British institutions or British law, that I venture to hope that the Statute-book will not find a standing place for this uncanny intruder. My Lord, the homage that is sought to be paid to law in the constitution of this investigating authority is in my opinion nothing but a mockery. Either you must abide by the law inherited by us through ages, or you must frankly say 'we do not care for these judicial forms and we will frankly reserve this power to the executive, and do not care that there shall not be any further inquiry.'...My Lord, as a lawyer trained in the British system of jurisprudence, as an Indian who loves his country and who is interested in the ordered progress of this country, and wants self-government, who is anxious to have responsible government at an early date, and who is anxious for the permanent connection between India and England, my Lord, I think it is my duty to oppose this measure. My lord, during the last few months I have been going all over the country with the Reforms Committee, and my experience has been that the feeling for the proper reception of reform is fast growing until day before yesterday.....

"And lastly, my Lord, there is one more point which I would urge upon your Lordship's attention and upon your Government. My Lord, if there is one principle which is embodied in the British constitution and in the British law it is that no man shall be deprived of his liberty and freedom, without a proper judicial trial. I venture to doubt whether the Government of India have got the power to pass a measure of this character. My Lord, I will refer to section 65 of the Government of India Act, which says that—

The Governor General in Legislative Council has not, unless expressly so authorised by Act of Parliament power to make any law repealing or affecting any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom'.

"My Lord, the bond of allegiance, the strongest bond of allegiance between the subject and the Crown, is that the Crown protects him against arbitrary executive power and that the subject is entitled before he is deprived of his liberty and of his freedom, to be tried according to the recognised forms of law. My Lord,

I have no doubt that your Government have satisfied themselves that they have such power ; but speaking for myself, I am not free from doubt on that matter, and I should very much welcome any explanation on that point of law.

"Lastly, my Lord, I will beg you to realise the situation as it has been growing during the last few days and as it threatens to grow in future. My Lord, already there is a wave of indignation running through the country ; from one end to the other protest meetings are being held. Do not dismiss them with a wave of the hand and say, 'Oh ! well, all this will pass away.' My Lord, what was impossible in this country ten years back is no longer impossible now. Political feeling has been growing in this country ; political consciousness is much stronger to-day than it was ten years ago, and what the country was prepared to put up with ten years ago it is not prepared to put up with now. My Lord, you are going to throw the country into a whirlpool of agitation such as it has never witnessed before....."

The Hon'ble Mr. G. S. Khaparde humourously said that there is no rose without a thorn ; the rose is the Reforms but unfortunately the thorn has begun to prick before the rose blossomed. He quoted Lord Morley : "Reaction triumphs and mischief goes on," and showed how it is only too true in India.

He then raised the question as to whether the Government of India had power to pass a measure curtailing the liberty of the subject in the drastic manner proposed and quoted Sir John Simon in favour of his view. "The constitutional rights of the subject stand upon the authority of Parliament and the coronation oath. No legislature of a dependency possesses the right to infringe these rights without the express authority of the King in Parliament." There was a commission appointed presided over by Lord Loreburn before whom Sir Courtenay Ilbert was examined and he gave a list of fifteen enactments which according to him were not really speaking authorised by law, that is to say, fifteen *ultra vires* enactments ; but that list unfortunately was said to be confidential ; I tried to get it but I could not get hold of it and it still stands ; among them, however, it has come out that the Defence of India Act stood first. Your Excellency may remember that there was a case recently in Burma in which this point was raised ; the enactment said that no person will be allowed to bring a civil suit for anything done *bona fide* under the Act, as it is said also under this Bill. Then the person did bring a suit and it was rejected and he appealed to the Privy Council and the Privy Council allowed that appeal, and they were inclined to hold that the Government of India, this Hon'ble Council, could not pass a law taking away a subject's right to sue the Secretary of State. It comes to this, that this point

is still open and has been argued and in the Burma case at any rate it has been so ruled. That being so, I humbly submit that this legislation is, so far as I can see, with due respect to the eminent jurist, the Law Member, who sits opposite to me, with due respect to him, I still believe that this argument is correct and when I read this passage I read it merely to give the authority of Sir John Simon. The practical part, however, is that the enactments are there and I go upon those enactments.

Regarding the findings of the Rowlatt Committee, he said, that the evidence on which they had to work was *ex parte*, and so he could not rely on them. The only justification for the new legislation put forth was that the executive could not find sufficient evidence to deal with the 'anarchists.' "But whose business," said he, "was it to collect evidence? I believe it is the business of the police or the Criminal Intelligence Department. Why don't they do it? Well, it is said, they are unable to do it. I say that points to the inefficiency of the police; it does not point to the inefficiency or defect of the law; it points to nothing else. Why not ask them to do their work properly? They say they cannot do it. Why can't they? In England they do it; they do not require these laws in England to unearth these conspiracies; they do not require these very unusual laws. Why do they want these laws here to unearth them? It is like the analogy which was put by an Hon'ble Member here 'Lower the standard of the examination because my son cannot pass now.' 'My police cannot collect evidence; kindly make the law more rigorous and relax the rules of evidence' That is not the kind of argument that appeals to me, and I believe it will not appeal to anybody here."

Then he referred to the great alarm felt all over the country in view of the present measure and to the feeling generally prevalent that the bill if passed will make political discussions impossible, as in the days of the *swadeshi* movement in Bengal and the reign of terror following it. "A living body does not tolerate a foreign substance," said he, "and so Jurisprudence does not tolerate a wrong principle being introduced. A living body will throw off any outside matter, so Jurisprudence will not tolerate this principle of the personal liberty being placed at the mercy of the Executive and being taken out of the jurisdiction of the Courts. This tendency of of the principle of liberty being curbed by the executive authority would lead to a number of principles being violated as was pointed out by Mr Malaviya. Similarly, many difficulties will arise. We should stick to the good old principles which have endured for centuries."

The Hon'ble Mr Shafi said that on a careful analysis of the Rowlatt Report what we find is this :—The revolutionary movement

came into being under certain circumstances which are connected with certain years in the past. Certain measures which have been taken since the outbreak of the war have resulted in putting an end, for the time being, to the crimes and outrages committed previously. It may be that hereafter when conditions which existed previous to the war are restored, there may be a recrudescence of these outrages and crimes. We are not in a position to say anything one way or the other. But we are not in possession of evidence showing that the revolutionary movement has been absolutely extinguished, and it is on that supposition that we report to the Government what we think ought to be done in case there is evidence of a recrudescence of those crimes. Looking at these passages as a lawyer, it seems to me that their conclusion amounts to this, that should the time be reached when special legislation such as adopted during the course of the war which has resulted in putting an end to these outrages and crimes for the time being becomes necessary, we recommend the following measures which we suggest should be adopted. Now, my Lord, these paragraphs were written very nearly one year ago. Since then India's steadfast loyalty to the British Crown, her deep-rooted attachment to the British Empire, has been vindicated in a manner beyond all praise. No outrages or crimes of the kind with which the Rowlatt Committee dealt in their report have occurred during this one year. And when we bear in mind the fact that even the very introduction of these Bills into this Council has created an amount of nervousness, alarm and agitation in the country which is evidenced by meetings that are being held all over the country, it seems to me, my Lord, that I should be failing in the duty which I, as a nominated Member, owe to your Excellency's Government if I were not, under these circumstances, to give what I believe to be true and faithful advice to your Excellency's Government. And my advice is this, adopt the course suggested to you by my friend the Hon'ble Mr. Surendra Nath Banerjee. What does that course amount to? It amounts to this, that the Select Committee shall report to this Council six weeks after the passing of the Reforms Act in Parliament, on the Bills which have been introduced in Council to-day. If by that time there is any evidence of the recrudescence of these crimes and outrages, of the existence of this revolutionary movement in India, no one will support the Government more strongly than I. And I am perfectly certain that at least a majority of the Hon'ble Members of this Council will then, because of the existence of this nefarious movement, give their whole-hearted support to Government in any measure, to these very Bills, if necessary, which may be required to meet the new situation.

The Hon'ble Sir George Lowndes referring to a question

asked whether, as a Government, we desire to pay no attention to the opinion of non-official Members of this Council." gave a very characteristic reply. He said :—The answer can only be that we have every desire to do so ; but if we are asked to surrender our own judgment, maturely and carefully come to, on a very difficult question of policy, it is impossible for us to do so even to the unanimous opinion of non-official Members, who are not in the position of responsibility in which the Government is." He continued :—

"My Lord, one fact at all events has emerged from this debate. Hon'ble Members in this Council have admitted on all sides that the facts as found by this Commission are proved ; no one has attempted in this Council to deny the existence of anarchical revolutionary conspiracies and agitators in India. I say it is impossible for us to agree that a further power of repression is not a necessary weapon in the hands of an efficient Government. Hon'ble Members do not dispute the facts ; they only dispute the conclusions, as deductions from the facts, to which the Commission have come. My Lord, we brought out, we created a Commission of the highest possible character, we asked an English Judge of eminence and reputation as a criminal lawyer, to come out here and advise us ; they have advised us and we, as a Government, are bound to accept their recommendations. Surely we should stultify ourselves if we, did not. And what have we against it ? Hon'ble Members here, legal practitioners of great eminence, no doubt, in local affairs get up and tell us that they do not agree with the conclusions of the Commission. To which are we to turn ? The Commission consisted of an English Judge, sitting with Indian Judges of long experience and great weight, with a non-official Indian Member as well upon it, and their recommendations were unanimous. Can we as a responsible Government refuse to follow them ? Can we as a responsible Government accept as conclusive my Hon'ble friend, Pandit Mandan Mohan Malaviya's statement that he does not agree with their recommendations ? Which are we to turn to ? Which are we to take ? Can any reasonable man doubt ? Well, we have made our choice, and we think as a Government we have made the right choice and the only choice that is possible to us. The position to my mind irresistibly suggests the case of a man who is admittedly sick and who has tried the local doctors and is not satisfied with their opinion ; he brings out specialist from Europe to examine his case and associates with that specialist all the leading doctors of the place, and then it is proposed that he should not take their advice. Now, in the ordinary things of life do any of us act like that ? Would any of us resist an opinion of that kind ? The committee of eminent doctors advise a nauseous pill ; the friends of the patient say :—"No, do not take it ; try

sugar and water. The specialists advise an operation. The friends of the patient say, 'No, put it off for six months; wait for something else to happen.' Is that the counsel which the ordinary man of the world will accept and follow? I trow not. Surely, we as a Government are only acting on the lines of common-sense in accepting the best opinion we can get, which is emphatic in recommending this legislation. In the first place, we have a remedy proposed and we find it disputed in this Council whether the remedy proposed will be of any use. Some Hon'ble Members have said 'that it will be useless; that it will not effect what we desire; that we shall not be able by these means to stamp out the anarchist conspiracy; that we shall only make it worse.' Here I am glad to see at all events that we have a very definite difference of opinion among the non-official Members themselves. I remember yesterday my Hon'ble friend, Mr. Jinnah, saying frankly and with the weight of his own experience behind him, 'I do not deny that there are these conspiracies and that you can get rid of them by the means you propose; I admit you can do so, but you can do it better in another way.' Other Members say 'that is not so; there is obviously a division of opinion on the point. But what practical remedy for this state of things which is now admitted to exist in India is put forward by any non-official Member of this Council? We have heard the facts stated by Sir Verney Lovett, who knows them probably better than most of us, and what remedy has been suggested for them. I have heard my Hon'ble friend, Mr. Sitanath Ray, recounting experience that have come very near to himself, and what remedy does he propose? What is the practical remedy proposed in this Council? Well, we have two; let me deal first with the no doubt practical suggestion in a way of my friend, Mr. Surendranath Banerjee. He says, 'You have got powers under the Defence of India Act which will last some time yet. Use them. After that pass an ordinance to the same effect and use it for six months. Thirdly, you have got on the permanent Statute-book Regulation III of 1818. Use that.' Well, if I may take that in any sense as a mandate from Members of this Council, it is a mandate for repressive legislation of a far worse description than what we are now proposing.

"This Act does not go nearly so far as the Defence of India Act, it is surely a far milder measure than Regulation III of 1818. Therefore, I say that the constructive policy that has been put forward by my Hon'ble friend to my right, Mr. Surendranath Banerjee, and which has been backed by a certain number of Members of the Council is a far more repressive one than the measure which has been condemned in the Council to-day.

"Then what is the alternative policy that we have heard from

nine-tenths of the speakers in this Council? It is the policy which is summed up in the Asquithian 'wait and see'. Well, my Lord, we do propose as a Government to wait and see, but we propose before we start on the period of waiting to arm ourselves, in case it is necessary to use our powers again. Let me again take a homely illustration of what I mean. A burglar has broken into your house and has robbed you, and you think he is coming again, or at all events, you think he may come again. If you wait behind the door for him, do you wait without a weapon in your hands, or do you before he comes arm yourself and wait for him armed? This is all we propose to do. Many Hon'ble Members have spoken as if the provisions which are to be enacted by this Bill were to be brought into force in the whole of India immediately. Surely, they cannot have studied the Bill; the whole point is that Government are to be armed with powers which can be called into operation if the burglar comes again. Then as to the policy of what I have called 'sugar' of 'wait and see'; 'try the effect of the Reforms'. If a snake has stung your son and perhaps killed him do you try and charm the snake, do you make him an offering and ask him not to do it again, do you kill the snake? We are arming ourselves with powers to deal with a case of that kind, and surely that is what every prudent man would do in the ordinary walk of life.

"Then, again, I venture to say that in this debate there has been a large amount of exaggeration with regard to the effect of this Bill; a typical instance of this occurred in the speech of my Hon'ble friend opposite, Mr. Chanda, when he spoke of the 'untold miseries', I believe those were his words,—the 'untold miseries' that this Bill will bring to the people of India. Well, it seems to me that that is a great exaggeration and for all the weight with which my Hon'ble friend spoke, I have yet to learn that the pulse of India is in Assam. Then my Hon'ble friend Mr. Bannerjea talked of innocent millions suffering for the sins of a few hundred,—the Hon'ble Mr. Jinnah said a few thousand. Here it was, I venture to think, his heart that led him away and not his head. We had one form of argument which really was, put into plain language, the threat of agitation. That is an argument to which no reasonable Government can give way. I venture to think that the agitation in India will be exactly what the politicians choose to make it. Then lastly, we were told, though I think I have dealt with the point before, we were told that the measure will be useless. It is admitted that something must be done, but nothing coming within the realm of practical politics has been suggested by our opponents.

"Their have been other contentions raised which I should like to deal with as a legal member of this Council; they are possibly not so material to this discussion as they would be when discuss-

ing the details of the Bill, but as they have been raised, I should like to answer them to the best of my ability. The argument has been put forward that we have no power to legislate as we propose to do by this Bill. It was brought into being by Mr. Chanda and was taken up by the Hon'ble Pandit Madan Mohan Malaviya yesterday. He called for one of the Government of India and told us he would elaborate the argument later, but went no further, and when the Council rose I did not know on what the argument was based.

"Dr. Sapru, my Hon'ble and learned lawyer friend, took up the offensive and carried it a little further, but it waited for the courage and ingenuity of my Hon'ble friend Mr. Khaparde, to bring the babe out of its swaddling clothes into the light of day. Then when was it? I hoped to hear something new and interesting. It was the old argument that was raised half a century ago in Calcutta, and which has been revived from time to time; it began in the very well-known case of Amir Khan in 1869 or 1870 and received no acceptance then. It was raised a quarter of a century ago in Bombay and met with the same fate; it has been raised recently in Patna, and has again met with the same fate. It is the old argument that you are touching the allegiance of the subject by interfering with the right of liberty. It is the old argument which has been raised for half a century and has never yet found any supporter on the judicial Bench of this country. I do not propose to deal with it at any length. Let me read a few words only from the most recent judgment of an eminent judge in Calcutta, Mr. Chaudhuri :—

The Indian Legislature both before and after the passing of the Indian Councils Act, 1861, has from time to time passed similar enactments authorising the privation of liberty in certain circumstances, and no instance has been cited to me in which such acts have been held to be *ultra vires* or in which any of the above arguments' (these are the arguments which the Hon'ble Mr. Khaparde has addressed to us) 'which have been repeated from time to time have ever been accepted as correct'. A similar point, I may note, was raised in England as to the power to restrain the liberty of British subjects and was carried to the House of Lords. My Hon'ble friend Mr. Khaparde read to us from a certain petition before the Privy Council. I know nothing of its contents. I only know that the petition was dismissed, and therefore it is not an unfair assumption that in the Privy Council too this argument found no favour. Is it, under these circumstances, wonderful that I, so far as I am the legal adviser of your Excellency's Government, have declined to suggest that there is any lack of power in the Government of India to legislate to this effect? Remember, that this argument could

have been addressed and was addressed to the Courts after the Defence of India Act was in operation. We have had all these years of the war in which the ingenuity of the lawyers has been engaged in trying to attack the powers exercised under the Defence of India Act. We had two very big cases in the High Court at Patna not very long ago in which, as I say all the ingenuity of lawyer from Calcutta and Patna was employed to try and make the Act of no effect. And these are the arguments upon which my Hon'ble friend Mr. Khaparde says that I ought not to have accepted the position that we have power to legislate. When I interrupted my Hon'ble friend the Pandit yesterday it was to say that in my opinion there was not the slightest shadow of a doubt as to our power of legislating in this matter, and I say the same again now.

"Then considerable point was made by more than one speaker with regard to the provision in the Bill as to the admission of evidence which it was said was contrary to the existing law, and with that I quite agree. My Hon'ble friend Mr. Jinnah argued that we should then have a trial within a trial, in order to ascertain whether the particular person whose evidence was being adduced had been spirited away in the interesting accused. My Hon'ble friend suggested that this was a great blot upon the clause. I do not think I have misrepresented his argument. I think my Hon'ble friend forgot that possibly it was an unwise thing to argue this in an assembly which contains so many lawyers, as we already have exactly the same inquiry, the same trial within a trial.....

The Hon'ble Mr. M. A. Jinnah :—"Under section 33 a statement is only allowed subject to certain provisions which I should ask you to read"

The Hon'ble Sir George Lowndes :—"I do not think my Hon'ble friend quite understands me. This clause, of course goes a great deal further than section 33. Under section 33 of the Evidence Act, we all know that the evidence of a witness which cannot be produced is only admissible provided among other things opportunity has been given to cross-examine him: all that I am dealing with however is the argument which my Hon'ble friend Mr. Jinnah rather unwisely, as I thought, elaborated yesterday that the real objection to this clause of the Bill was that you would have a 'trial within a trial' in order to see whether the man had been actually spirited away. All that I am suggesting to him is that we have exactly the same possibility under section 33 of the Evidence Act. He obviously forgets the provisions of section 33. The section deals with the relevancy of certain evidence for proving in subsequent proceedings the truth of the facts stated therein, i.e., when the witness is dead or cannot be found, or is incapable of giving evidence or is kept out of the way by the adverse party. This is

the passage in the section to which I referred. Here you have exactly the same 'trial within a trial' in order to know whether he has been kept out of the way by the adverse party. I am only meeting the argument that has been put forward. I am not dealing with anything else. Whether it is desirable to have such a provision in this Bill may be another matter, but the particular objection taken to it is of little weight if that is already in the law under section 33.

"Another point that was made by several Hon'ble Members and which has been emphasised by such an eminent lawyer as my Hon'ble friend the Pandit was that by this Bill we were taking away the birth-right of every man in taking away the right of appeal to the High Court which is part of the charter of liberty. I am not suggesting that these are his own words, but that is the trend of his argument. But does my Hon'ble friend and those who follow the same line of argument forget that until a very few years ago there was no right of appeal whatsoever in any criminal case in England? It is only a very modern innovation in the English law which has allowed a criminal the right of appeal.....

—The Hon'ble Pandit Madan Mohan Malaviya :—"Have you any trial by jury?"

The Hon'ble Sir George Lowndes :—"In many cases in India we have a trial by jury."

The Hon'ble Pandit Madan Mohan Malaviya :—"Give us that and we are quite content."

The Hon'ble Sir George Lowndes :—"It is not merely going back to the English practice. I would remind my Hon'ble lawyer friends of what the law in India is. There is no appeal in a criminal case in India where the case has been tried in the High Court in a criminal Sessions. There is no appeal then, and why? Why have we adopted in India from very early times the right of appeal in criminal cases from the district Courts, from mofussil Judges, but not where the case is tried in the sessions of the High Court?"

The Hon'ble Pandit Madan Mohan Malaviya :—"Is there not always a jury in the High Court?"

The Hon'ble Sir George Lowndes :—"We have juries in the district just as much. But there is no appeal from a criminal trial in the High Court because of the higher status of the Judges; that I say is the difference. Here we are providing a tribunal to deal with these cases consisting of three High Court Judges, and therefore I say that there is no necessity for a right of appeal and that the taking away of the right of appeal is not to deny.....

The Hon'ble Mr. Kamini Kumar Chandra :—"Is it not practicable to appeal from decisions of a High Court on a certificate by the Advocate-General or on a point of law reserved?"

The Hon'ble Sir George Lawndes :—"I am afraid my Hon'ble friend is not quite correct. He will, no doubt, remember clause 25 of the Letters Patent. It reads thus. I am reading from the Calcutta one :—

of 'And we do further ordain that there shall be no appeal to the High Court or judicature at Fort William in Bengal from any sentence or order passed made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law, for the opinion of the said High Court.

"I am, therefore, correct in saying that there is no appeal where a trial is in the High Court, and here the trial that we are providing for is before three High Court Judges.

"Well, I do not desire to follow all the arguments that have been addressed to this Council to-day nor to go into all their ramifications. The various points that have been raised will be dealt with by the Select Committee which, I hope, will consider this Bill very sympathetically. I think it right to say, speaking for myself as a lawyer who has practised for some years under the English system of law, that I have a great dislike to legislation of this kind, and I would not support it as I do whole-heartedly now, unless I was absolutely satisfied myself that it is necessary. I dislike it, but I recognise the necessity for it. I, therefore, support it whole-heartedly as being necessary for the conditions that we have in India at the present time. At the same time I should like Hon'ble Members to know that, when the Bill goes to the Select Committee, any suggestions that they may have to make for mitigating the severity of it or doing away with possibilities of oppression and so on, will meet with sympathetic response from my Hon'ble Colleague who is in charge of the Bill, and it is there that we may be able to do a great deal to meet the difficulties which many Hon'ble Members have dealt with."

The Hon'ble Rao Bahadur B. N. Sarma after referring to the injunction of the Law Member that they should be lead not by emotions but by the intellect in deciding the issue, said that he will try to appeal to the intellect alone.....

He said that the issue is whether the people should submit to the rule of the Executive pure and simple, without the aid of the judiciary and continued; "has the Government realised the full significance of their admission in bringing forward this legislation at the present moment? To my mind they have confessed that after a century of British rule, the rule of the bureaucracy has brought

India to such a state—progressive if you please—that they find that the judicial administration, their own creation, hampers them to such an extent that they would have to discard it if they are to rule India at all peacefully. That is the confession, a confession of inefficiency, a confession of absolute failure, the logical result the admission of the need for this legislation if the Government should press for it. Well, people have been saying that to a very large extent and therefore pressing for reforms, have been asking the Government to take the people into active co-operation as government on the old lines is absolutely impossible. Now the answer of the Government to that may be : we have realised that and that is the reason why we have brought forward a scheme of reforms which would give self-government in course of time to India, but mean-while we find it absolutely necessary to arm ourselves with these powers during the transition stage. It is true that the present system of government is a failure, that we cannot rule on these lines, but we at the same time have to arm ourselves and go back upon our position to some extent and treat the whole of India or portions of India as if they were Agency tracts before the self-government scheme is in working order. My submission is that the policy of the Government for which something has to be said, that the bitter pill which has to be administered to the patient had better be administered prior to the sugar pill, and that the patient would appreciate the sugar pill a little more if the bitter pill were administered first, that repressive legislation should be introduced first and the liberal legislation later on, is unsound. What we have to ascertain is whether the bitter pill is a real medicine, whether it may not exasperate and kill the patient, whether it is worth the while of the patient to live an inglorious life, deprived of all security of person and liberty in the hope that on a future day there might be reforms. The next question is as to whether this bitter pill is likely to attain the end which the Government has in view. The Hon'ble Sir George Lowndes and the Hon'ble Sir William Vincent, the Home Member, have practically accepted the dictum in the Report of the Rowlatt Committee that even in 1914, prior to the theft of Messrs. Rodda's arms, it was felt that the forces of law and order had in this respect been vanquished, and that the sedition party was too strong for the Government. Is that a correct statement of fact? My Lord, I submit that it is not and I beg leave to dispute it; I take the liberty to say that the police of Bengal as of other provinces have been as efficient, perhaps much more efficient, in tracking this particular kind of crime than they have been in grappling with other serious forms of crime, and if there is any inefficiency, if there is any inability to cope with the situation, it is not to be noticed in this particular case alone, but it is to be found all

along in the case of grave crime. I beg permission to quote only a few facts to show that I am right that in the matter of the sedition trials the Courts have been a little more lenient towards the prosecution than they have been in the case of other crimes, and that the percentage of convictions has been much higher than in the case of murders and dacoities, and therefore it is not a correct fact to say that the forces of law and order have been found inadequate in this particular instance. If you say that they have been all along inadequate in dealing with grave crime, I have no answer but to say, 'yes,' but if the Government think that they have been adequate in dealing with grave crime but that in this particular instance alone they have failed, I beg to join issue with them. What do you find? The Committee say that in the ten attempts to strike at revolutionary conspiracies, 192 persons were involved in the prosecutions launched, and that 63 were convicted, that is a percentage of about 33. Now, my Lord, what has been the fate of the cases which have been brought to the Courts for murder and dacoity. You find that in Bengal during the year 1912, 420 reported cases of murders and only 39 convictions, which is 9 per cent. You find in 1915, 514 reported cases and 71 convictions, about 11 per cent., in 1917, 425 and 60 convictions. And if you take the number of persons, you will find the proportion would be nearly the same.

"Take dacoities again. You find there were in 1912, 249 dacoities and you have had only 19 convictions or 7 per cent. and you had in 1915, 769 dacoities and 102 convictions as against 24 or so in the case of sedition. The police in other provinces have been much more efficient than the Bengal police in the matter of tackling grave crime. Therefore, my Lord, having such an inefficient machinery in your hands, can the Government complain that the people have not loyally co-operated in dealing with this sort of grave crime. It is not the fault of the people that they have not succeeded in enabling the Government to secure a larger number of convictions. It is the fault of the administrative machinery. It is the mutual adulation society in which we have been living, one department supporting another, each department praising its own men and the others accepting it, that is responsible for this state of things. Therefore, if you ask for a remedy, the remedy is to make the police in general, and the Bengal police in particular, more efficient. Because the police, having search powers, having so many vast powers entrusted to them, had not been able to discover anything until seven or eight years after the rebels openly proclaimed themselves, you say to us, 'we are inefficient, we have such a hopeless machinery, therefore arm us with powers depriving the people

of the security they enjoy under the protection of a judicial administration.

"Let me take up another argument which was advanced by the Rowlatt Committee that the convictions have not been able to repress crime. Have they repressed crime in the case of murder? Have they repressed crime in the case of dacoity? We find that the number of crimes has been increasing year after year through out India. This state of things is not confined to the case of sedition alone; it is to be found in the case of all grave crime. 3,343 reported murders in 1903 and 4,770 in 1915 with 1,103 and 1,401 convictions and 2,339 and 3,738 dacoities with 443 and 733 convictions. I shall not weary the Council with further figures.

"Your Lordship, the question has been asked: what is your practical suggestion? My practical suggestion is this. Just as you stamped out the Thugs by a special department, if need be, create a special department and stamp out this crime. If a province is so beggarly as not to be able to find money for it, take the money from the other provinces, if necessary, in order to be able to finance that province; but in the name of common sense do not deprive the people of other provinces, of their rights and liberties simply because you find one administration unable to cope with crime of a particular character.

I cannot but feel, my Lord, that, notwithstanding the safeguarding words that it is only in the case of a seditious movement being connected with certain grave crimes that this machinery is to be employed, notwithstanding the employment of these words, an inefficient police would only have to say 'so and so, who is a political preacher, has preached here and dacoities have gone up,' to invoke the provisions of this Act, and we find, as a matter of fact, ordinary Hindu-Muhammadan disturbances being tried by special tribunals under the Defence of India Act. That procedure may be followed hereafter, the name of sedition being conveniently employed. Therefore, I would ask that those essential facts on which the Report has been founded should not be treated as proved or employed as arguments in support of this legislation.

"Then my Lord, the question was asked what else would you suggest? What are the constructive proposals you have? Well, one of the constructive proposals we have always suggested is to give us the power. If the Government finds that they cannot manage law and order, let them put them under the control of a representative assembly, and I am morally certain that they will be able to repress this sort of crime much sooner than may be imagined. People will know where to hunt for these men, they will

devise the necessary machinery. But, my Lord, may I ask, have the people of that particular locality where this crime has been so prevalent been quartered with any punitive police in the past? Has the Government ever tried the experiment between 1906 and 1918 of asking the people where these disturbances occurred to pay for the police and to co-operate with the police in repressing the crime? What practical steps have been taken by the Government beyond the strengthening of the Criminal Investigation Department, working in secret to tackle this sort of crime, that they should come forward and ask this assembly to enact that the people should submit to a sacrifice of their fundamental rights of citizenship? After all, what does the Rowlatt Committee itself say? The Rowlatt Committee says that this sort of crime is not indigenous to any province, that it has been accidentally imported into the Punjab, and that even in Bengal there are so very few people who are given to it compared with the total population, that there is no real danger of its spreading. And the proof of there being no real danger is that even before the Defence of India Act was in force rigidly in Bengal, the government have during the most troublous times of war been able to enforce all their measures, that the people have been loyally co-operating with the Government, and that although there was sedition it was never a hindrance to peaceful administration during the most troublous times of war. I ask, therefore, if the people have been so loyal and if they have co-operated with the authorities so loyally during the most troublous times of war, is there a case made out for asking the Legislative Council to equip the Government with these powers in times of peace? Well, it has been said these powers are not going to be used immediately; they will be on the Statute book so that people may be told, 'if you employ terroristic methods we will also employ terroristic methods.' It comes to that. If the Executive are going to shut up any man without any inquiry, without allowing him a chance of proving his innocence in a law Court, it means that that the Government are prepared to ask this council to equip them with terroristic weapons in order to cope with terrorism. I ask, in this peaceful time, would it be right for the legislature to put on the permanent Statute-book a law giving the executive Government powers to terrorise in the manner they ask that they should be permitted to do? I humbly submit, no. Is there any difficulty in the Government of India passing legislation at a moment's notice? That question has not been answered. It is said, why should we not arm ourselves with power before hand? I say it is dangerous, because a bureaucracy always loves power, loves to arm itself with power and abuses that power, if it is armed, whereas if it has to make out a case on a specific occasion, it will

see to it that it does not come up unless it has a very good case. That is one reason why, although we realise that the Government can at a moment's notice or even without notice pass an Ordinance or pass law—and the Government of India are not going to weaken themselves in any way—we object to arming them in advance because the natural tendency is to accumulate more power in the hands of the bureaucracy, and we wish to check it. My Lord, has not that tendency been exhibited in this particular case? What are the powers which the ingenuity and the wit of man, of lawyers and of thorough-bred bureaucrats could devise which have not been given already? What are the measures which are not already on the Statute-book even if this Bill is not passed into law, which can be devised, consistently with resort to judicial tribunals? You have passed a law prohibiting any public meetings being held when you wish it; you have taken power to search for any seditious article anywhere; you have taken power to suppress the Press, to confiscate the Press. You have taken power about the burden of proof being laid upon persons who are found in possession of explosives. You can prevent any press from publishing seditious matter; you can confiscate the press and prevent the Post Office from being employed for these purposes. You have got all these powers in your hands. The only drawback the Executive sees is that there might be some shadow of supervision by the judicial tribunals. Hitherto the bureaucracy have not been able to resist the invasion of the judicial tribunals into their preserves in every matter, although the Calcutta High Court has admitted that their powers are practically nugatory. Apart from that, you have accepted that in some instances there might be an appeal to the law Courts. You have got in your Statute-book practically all that you ask for in this measure subject to that one reservation. Therefore I ask, what is the necessity for this measure except that you are mortally afraid of a resort to the law Courts?

My Lord, you are driving the people to desperation. You are snapping the tie—unconsciously and without knowing it—you are snapping the only tie that makes the people submit willingly, nay cheerfully, to your bureaucratic rule, by saying 'We shall suspend the administration of justice when it pleases us to do so.'

Then, with regard to the repressive measures being taken up before the Reforms are taken up, I say one word. Government has succeeded in quelling prussianism. Do not allow the people for goodness' sake to say that in quelling prussianism abroad you have come to establish prussianism in the country. That is what the people are saying. There is a feeling that Germany has been conquered for the benefit of mankind, that freedom and liberty are in the air, that even nationalities much worse placed than we

are hoping and rightly to get governments of their own and that we also may have our fair share. At such a time of hope, when even anarchists abandon their methods because they see all hope of succour from Germany or from any other country is shut out from them, even they see how futile it will be to endeavour to subvert the British Government; at such a time as this, I pray that you should strengthen the moderate element. What will be the result if the representations of all the non-officials being rejected, as possibly will be the case? These anarchists would say: 'Now, look here, you have been talking all along about moderates and extremists; what have you moderates succeeded in getting from Government? You have been utilised for certain purposes of Government, but when Government has set its mind on any object there is no use in your trying.' Do not drive moderates into that humiliating position. Nothing is lost when you have got the power to enforce your will at any moment by agreeing to a little delay as has been asked for. Let us not imagine that the Executive would not always abuse its power. I remember very well in my early days when I entered the Madras Legislative Council that a petty quarrel, not of a very edifying kind, in which a European was involved, led to an assault and the military were called in because there was political fervour previously in and about the place. There is likely to be a mistake of cause and effect, and unrest will be created by our anticipating it. I therefore pray that that should not be done. If you have to do anything by way of taking legislative powers create permanent judicial tribunals, even when you want to act under the preventive sections of the Code. Let legislation be temporary, but to think, to dream of putting this on the permanent Statute-book seems to be madness. We ask for co-operation; you ask for co-operation; we reluctantly oppose this Bill because we love the British connection; we realise that it is only by the prolongation, if possible for ever, of the British connection between the two countries that India's destiny will be achieved. It is because we feel that our hopes are centred in this permanent union that we ask that you should listen to our advice; it is because we are desirous of safe-guarding the elementary rights of citizenship, we do not wish to condemn the bureaucracy of so much inefficiency of which they are unconsciously accusing themselves; it is because of this that you are playing into the hands of the anarchists, we are not satisfied that this measure is necessary, and we do not wish to render the administration more inefficient than it is; it is because it is not competent to the Indian legislature to pass this law, and we do not wish to create unrest by anticipating it; it is because there is the possibility of specific legislation being undertaken to deal with any particular individuals who may be undesirables and who may have to be released when the Defence of India Act is repealed, if the Regula-

tion of 1818 is felt to be inapplicable, that we ask the Government to pause and to listen to our advice."

The Hon'ble Mr. Srinivasa Sastri said :—It is not in accordance with the practice of other Governments to bring in repressive legislation of this nature long before its necessity has become clear. The Home Member rather overstated his case when he told the Council that the Government must not be left naked and defenceless when the burglar had made his appearance. The Government cannot be naked and defenceless, it is avowedly in full possession of the powers that it needs to put down wrong of every kind ; that will continue for many months yet and if it pleases the Viceroy for another long year yet it will remain in possession of all the needed powers. To say that the necessity has now come and that the Members of this Legislative Council should not leave the Government in a position of defencelessness is certainly in my opinion to over-state the case. Then the Hon'ble the Home Member also relied on the recommendations of the Rowlatt Committee, but I am unable to find in the recommendations of the Rowlatt Committee any mandate or any strong counsel to the effect that any of the measures proposed must be permanent, that they must be worked into the Penal Code, or into the Criminal Procedure Code of the land. Their character as emergency legislation must be recognised. I think the course taken by the Government in recommending to this Council permanent legislation involving alterations in the Penal Code and the Criminal Procedure Code goes beyond the recommendations of the Rowlatt Committee, and has necessarily evoked a great deal of alarm. I conceive, your Excellency, that it was hardly necessary to frighten the country by saying that the Government must be armed with powers of a permanent character. I very much wish indeed that the Government had found it possible in the first instance before raising a storm to say that they would be content with these powers being placed in their hands for a temporary period. When in the course of time the Defence of India Act expired or the Defence of India Act extended by the Viceroy expired, it was still necessary to have these powers, it was open to the Government to call a special Session of the Legislative Council, and I do not think that when the Government take such a startling step as to call a sudden session of the necessary powers to meet with a dangerous seditious conspiracy, any one in the country will raise his voice against it. Now everything seems to be alright, wrong-doing is under full control, and Government can say that in the exercise of the powers they have secured peace and tranquillity. To say now, long before the necessity arises that we want to equip ourselves permanently with weapons

repression—that word has been used by Government Members themselves and I have no scruple therefore to use it—is in my opinion simply to set the country in an unnecessary state of excitement.

“Then we are told that after all these powers are not placed in the hands of small officials. The small officials come in only after the Viceroy has satisfied himself that in certain area in the country crime of a very deeprooted and widespread nature is prevalent or is likely to become prevalent. Now I take leave respectfully to dissent from the implications of this proposition. The implications of this proposition go very deep indeed. We are asked to supplant the experience of civilized Governments. If every word that Hon’ble Sir George Lowndes told us were to have its due weight, if what he said were to be carried to its logical conclusion, if in every case where the Executive were armed with arbitrary powers they used them only justly, properly and no more than was adequate to the occasion, if in every case of mis-exercise they could be brought to book, if there was provision for publicity, then indeed there is apparently no reason why in the permanent law of England, in the permanent law of France and in the permanent law of America there should not be legislation similar to that which is proposed for this country. After all, it is good to to have these powers. No Government will ever abuse its power. The Executive, wherever they have the power, always use it only when it is necessary. If that is so, if there is no fallibility in the Executive, if all high officials charged with responsible power never erred, then there is no limit to the placing of arbitrary power in the hands of any Executive which a Legislative Council may be called upon to sanction. That, however, is not the way in which responsible people look at things. They ask, are these necessary? I was wondering how the Hon’ble Sir George Lowndes himself having made these rather sweeping statements came later on to say, ‘I myself as a Britisher hate this kind of thing; repression is distasteful to me.’ I heard the Hon’ble Sir William Vincent also say, ‘after all, these things are bad.’ Why should they be bad? We are bidden always to trust the Executive, to believe that they will never do wrong, the law will always be used considerably and only in the interests of the poor and the helpless; why should it be wrong then, why should we scruple at all to leave all power in the hands of the Executive, to roll up our Courts of law, to suspend or lay low your Legislative Councils altogether? That is not the way that we should look at things. We think that the Executive are apt to make mistakes, and I think they do make mistakes. We know, my Lord, Viceroys who have held, who are holding and who will hold power, are under no delusion that the Local Governments may not yield to

the public opinion of their community, may not be hounded on by an infuriated press to take in hand a policy of severity, always no doubt with the best of intentions, always no doubt with a feeling of horror and repugnance, always no doubt with a desire to stop everything the moment it should become unnecessary. But we know, my Lord, from bitter experience that these measures are put into force sooner than they become necessary; that while they are put into force they are exercised more harshly than is necessary, and that they are dropped only with the utmost reluctance long after the exigencies that called them into existence have disappeared, long after enormous miseries and frightful hardships have been inflicted. We know that these things have happened, and it is because I take it every Englishman feels that these things may happen that he is obliged to say when he stands up in defence of a legislation of this kind, however strongly he may word it in one part of his speech, 'I certainly dislike these things; they are objectionable on principle.' If they are objectionable on principle in one place, they are objectionable on principle in every place, and their application must be tested by the severest test and they must at every step be open to challenge. In England, my Lord, as I have read these things, whenever a repressive law is in force, every single exercise of it is at once openly challenged. A public inquiry is probably held. Anyhow a committee is appointed to take evidence. What happens in India? A press law is passed. Ten years afterwards in the Supreme Legislative Council an inquiry to be conducted by a mixed commission appointed by the Council is asked for, and your Excellency's Government come forward and say 'we will not appoint a committee. We will not face an inquiry into this affair.' Now that kind of thing is not a circumstance which encourages us to go forward and place summary powers in the hands of the Executive, because we fear with some experience behind us, that you will not submit your actions to the scrutiny of the public as every exercise of arbitrary power should be submitted.

"Then we are told with almost pathetic simplicity quite worthy of a paternal Government. 'Why need the innocent man fear? The honest man need not walk in fear of these repressive measures; they are meant only to punish the wicked and they will be used only to punish the wicked; let the virtuous men go about as usual in the exercise of their work.' I wish that this idyllic picture were true in India or anywhere. Now, my Lord, a bad law passed is not always used against the bad. In times of panic to which all alien Governments are unfortunately far too liable, in times of panic, caused it may be by very slight incidents, I have known Governments lose their heads. I have known a reign of terror being brought about; I have known the best, the noblest Indi-

dians, the highest characters amongst us, brought under suspicion, standing in hourly dread of the visitations of the Criminal Investigation Department. I remember in my own time; it is not a very long experience I have of these matters, but I can remember a very valued friend of mine, now alas no more, a saint amongst men, telling me with almost tears in his eyes, 'I have borne a good character all along, but I have recently become a suspect of the Criminal Investigation Department and my life is passed in bitterness and in sorrow.' Why? because Government started a policy of suspicion generally in the locality and when they sent their minions of the Criminal Investigation Department none, not the most trusted friends of Government, were safe. I can remember, my Lord, in the year 1908 when I went round organising district Congress Committees, such a blight had fallen on the Political world the Criminal Investigation Department had been so active, the repressive policy of Government had been so manifest, that it was impossible in many places to get people to come together to a public meeting. 'Oh no, not now, not now!' A gentleman high in office at that time and about to retire from service met me in the middle of the night on one occasion. I was quite surprised and he told me—'My dear fellow, I have been long-ing to see you these three or four days that you have been here, but this place swarms with spies and informers. I am nearing my pension and have many children, I do not wish to be mixed up with a member of the Servants of India Society to their knowledge.' It is all very well to say that the innocent are safe. I tell you, my Lord, when Government undertakes a repressive policy, the innocent are not safe. Men like me would not be considered innocent. The innocent man then is he who forswears politics, who takes no part in the public movements of the times; who retires into his house, mumbles his prayers, pays his taxes and salaams all the Government officials round. The man who interferes in politics, the man who goes about collecting money for any public purpose, the man who addresses a public meeting, then becomes a suspect. I am always on the border-land and I therefore, for personal reasons if for nothing else, undertake to say that the possession in the hands of the Executive of powers of this drastic nature will not hurt only the wicked. It will hurt the good as well as the bad, and there will be such a lowering of public spirit, there will be such a lowering of the political tone in the country, that all you talk of responsible government will be mere mockery. You may enlarge your Councils, you may devise wide electorates, but the men that will then fill your Councils will be toadies, timid men, and the bureaucracy, armed with these repressive powers, will reign unchecked under the outward forms of a democratic government. Well, we are all anxious to punish the

wicked.....The price even for the extinction of wickedness that is demanded then is far too high. Much better, it seems an ungracious thing to say, much better that a few rascals should walk abroad, than that the honest man should be obliged, for fear of the law of the land, to remain shut up in his house, to refrain from the activities which it is in his nature to indulge in, to abstain from all political and public work merely because there is a dreadful law in the land. I was astonished to hear Sir Varney Lovatt tell us that it is not enough to indulge in conventional regrets in this Council. I wonder very much whether he will agree to retain and repeat the word 'Conventional.' When Hon'ble Members here get up and reprobate wicked deeds, I take leave to say that they do not do it in a merely conventional manner. I take it that we all abhor wickedness as much as Sir Verney Lovatt or any member of the Rowlatt Committee does. May I turn back and say that the proposals made by the Government betray a somewhat callous disregard of liberty.

...

"Then, my Lord, the Hon'ble Sir William Vincent told us that those laws are intended only to purify politics. I have taken down his very words 'not the suppression but the purification of politics is our aim,' he said. Ah! if in this world good intentions always bore fruit it would be very well and this would be a splendid world to live in. The history of legislation, both social and political, is strewn with instances of miscarriage of excellent intentions. Laws intended to cure poverty have aggravated it, multiplied it; laws intended to cure crime may run very well in the same unhappy direction; and I take leave to say to the Hon'ble Sir William Vincent that the laws now placed before us which are aimed at purifying politics may come dangerously near suppressing them. You cannot place on the Statutebook such drastic legislation without putting into the hands of over-enthusiastic executive officers what I consider short cuts to administrative peace. As I said before, even peace in administration, valuable as it is, can be sought in wrong ways. You provide them with short cuts to administrative peace and there is no administration that is able to resist the temptation to run across these short cuts when the only royal road to peace is the right road, and the righteous road. Now anarchists, it is said, do not want reform. They spurn these political concessions. Oh! yes, there are two ways in which perhaps this expression is intended to be understood. It means in the first place that the crime with which we have now to deal in Bengal, the Punjab and elsewhere, is partly only political, and partly it has become ordinary. I much regret that, so far as I am able to judge of the matter that has been placed before us, there is very considerable truth in the observation. I do think, my Lord, that however this