The Rowlatt Bill II.

(Criminal Law Ammendment Bill.)

Debate in the Imperial Legislative Coun cil.

Delhi 10th February 1919.

Sir William Vincent said that before proceeding with the motion which stood in his name (introduction and reference to the Select Committee the Bill to provide for amendment of the Indian Penal Code and the Code of Criminal Procedure 1898) he would like to state that during the debate on the Criminal Law Emergency Power Bill some of the non-official members said that they would have been in a position to support the measures if it were of a temporary nature. Mr. Banerjee had asked him pointedly what were the exact intentions of the Government. Since then he (Sir William) had ascertained the views of the Government of India and he was authorised to state that the Criminal Emergency Power Bill would remain in operation for a period of three years after the couclusion of peace.

He next introduced the Bill to provide for the amendment of the Indian Penal Code and the Criminal Procedure Code. He said that the Bill was intended to make permanent change in the criminal law of the land. The provisions of the Bill were based on the recommendations of the Rowlatt Report. The first clause of the Bill was based on Rule 25 A of the Defence of India Rules which had been in force for some time. Clause three merely authorised the District Magistrate to direct preliminary inquiry by the police in case of certain offences, the prosecution of which could not be launched without the sanction of the Local Government. It was necessary to hold such inquiry before the Local Government decided whether the prosecution should be launched. Clause 3 merely empowered the Magistrate to order an enquiry by the police but the prosecution could not be undertaken without the Local Government's permission. Clause 4 was found necessary to offer protection to the men affraid of the anarchists, and was intended to amend Section 343 of the Criminal Procedure Code. Section 343 prohibited the offer of threat, inducement etc. to the accused persons to make the statement It had been found that this provision of the law interfered with the promise of protection to the accused person who was willing to become approver but was really afraid of violence and the intention was to enable Government to offer such protection to the persens about to become a witness. Clause 6 intended to check the criminal activities of persons released. He formally moved that the Bill be referred to select Committee consisting of Sir

George Lowndes, Pandit M. M. Malaviya, Mr. Shafi, Mr. Muddiman, Mr. Khaparde, Mr Banerjea, Mr. Fagan, Mr. Patel, Sir Verney Lovett, Sir James Duboulay, Mr Emerson and himself.

The Hon Mr. Patel next moved the amendment "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" He expressed satisfaction at the announcement of Sir William Vincent about the time limit to the Criminal Emergency Power Bill.

He said that clause 2 made the possession of seditious literature criminal and so created a new offence. He traced the gradual tightening of the bond and said that the next measure perhaps would be to penalise a man who *thinks* sedition. The trial of a person accused under provisions of this law would not be in an ordinary court of law The law proposed to make association with an offender prejudicial to the accused. These innovations were highly objectionable. Even the first offender under this law would be treated harshly and not leniently as under the existing law.

Mr. Surendra Nath Banerjea acknowledged on his own behalf as well as that of his colleagues the fact that Government had shown great deference to public opinion by limiting the operation of the first Bill to 3 years His opposition to the Bill however remained and their attitude would be largely determined by the shape the bill took in the Select Committee. It was no use denying the fact that the bill has created great alarm and anxiety in the public mind. He asked the Home Member to make specific declaration that the Bill would be only confined to anarchical crimes. The section about the possession of seditious literature was a dangerous weapon which was liable to be misused. He eloquently appealed the Viceroy to drop the Bill altogether.

Dr. Sapru in supporting Mr. Patel's amendment said he did not wish to cover the same ground as was covered on the last occasion. So far as the questions of policy or expediency were concerned they were dealt with at great length on the last occasion and he submitted the same consideration applied to this Bill as did to the last bill but there were just one or two matters connected with this Bill which he wished to place before His Lordship and the Council. After the announcement that had just been made by the Home Member they found the first bill was going to be of a temporary character. So far as this Bill was concerned it had just been stated it was going to be a permanent addition to the Statute book. The leading feature of this Bill was that it created absolutely new offence. Clause two of the Bill first of all made it penal to possess seditious document and in the next place it cast burden of proof that it was for a lawful purpose on the accused. He did not

think that any of them, however highly placed, would be safe from molestation under the provisions of this section. He ventured to submit that even the Home Member would not be safe. Every day he had to deal with seditious documents and in council-meeting he had often to read them and if an enterprising police officer wished to make himself immortal in the history of the council he could do so by laying his hands on the Home Member for being in possession of the seditious document, and he would have to call His Excellency and them all to prove that he was holding these documents for lawful purpose. He would ask the Home Member to imagine a position like that. He submitted that this was the most vital and far reaching change and he begged His Excellency's Government to consider whether it was wise to rush a measure like this without giving the country opportunity to consider its provisions. Why not circulate it to Local Governments for opinion ? Why not invite criticisms from the Judges of the High Court ? Why not invite public criticism ? He did not think the present Bill stood on the same footing as did the last. That Bill was intended to deal with Emergency that had arisen or that might arise and it was considered necessary that there must be speedy and summary procedure to deal with cases of that character. Those considerations did not arise in this case. He thought the country was entitled to ask for time to consider the provisions of a measure like this. On the last occasion Sir William Vincent had said these bills were intended to grapple with anarchical and revolutionary movement. If that be so why not make it clear? The preamble of this Bill contained the words : "In order to deal more effectively with certain acts dangerous to the State" He would much rather that that they were more definite about the certain acts dangerous to the State and say plainly the acts that are of anarchical and revolutionary character. That would enable the courts of law to interpret he bill in the manner it should be interpreted. Clauses five and six were also novel provisions of far reaching consequences. He strongly supported Mr. Patel's amendment and urged His Excelleucy's Government out of deference to public opinion in the country to republish the Bill, at least, if they were not prepared to drop it altogether, as he would very much like them to do.

Mr. Chanda thanked the Home Member for his announcement. He associated himself with the view expressed by Mr. Banerjee and Dr. Sapru that the operation of the Bill should be confined to anarchical crimes. The fact that the Government of Bengal were able to release about one thousand detenus clearly showed that the situation was far better than commonly imagined. He read an extract of a letter which he had received from a prisoner in the Andamans, dated 27th October, last, in which among other things

it was said that now that the Government promised substantial Self-Government the work of revolutionaries was over. Mr. Chanda said this clearly showed that with such an attitude of mind coming into the so called revolutionaries the necessity of such repressive laws no longer existed. He criticised the provisions of clause 2 as being very dangerous.

Pandit Madan Mohan Malaviya in supporting the amendment expressed the hope that Government would further consider the matter and drop the first Bill altogether. He wished to point out the danger. In 1907 the Seditious meetings Act was passed as temporary measure and was made permanent in 1911. With regard to the present Bill there was no occasion for hurry. Their request was all the greater in this case because here it was proposed to make permanent additions of novel and dangerous offences. As every speaker before him had pointed out the section about the possession of seditious documents was a very wide departure from the rules in force under the Defence of India Act. In these Governmnnt defined what documents were seditious. They had prohibited the possession of certain documents. Everyone therefore knew what they were and it was easy to avoid them. The present section left it to every individual to decide whether the document was seditious or not. Everyone knew how very dfficult it was to decide whether the document was seditious or not. What of ignorant school boys? What of Newsboys selling papers in the streets? Even courts had differed and it was rather hard and positively unfair to ordinary citizens that the possession of the document which might be interpreted as seditious be made penal. Now who were the persons likely to fall victims. The Rowlatt committee had said those evilly inclined sought to convert the young. If seditious leaflets were circulated among students were they expected to judge whether the documents were seditious? He thought a lot of poor students would fall victims to this provision. He submitted the remedy was worse than the disease. They ought to find measures which would have public sympathy and support to deal with this matter. He urged the Government to limit the scope of the proposal to only introducing the Bill to-day and to refer the Bill to the Select Committee during the Simla sessions.

Mr. B. N. Sarma said he wished the Government had come to the same decision with regard to this Bill as the Criminal Emergency Power Bill in keeping it in operation for three years. He hoped it was not too late. He criticised at length several provisions of the Bill and concluded by appealing to the Viceroy that the Bill be dropped.

Sir George Lowndes then addressed the Council. He dealt with the objections raised by the non-official Members against the various clauses. He first took up the question of clause two and

said in drafting the clause he intended to make penal possession plus intent to publish. He had tried to put it in plain English language but if it was thought the section went beyond that it was a matter to be settled in the Select Committee. With regard to other difficulties raised, he said, they existed under the present law also. They were not creating any new difficulties. People who dealt with rather doubtful matters had got to take the risk of being prosecuted. What Government wanted was to prevent the mischief being done, and any means which could prevent the seditious matter getting out would commend themselves to every member. They all wanted to do the same thing and how best it could be done could be discussed in the Select Committee. Dealing with the clauses about associating with persons convicted of offences against the state he said the answer to Mr. Bannerjee's argument was that the relevancy and admissibility of evidence were two different things. Many things were admissible in evidence but they would have no weight when proved.

Sir William Vincent who spoke next in opposing Mr. Patel's Amendment on behalf of the Government said the first point on which he was asked to give assurance by the members was as to the scope and intention of the two bills brought before the Council.

The provisions contained in clauses two were exactly the same as those in rule 25A, D. I. A., but he was quite prepared to examine this matter further. Dealing with clause 5 relating to associaton, he said, the principle of, the clause was based more or less on section in Evidence Act but the matter could be examined in the Select Committee.. What Government had attempted to do was to put down all the recommendations of the very powerful committee for prima facie consideration of the Council. Dealing with the amendment he said he was afraid he was unable to meet the wishes of the mover. The principles of the Bill had been before the public for a considerable time and had been criticised at great length and no useful purpose would be served by the republcation and delaying the reference to the Select Committee. At the same time he realised this Bill stood on a different footing from emergency measure and it seemed to him the most convenient and advantageous course was to refer the Bill to the Select Committee at once. After the Committee had examined the details, if there were considerable changes they would consider the necessity of republishing it.

Mr. Patel's amendment was put to the Council and lost.

Mr. Banerjee's amendment was put to the Council and lost.

The Viceroy next put the original motion of refering the Bill to the Select Committee which was carried.

The Bill was referred to the Select Committee.

Report of the Select Committee

On the Criminal Law Emergency Powers Bill

(Rowlatt Bill No. 1. 1 March 1919.)

(For the Original Bill See the Introduction)

The following is the text of the Select Committee's report on the Criminal Law Emergency Powers Bill (Rowlatt Bill) :—

1. We, the undersigned members of the Select Committee to which the bill to make provision in special circumstances to supplement the ordinary criminal law and for the exercise of emergency powers by the Government was referred, have considered the Bill and have now the honour to submit this our report, with the Bill as amended by us annexed hereto.

2 Before we proceed to set out the modifications of detail which we have made in the Bill we may state at once that we do not propose to refer to the numerous amendments which were suggested in the Bill in so far as they were destructive of the general principles of the Bill. Amendments of this kind should be brought forward in the Council which is the appropriate arena for their discussion.

3. An apprehension that has been widely expressed in connection with the Bill under our consideration is that its provisions if they became law might be used or rather abused for the purpose of suppressing legitimate political activities. The Hon'ble Member in charge of the Bill has, on several occasions, repudiated any such intention in unequivocal terms. We, however, consider that in order to avoid the possibility of such a view being reasonably entertained, the bill itself should bear clearly impressed on its face the refutation of such a suggestion. With this object before us, therefore, we have made several amendments to make it clear that as the long title states the Bill is a Bill to cope with anarchical and revolutionary crime. These amendments will be found in the long title, the preamble, the short title, Clause 3. Clause 20 and Clause 32 in all of which provisions with what might possibly be considered excessive caution, we have reiterated the words which in our opinion place the object and scope of the Bill beyond all doubt.

4. The Bill, as originally drawn, purported to make a permanent addition to the statute Book. The decision which was announced in the Council that it would be limited in duration to a period

of three years from the termination of the war which we have given effect to by the new sub-clause (3) Clause I, has enabled us to revise certain other provisions of the Bill notably the important clause 26. The duration of the Bill moreover supplies an automatic limitation in regard to the operation of certain of its provisions, a question which otherwise might have called for our anxious consideration.

Methods of Trial.

5. We will now refer to the detailed amendments which we have made in the Bill in so far as they have not already been disposed of by the foregoing remarks.

6, We have omitted the definition of offence against the State in Clause 3 as the term only occurred in Clase 20 and for the reason which we give in dealing with that clause it has now disappeared from the Bill.

7. Clause 3 :—We have assimilated the language of this clause with that of clause 32 as we think these clauses should correspond as closely as may be in the nature of the declaration they require.

8. Clause 4 :—It seems to us desirable that once an accused has been committed for trial no order should be made under this section, and we have accordingly inserted the words "or the court of sessions" so as to exclude cases where commitments have been made as well to that class of court as to the High Court. In this respect we follow the precedent of the Criminal Law Amendment Act of 1908. We think further that the accused is entitled to have notice of the particulars which the prosecution intend to prove against him and we have amended the wording of sub-clause (3) to give effect to this view.

9. Clause 6:—The new proviso to this clause which replaces that in the bill as referred to us must be regarded as a compromise between the conflicting influences. On the one hand we recognise that the importance of a local trial may in particular circumstances only be fully realised by the executive Government. On the other hand we are averse to invoking the authority as a matter of course of the Governor General in such a matter. The provision we suggest seems to us a reasonable via media.

10. Clause 8;—We have slightly amended this clause so as to require the prosecutor to open his case, thus following the lines of Section 286 of the Code of Criminal procedure.

11. Clause 9:—In deference to the wishes of some members of the committee we have extended the period of adjournment which is provided for in this clause from ten to fourteen days.

12. Clause 10:—We think it desirable that a full record of the evidence should be made but not that it should necessarily be

recorded by the Court itself. The amendments made in this clause are intended to give effect to this view.

13. Clause 12 :—We have amended the provisions ofthis clause to bring it more closely into line with the provisions of 61 and 62, Victoria C 26 and have included in the clause the provisions of this Act prohibiting comments by the prosecution on the failure of an accused to give evidence and providing that if he does give evidence he shall do so from the witness box. These provisions are probably of considerably less importance in a trial such as that which will be held under the bill by three High Court Judges, but as their insertion is urged on us by some members of the committee we have deferred to their views.

14. Clause 14 :—We have been pressed to amend Clause 14 on the lines of Section 1 (4) of the Irish Act of 1882 (45 and 46 Vict C 25) but after considering the matter carefully we feel that there is no reason to depart from the proposal in the Bill which is indeed on the same lines as the corresponding provision in the Criminal Law Amendment Act 1901.

15. Clause 15 :—We think this clause as it stood in the bill went too far and we would only allow a conviction under it in respect of an offence against any provision of the law which is referred to in the schedule.

16 Clause 19 :—We have made the intention of the rule making power in item of this clause clearer by the insertion of the words "to the complete satisfaction of the Court" and we have enabled rules to be made to provide for the intermediate custody of the accused.

17. Clause 20:—With the introduction of definite reference to anarchical and revolutionary crimes in this clause, it seems to us to follow that the terms "Scheduled offences" must be substituted for the words "offences against the state" which formerly appeared in this clause. A comparison between the language of clause 20 and of Clause 32 as they now stand will show the progressive degrees of emergency which will justify the application respectively of part II and part III of the Bill.

18. Clause 21 :—We have limited the purposes to which security can be taken under this clause to the very definite cases which we now set out in the Bill. A bond to be of good behaviour would on the analogy of section 121 of the Code of Criminal Procedure have covered the case of any offence punishable with imprisonment and we do not think that it is necessary to go as far as that. We have also made a small amendment at the end of this Clause to show that the reports to the police are to be made at the nearest police station.

19. Clause 23 :—We have modified the language of this clause to make it clear that unnecessary force is not covered by the terms of the clause.

Investigating Authority.

20. Clause 25 :—This important clause has been receiving our most careful consideration. The procedure it contemplates is a fundamental basis of the recommendations of the Rowlatt Committee and any material change in the nature of the investigating authority would completely destroy the efficiency of the procedure it contemplates. We think, however, that the following modifications may be made without unduly affecting the procedure. In the first place we think that the Government should set out all material facts in its possession whether in favour of or against the accused, and we have therefore substituted for the words " in support of its action" at the end of subclause (1) the words "relevant to the inquiry." We have made a slight but very important change at the end of sub-clause (2) where we require that the investigating authority shall make such further investigation, if any, as appears to such authority to be relevant and reasonable. The only ground therefore for refusing to inquire into the matters which the person whose case is under investigation desires to adduce, would be that such inquiry did not appear to the investigating authority to be relevant and reasonable. This is an important change in the substance of this sub-clause. We have been compelled to reject various proposals affecting the provisos to sub-clause (2). We recognise the force and ability with which some of them were pressed but to give effect to the amendments would be to destroy the whole procedure. Under this part of the Bill we have inserted a new sub-clause (4) with the object of penalizing false statements to the investigating authority when made by persons other than the person whose case is under investigation. It was suggested to us that conclusions might be held to include the reasons for conclusions. This is clearly not the intention of the Bill and it seems to us most undersirable that any such argument should be left open. We have therefore added the words "and may if it thinks fit adduce reasons in support thereof" to sub clause (4) (now sub clause 5). These words may be considered abstruse but for the reasons we have alluded to above we recommend their insertion.

21. Clause 26 :—We have amended sub-clause (1) so as to make it clear that the conclusion of the investigating authority shall be set out in the form in which they are reported by that authority. We have recast the provisions of this clause after sub-clause (2) down to the end of the clause. Our new sub-clauses provide that no order shall continue in force for a total period of more than

two years against three years in the bill as published. It will be seen from our new sub-clause (4) that where an order is made again on the expiry of the first order the Local Government must refer any representation on behalf of the person to whom it relates to the investigating authority and consider the report of that authority.

22. Clauase 27 :—We have made a small amendment here to make it clear that the penalty provided by this clause shall only be enforced on conviction by a Magistrate.

23. Clause 29 :—We have amended subclause (1) of this clause so as to prevent any appointment of investigating authorities. We are aware that this was not the intention of the Bill, but we think it is desirable that that should be apparent on the face of the clause.

24 Clause 30 :—We have slightly expanded the provision as to visiting committees and have required that rules made for their guidance should be published in the Gazette.

25. We have made a small addition in Clause 31 which needs no explanation.

Detention Clause.

26. Clause 33 :—We think it desirable and we have made it clear by an appropriate amendment that no person confined under this act should be confined in a place where convicted prisoners are confined. This is clearly the intention of the framers of the Rowlatt report and it is a matter which, we think, should receive statutory recognition.

27. Clause 34 :—In deference to the views of some members of the Committee we have reduced the normal term of detention in custody under the provisions of this clause to seven days.

28. Clauses 38 and 39 :—Exception was taken to the provision in the Bill referred to us which provided that no reference to the investigating authority should be necessary where these powers were employed. We recognise, however, that there is force in the contention which was put before us by the member in charge of the Bill, who pointed out that in most cases investigation of a very careful nature had recently taken place in regard to these persons. We think the compromise provided by our new provision to both these clauses should meet all reasonable requirements.

29. Clause 40 :—We think that the period of thirty days contemplated by the provison to sub-clause (3) of this Clause is unnecessarily long and we have reduced it to 21 days.

30. The Schedule :—We were much pressed to exclude offence under 124 (A) from item I of the schedule and in deference to the wishes expressed by the non-official members we have removed

offences against this section from item I and inserted them in item 2 (A) of the same schedule which will supply the safeguard provided by that item in regard to the offences included therein. As a matter of drafting we have removed those offences which are themselves 'attempts' from the list of offences in item 2 (A), as we think they are sufficiently provided for by item three of the schedule.

31. It will be observed that all the amendments that we have made in the Bill are amendments in favour of the subject and that on the other hand the main scheme of the Bill has not been materially altered. In these circumstances the majority of the Committee do not recommend republication of the Bill.

Notes of Dissent.

1. The Majority Note.

The report was not signed by Messrs Khaparde, Patel and Pundit Malaviya. Messrs Sastri, Shafi and Surendranath Bannerjee signed subject to the following note of dissent :—

We recognise that the Bill as altered by the Select Committee is not open to objection to which it was open in its original form. Its duration has been limited to three years and by the words put into the preamble and certain clauses its application has been restricted to offences connected with anarchical and revolutionary movements. Several minor improvements have likewise been made. Still we disapprove of the policy and principles of the Bill and must reserve our right to oppose it altogether Without prejudice to this right we proceed to make some observations and suggestions with reference to the provisions.

Clause 12 :—We are not satisfied that it is desirable to introduce in this country the principle of giving an accused person the option of offering himself to be examined as a witness. One of us, Mian Mahomed Shafi, however, thinks it an advantage and approves of its introduction, but we are all agreed that if it is introduced, a safeguard should be provided in addition to the one embodied in subclause (3). It should be something to this effect : "nor shall the Court make an inference adverse to the accused from such failure on his part."

Clause 14 :—We cannot agree that in the case of a difference of opinion among the Judges the opinion of the majority should prevail so as to result in a conviction. Following the example of the Irish Crimes Act, we would make conviction dependent on the unanimous opinion of the Judges.

Clause 15 :—It appears to us necessary to take care that this part of the Bill is not used for the trial of scheduled offences generally. We would insist on a proviso to Clause 15 somewhat as follows : —Provided that when the Court convicts a person, whether of the offence with which he was charged or of another, it shall record a finding that such offence is connected with an anarchical or revolutionary movement.

Clause 17 :—This clause takes away the right of appeal to a High Court. We think it should be provided on the contrary that on the analogy of the Irish Crimes Act an appeal would lie in such cases to

a Full Bench of the High Court consisting of not less than five Judges.

Clause 21 :—It is a part of our general objection to the Bill that no restrictions should be imposed on the personal liberty of a citizen except as the results of conviction in a court of law. Excepting part I, the rest of the bill gives sanction to such restrictions by mere executive order. Assuming however that it is necessary to the executive Government such extraordinary power, we indicate below certain points on which we differ from the majority report. We suggest that before passing an interim order under Clause 21 against any person, the Local Government should be required to place all the materials relating to his case before a judicial officer, not below the rank of District and Sessions Judge, and take his opinion thereon.

Clause 25 :—Sub clause (2) makes it obligatory on the investigating authority to hold the inquiry in camera. We think it sufficient to provide for the inquiry being in camera if and when the investigating authority thinks it necessary and we would provide that right of giving evidence should be expressly conceded. Sub-clause (23) says that the investigating authority shall not be bound to observe the rules of the law of evidence. We would provide that such authority shall be bound as far as possible to observe those rules.

Clause 26 :—We do not consider it sufficient protection that a person against whom restrictive orders are renewed should be allowed after such renewal to make a representation to be placed before the investigating authority as is provided in sub-clause (4). We are of opinion that no orders under clause 21 should be extended for a further period without the case being referred to the investigating authority a second time and the person in question being allowed more or less in accordance with the procedure under clause 25, an opportunity of being heard.

Clause 32 ;—We consider that the investigating authority should consist of two persons who have held judicial office, not inferior to that of a District and Sessions Judge and one non-official Indian.

Clause 33 :—We recommend that before orders are passed against a person under this clause, that the same procedure be adopted as we have recommended under clause. 21. The materials of the case should be referred for opinion to a judicial officer not below the rank of District and Sessions Judge.

Clause 36 :—We would of course modify the procedure under this clause on the same lines as the procedure under clause 21 and 25.

In conclusion, we strongly recommend that in view of the substantial changes suggested above and in view of the fact that the bill

embodies principles wholly at variance with the principles of the ordinary criminal law, the bill be republished and referred for opinion to the Local Governments and the High Courts and important public bodies and individuals.

(Sd.) Surendranath Bannerjee
V. S. Srinivasa Sastri
M. Mahammad Shafi.

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2. Hon. Nabab Nabab Ali's Note

When the bill was first introduced it was contemplated by Government to lay down a permanent legislation in the country which it was feared would to a great extent restrict the liberty of the people. On the opposition of the the people's representatives in the Imperial Legislative Council, Government subsequently declared the intention to introduce it only as a temporary measure and thus a considerable portion of its harmful nature was reduced. The bill as it has now emerged out of the Select Committee is a decided improvement on the one introduced in the Council in the original draft of the bill. The preamble was in general terms but by the addition of the words, "for the purpose of dealing with anarchical and revolutionary movements" in the preamble of the bill as amended by the Select Committee its scope has been much limited. Several other improvements have likewise been made and they, coupled with the words added in the preamble mentioned above, have greatly removed its objectionable character. I have however to dissent on the following points from the majority report :—(3) Some words to the following effect should be added to the subclause "nor shall the court make any inference adverse to the accused from such failure on his part."

20. (2) "Of three persons constituting the investigating authority two should be persons who have held judicial office not inferior to that of a District and Sessions Judge". Now as the Bill has given rise to considerable nervous agitation in the country and opposition meetings are being held in every quarter and as certain vital changes have been introduced in it by the amendments made by the Select Committee whereby its objectionable character has been much reduced if not almost, removed it will be proper for Government to publish the Bill again in the Official Gazettes.

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3 Hon. Mr. Khaparde's Note

The following is the minute of Mr. G. S. Khaparde :—

The debate in the Council and the meetings of the Select Committee appointed to consider the provisions of the bill in detail have made it abundantly clear to me after long and anxious consideration that the principles or rather the departures from the principles which this Bill embodied cannot possibly commend themselves for acceptance.

Its first part provides for the proclamation of any area in British India, without any reference to the Indian Legislative Council. It constitutes a tribunal which need not be unanimous in its condemnatory findings and from the decision of which no appeals of any kind or in any form are permitted. An examination of the accused is allowed on oath which in the present state of India and its judiciary is highly unsafe and the relaxation of the rules of admissibility and relevancy of evidence renders the whole part in my opinion dangerous.

2. Parts 2 and 3 substitute the executive for the judiciary, and the liberty and property of subjects can be interfered with without the intervention of a court of justice. This is to my mind inconceivable in times of peace. The proclamation of an area is again valid without any reference to the Indian Legislative Council and the provision calls into existence an investigating authority, which has neither executive nor judicial functions, works "in camera," can make no recommendations, and whose conclusions are not binding on the Local Government. This introduces a state of things so anomalous and so antagonistic to any scheme of good government that probably a parallel to it cannot be found in any system of jurisprudence worthy of the name.

3. Part four adjusts the provisions of the Bill with previous legislation and part five contains a provision which directly contravenes the judgment of Privy Council in Moment's case and this as a whole is beyond the competence of the Indian Legislative Council to pass, not only because of this transgression of its power, but also because of other provisions affecting the liberty and property of British Indians and their allegiance to the Crown during time of peace.

4. The schedule and the whole framework of the Bill shows without any possibility of a mistake that the main question, the determination of which in the affirmative confers jurisdiction on the special tribunal created and the investigating authorities brought

into existence, is to be decided not by any judicial authority but by the executive ; it is, whether the offence or offences which are alleged to have been committed by an accused are connected with any movement endangering the safety of the State. It is a fundamental question of fact and cannot be left to be determined by a Local Government which of necessity has to depend on reports and uncross-examined testimony.

5. The report of the Sedition Committee on which the Bill is based and to carry out the recommendation of which it has been framed and introduced is the result of an inquiry held "in camera" at two places, viz., Lahore and Calcutta and is given to the Council in a mutilated and incomplete form without the evidence and papers which throw any light or supply any justification for it.

In these circumstances I regret I cannot give my concurrence to any provisions of the Bill and the circumstance that it has been rendered temporary does not constitute any material improvement at all.

4. Hon. Mr. Patel's Note.

The following is the memorandom of Mr V. J. Patel :—

I regret I find myself unable fo join with the majority of the Select Committee in signing the report for the following reasons :—

Committee's Report Invalid.

The report of the Select Committee is in my humble opinion an invalid document. At the first meeting of the Select Committee two preliminary points were raised, the first was whether the Select Committee could consider the principle of the Bill and report to the Council that the bill should be dropped, and the second, whether the Select Committee could recommend to the Council that it was not within the competence of the Indian Legislative Council to enact the proposed law. The Chairman of the committee gave his ruling that the Select Committee have no power to go into the principles of the Bill and in his opinion the duty of the Committee was restricted to the examination of the seven clauses of the Bill and the recommending of such alteration and amendments as they might think proper.

Select Committee's Rights.

With due deference of the high authority of the Hon'ble the Law Member, I respectfully submit that his ruling was wrong and probably misled several Hon'ble members of the Committee into erroneous views as to their rights and duties as members of the Select Committee, with the result that they thought it to be their duty, as I did not, merely to examine the clauses and recommend amendments. In this connection I beg leave to refer to a few rules of our Council on the subject. Under rule 19, the member in charge of a Bill is intended to make a motion that the Bill be referred to a Select Committee who are required to state in their report whether or not in their judgment the Bill had been so altered as to require republication. Nor is there any such thing as an order of reference. The Bill is merely referred intact without any instructions. This is quite in accordance with the practice obtaining in the British House of Commons.—There the Select Committee, to whom Bills are referred, are entitled to deal with them in any manner they like and it has always been taken for granted in this country that our Select Committees have exactly the same power. Unless therefore there is any authority that the scope, functions and duties of our Select Committee are expressly limited in any par-

ticular way the committee has authority to deal with the Bill as they think proper. The rules of our Councils referred to above in no way define or limit the powers of the Committee; but on the contrary they provide sufficient implications to show that their powers are as wide as those of a Select Committee of the House of Commons. In this view of the question, I am of opinion that the decision of the Hon'ble the Law Member is wholly unconstitutional and therefore the whole proceedings of the Select Committee and the report based thereon are invalid. That being so if the Government do not abandon the Bill the only course left open to them is to move the Council to recommit it to the Select Committee.

2. Regarding the second preliminary point referred to above, I am of opinion that the question is not so free from doubt as the Hon'ble the Law Member would have the Council believe. In dealing with this question three points arise for the consideration of the Council: (1) Section 65 of the Government of India Act (1915) says that the Governor-General in the 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 of the constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the United Kingdom. Now, what is this bond of allegiance referred to in the section? It is that the Crown protects the subject against arbitrary excutive power and that the subject is entitled to be tried according to the recognised forms of law before he is deprived of his liberty. The proposed Bill in parts 2 and 4 substitute the authority of the executive for that of the judiciary in respect of certain offences and thus infringes upon the fundamental liberty of the subjects of His Majesty in India thereby repealing the unwritten laws and covention of the United Kingdom whereon depends the allegiance to the Crown. It is a question therefore whether the Indian Legislative Council has the power to enact this law. (2) Section 106 of the Government of India Act 1915 provides that the several High Courts are courts of record and have such jurisdiction, original and appellate, and all such powers and authority over or in relation to the adminstration of justice as are vested in them by Letters Patent. The section further states that the Letters Patent establishing or vesting jurisdiction powers or authority in a High Court may be amended from time to time by His Majesty by further Letters Patent.

Part I of the Bill ousts the jurisdiction of the High Court and vests it in a specially constituted tribunal. The judges of the Indian High Courts derive their authority from the Letters Patent signed by His Majesty and their power could not, in my opinion,

be curtailed for any reason by any enactment of the Indian Legislative Council as it is proposed to be done under this Bill.

Section 32 of the Government of India Act 1915 enacts: (A) that the Secretary of State in Council may sue and be sued in the name of the Secretary of State in Council as a body corporate; (B) every person shall have the same remedy against the Secretary of State as he might have had against the East India Company if the Government of India Act 1858 and this Act had not been passed; while Section 65, Clause 2 provides that the Governor-General in the Legislative Council has not, unless expressly so authorised by Act of Parliament, the power to make any law repealing or affecting any Act of Parliament passed after the year 1869 and extending to British India.

The provisions of these two sections read together make it clear that the Indian Legislature has no power to enact a law depriving any British Indian subject of his right to sue the Secretary of State in Council and yet we find that Clause 41 of the Bill says that no order under this Act shall be called in question in any Court. I have already observed that the question whether the Indian Legislature is competent to pass this measure is not free from doubt. But I would go further and say that it is certainly not a question which should have been lightly treated or summarily rejected. Indeed, the learned authors of the Rowlatt Report themselves, in the concluding paragraph, have expressed their doubt and made no attempt to solve this difficult question. They say in making suggestions for legislation: "We have not considered at all whether it would 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"

Executive Supremacy.

The proposed measure in Parts 2 and 3 substitutes the rule of the executive for that of the judiciary. It is utterly subvertive of the order of things hitherto recognised and acted upon in all civilized countries for good government. In the words of the Hon'ble Mr. Sapru, "the bill is wrong in principle, unsound in conception, dangerous in its operation and too sweeping and too comprehensive. It will strike a deathblow to all legitimate and constitutional agitation in the country. It will defeat its own purpose for the reason that it will drive all agitation into a hidden channel with the result that the consequential evils will follow as night follows the day."

I am respectfully of opinion that a Government that contends that the country cannot be governed even in ordinary times without the assistance of such unconstitutional laws as are proposed to be enacted, forfeits its claims to be regarded as a costitutional Government. Just consider for a moment what the provsions of the Bill are.

Part I.—The executive Government is empowered to say that certain offences shall be tried by a specially constituted tribunal and not by the ordinary courts of law ; (2) in such trials, there shall be no jury ; (3) in such trials there shall be no commitment proceedings ; (4) in such trials, certain statements that were inadmissable, shall be admitted in evidence ; (5) in such trials the accused person shall be examined and cross-examined on oath as a witness on his own behalf ; (6) such trials may be held in some place other than the usual place of sitting of the High Court on the mere certificate of the Advocate-General unsupported by an affidavit or ground ; (7) the tribunal is bound to accept the opinion of the Local Government that the offence charged is connected with a movement endangering the safety of the State, and to sentence the accused in spite of its belief that the offence is in no way connected with any such movement ; (8) the judgment of the tribunal is to be final and conclusive and there is to be no right of Appeal or revision and no High Court is to transfer any case or issue any mandamus.

Parts II and III :—All the provisions of these parts stand self-condemned. Under part I the Provincial Executive, on a notification of the Governor-General-in-Council is empowered to pass all or any of the following orders against any person in their jurisdiction who in their opinion, is or has been concerned in any movement of the nature referred to in section 20 : (1) To execute a bond for a period of one year to be extended for another year, if need be, that he will not commit or attempt to commit or abet the the commitment of any scheduled offence ; (2) to notify his residence to the authority specified ; (3) to remain or reside in any specified area in British India ; (4) to abstain from any act calculated to disturb the public peace or prejudicial to the public safety ; (5) to report himself to the police at specified periods ; (6) Under the provision of part III the Provincial Executive, on a similar notification and in certain circumstances, is empowered (A) to arrest, without warrant, any person who, in their opinion, is concerned in a scheduled offence ; (B) to confine him ; (C) to order the search of any place which in their opinion had been, is being or about to be used, by any such person for any purpose prejudicial to the public safety ; (8) It is to be noted that all these orders are to be made without even the semblance of a judicial enquiry in any shape or form. As one of the non-official members of the

Council very rightly remarked, these provisions are nothing more or nothing less than undiluted coercion. It has been suggested that there are provisions in these parts calculated to safeguard the interest of aggrieved persons. These provisions in my opinion, are to say the least hopelessly inadequate and the so-called safeguards are merely illusory for the following reasons: (1) the appointment of the investigating authority is to be made by the Executive Government, (2) the investigation is to be held "in camera," (3) the person concerned is to have no right to be present at all the stages of the enquiry, (4) the person aggrieved is to have no right to be represented by a pleader; (5) the investigating authority is not bound to follow any rules of the law of evidence, (6) the investigating authority is to have no power to summon and compel the attendence of any witness and no suit, prosecution or other proceedings shall lie against any person for anything done or intended to be done in good faith and thus complete the paramountcy of the Executive and place the liberty of the subject entirely at its mercy.

A measure without a parallel.

In these provisions we find the functions of the executive, the legislature and the judiciary, all combined in the executive. Now the Legislature in this country, constituted as it is, carries out the will of the executive, proposed that in respect of certain offences, the judiciary must disappear and make room for the executive. Suffice it to say that the provisions are without a parallel in the legislative history of the civilized world. We are told that the measure after all is to be a temporary one, to be in force for a period of three years only and the non-official members must therefore reconsider their attitude towards the Bill. On that account I submit that a measure which is in fact and in substance dangerous and obnoxious does not cease to be so because it is limited in duration. The question in issue between Government and the non-officials is not, and has never been, whether the measure should be a permanent or a temporary one. The difference is realy one of principle. There can therefore be no question of compromise. No Indian can and will, therefore, I venture to say, ever consent to this measure being placed on the Statute book in whatever form or shape even for a day. We believe that repression is no remedy to eradicate revolutionary and anarchical crimes. What is the root cause of the evil? These crimes are the outcome of political and administrative stagnation which has resulted in untold miseries to the people of India. The only remedy therefore is to remove the standing grievances of the people which the Indian National Congress has been proclaiming year after year for the last 3 and 30 years. Has repression succeeded in any country? Has it succeeded in Ireland with all

its Crimes Acts? Has it succeeded in our own country? We have amended the Criminal Law to widen the scope of the definition of Sedition. We have amended the Criminal Procedure Code from time to time to meet the end in view. We have disfigured our Statute book by placing in it the Criminal Law Amendment Act of 1908, the Conspiracy Act of 1913, the Press Laws and the like. We tried the prevention of the Seditious Meetings Act and with what result we all know.

A Personal Explanation.

I have been told that I should have declined to serve in the Select Committee on the basis to which I was so much opposed. My reply is this: In the first place, I maintain that the Select Committee has the right to deal with the Bill as they like and I thought I would try to convince the Committee that they should recommend to the Council to drop the Bill. I have already pointed out in the first part of this note that the ruling of the Chairman made this course impossible. In the second place, I was confident that in deference to the opinion in and outside the council and in view of the fact that the passage of the bill would throw the country into a vortex of agitation unknown in the history of British India, the Select Committee would see its way to so amend the bill as to make it less dangerous, less obnoxious and perhaps to some extent less objectionable. In this hope I confess I am grievously disappointed. No doubt the Select Committee has recommended some alterations in the Bill, but these relate to non-essentials and I am sorry to say that not an inch of ground was yielded in respect of the essentials. If at all the Bill has been made stiffer in one essential particular, viz., that the provisions of Part II of the Bill as introduced were applicable to movements which in the opinion of the Governor-General in Council were likely to lead to the commission of offences against the State only, while the the said provision as amended by the Select Committee apply to movements likely to lead to the commission of all the scheduled offencess which are of course much wider in scope.

5. Hon Pandit Malaviya's Note.

The following is Pandit Madan Mohan Malaviya's minute.

The amendments which have been made in the Select Committee, though mostly useful, have not touched the main scheme of the Bill. Its policy and principles, its character and scope, remain unaltered. I am constrained therefore still to recommend that the Bill should be withdrawn. If even the most important amendments urged by several of us Indian members had been accepted, they would have made the Bill less dangerous and therefore less unacceptable. But the majority of my colleagues did not see their way to accept them nor did they agree to recommend a re-publication of the Bill though this was urged unanimously by all the Indian members present. The prevention of the Criminal Act of 1882 was described as one of the most stringent measures ever introduced into Parliament, as the strongest measure of coercion that was ever passed for Ireland. The present Bill is far more stringent than that Act. Under the Act persons committed for certain offences were to be tried by a Special Commission Court consisting of three Judges of the three Supreme Courts of Judiature in Ireland but the Act laid down that a person tried by a Special Commission Court shall be acquitted unless the whole court concur in his conviction 45 and 46 Vic. Ch. 25 S. I. (4) Contrary to this the present Bill provides (S. 14) that in the event of any difference of opinion between the members of the court the opinion of the majority shall prevail. When it is remembered that the Court may pass any sentence, including a sentence of death, upon a person convicted by it the danger and injustice involved in such a provision will become obvious. I cannot think of any justification for the Government view that even in a case where one of the three High Court Judges who have tried a case should be of the opinion that the guilt of the accused has not been established or is doubtful or even that the accused is not guilty, the accused should be convicted and sentenced, may be, to death by the verdict of the remaining two judges. In my opinion Section 14 of the Bill should be modified to the effect that if the Court is not unanimous as to the guilt of the accused, he shall be acquitted but this alone will not be sufficient.

Right of Appeal.

The right of appeal is one of the most valuable safeguards of justice and liberty and an appeal should be provided from the judgment of the trial court as it was under the Act of 1882 referred

to above Sec. 2 (I) of that Act laid down : Any person convicted by a special Commission Court under that Act may subject to the provisions of the Act appeal either against the conviction and sentence of the Court or against the sentence alone, to the Court of Criminal Appeal hereinafter mentioned on any ground whether of law or of fact. This Court of Criminal Appeal was to consist of the 6 Judges of the Supreme Court of Judicature in Ireland and any of those Judges, not less than five, may sit and exercise the powers of the Court. It was provided that a Judge who sat in the Special Commission Court should not sit in the Court of Criminal Appeal on any appeal against a conviction or sentence by that Special Commission Court to which he was party, also that the determination of the appeal shall be according to the determination of a majority of the Judges who heard that appeal. It should be remembered that the prevention of the Crimes Act was passed at a time when, in the words of Sir William Harcourt, who introduced the Bill, all sorts and conditions of men in that country without distinction combined together to denounce this atrocious deed (the Phœnix Park murder) and its authors and yet the Government of the day took care that in providing for the repression and prevention of crime, they did not unnecessarily endanger the liberty of the subject. They required unanimous verdict in the first Court and provided for an appeal from that verdict. Sir William Harcourt said the court will sit without a jury. They will decide on the questions both of the law and of fact and their judgement shall be unanimous. Well then in order to give every security and confidence to this tribunal we have in all these cases an appeal to that court of criminal cases reserved I belive that is what it is called in Ireland. At all events it is a body consisting of the residue of the judges of the supreme Court. I believe that the ordinary quorum of that court is five judges and upon the appeal the judgement will be by a majority of the court so that you will see that no man can be convicted under these circumstances without the assent of six judges, three in the Court below and three in the court above. Well, we have another security. There will be an official shorthand writer and the notes will go to the Court above, but the Court above may, if they think fit, hear other evidence and call other witness so that in point of fact at their discretion, they may have a rehearing of the case and thereupon the court may either affirm the sentence of the Court below or they may alter the sentence. That is to say, in the way of diminution and not of increase.

The proposals in the Bill are based upon the recomendations of the Rowlatt Committee who have recommended, as they have said, (182 of their report) in substance the procedure established under the Defence of India Act though they have recommended that

the tribunal should be of the highest strength and authority. The Defence of India Act substantially embodied the main provisions of the originally proposed draft ordnance (Rowlatt Committee 140) which had been proposed by Sir Michael O'Dwyer (Ibid 136). The Lieutenant-Governor considered that it is most undesirable at the present time (end of 1914) to allow trials of any of these revolutionaries or other sedition mongers who have been or may be arrested in the commission of crime or while endeavouring to stir up trouble to be protracted by the ingenuity of counsel and drawn out to inordinate length by the committal and appeal procedure which the criminal law provides. His Honour therefore submitted for approval a draft ordinance which provided, subject to the sanction of the Local Government, to its aplication in the cases (A) for the elimination of committal procedure in the case of offences of a political or quasi political nature, (B) for the elimination of appeal in such cases (c) for the taking of security from persons of the class affected by a more rapid procedure than that prescribed by the ordinary law but as the Committee note, the measure was exceptional and intended to cope with a temporary emergency and in enacting a law in the happily altered times in which we are now living the Government should not follow the model of the exceptional ordinance upon which the Defence of India Act was based but at least of the parliamentary statute referred to above. I would therefore modify Section 17 of the Bill and provide for an appeal to at least three judges of a High Court other than those who tried the case.

Accused Person's Evidence.

I would also omit Section 12 of the Bill which provides that an accused person may, if it so desires, be examined on oath and that on such examination, he shall be liable to cross-examination. The Statute which made it permissible for an accused person to be examined on oath was introduced in England in 1898 after fifteen years of controversy, but the circumstances of India are unfortunately very different from those of England. It should also be remembered that opinion was very much divided even in England. When the measure was under discussion, speaking on the Bill, Mr. Lytterson, M. P. said : "The very moment a man begins to cross-examine another, an atmosphere of heat is generated. How many men can engage in an ordinary argument on an important subject without showing warmth ? I think they are few in number. But what is cross examination ? In the argument conducted by men in public with all the excitement that publicity can give, it is done by a man who is exhibiting his powers before others which may afterwards employ him, and is it not too sanguine to expect that such a man would conduct a cross-exmination of a prisoner with that

calmness and moderation with which English prosecutions are now conducted ? May I give one quotation from the opinion of Lord Justice Collins who has allowed me to use his name in this matter ? My Hon. and learned friend has said that he did not believe that the Judge would be carried away by the duties imposed on them by this Bill. Allow me to read the testimony of one of the Judges on this point which, I am sure, will have a great weight. There is no Judge on the bench more respected, esteemed and admired than Lord Collins. He says :—My chief objection to the propotsed change is that I feel certain it will greatly alter the present rela ion between the Judge and the prisoner. It seems to me inevitable that if it should become the practice for the prisoner to give evidence in every case, the Judge will in most cases have to put questions in the nature of cross-examination himself. He has to do so now very frequently in cases under the Criminal Law Amendment Act. The counsel who conduct ordinary cases are frequently inexperienced and a crucial question often has to be put by the Judge. If this becomes the ordinary practice, as I think it must be if the proposed change be made, it must impair the prisoner's confidence in the absolute impartiality of the Judge which is so valuable a feature in our present system. It cannot but tend to alter the attitude of the Judge himself actually and apparently and I should regard this as a great public mischief and deprecate any change which might make it possible, unless I feel sure that the certain benefits would more than compensate." This is the opinion of a judge who has tried theseca ses himself and who has no prejudice one way or the other. He has had great experience of both systems. Is it not a deplorable thing for the Government of this country that the Ministry should seek to alter one of the most impressive functions of Government which now exhibits the Judge and the prosecuting counsel, at any rate the Judge not as the enemy, but as the friend of the poor and miserable ? Would it not be a deplorable thing that a system so generous and humane should be changed to one in which it would be the business and the duty of the Judge to put questions such as Lord Justice Collins suggests and as the result of which he would not appear to the poor and miserable in a criminal courts as a friend as he is now generally regarded but as an embittered enemy (Hansard vol. LVI 1898 pp 1015-1016.)

It must also be remembered that the Statute permitting the examination of an accused on oath did not extend to Ireland The Irish members were as a body opposed to such extension and Parliament recognised the validity of their objection. The reasons for it were well expressed by Lord (then Mr.) Morley in a debate on the Criminal Evidence Bill when it was introduced in the House

of Commons in 1888. As they have a bearing on the circumstances of our case, I will quote them here. He said: "There was no difference of opinion as to the utility of the measure. They were all agreed that to allow prisoners to become witnesses when they wished to do so would be a humane and beneficent change, but he could not agree that all the reasons which existed for the application of the Bill to England must necessarily exist in the case of Ireland also. The Hon'ble and learned Solicitor General said that there was no distinction between the cases. The Hon'ble and learned gentleman had not dealt effectively with the argument of the Hon'ble and learned member for North Longford (Mr. T. M. Healy) that the atmosphere of an Irish Court was not supposed by the people of Ireland to be favourable to the prisoner. The argument of the Hon'ble and learned member for North Longford proved that there was all the difference in the world between the operation of a measure in courts like the English courts and its operation in courts such as the Hon'ble and learned member and his friends believed theirs to be. This was a Bill in favour of the prisoner but the Government were going to apply it in a country where it would inevitably be regarded, whether rightly or wrongly as being hostile to the prisoner. The effect of the measure upon Irish opinion would be very opposite of that which was justly claimed for it in England. The Hon'ble and learned member for Inverness (Mr. Finlay) had argued with great plausibility that the supposition that there was animus in the mind of Judge against the prisoner was all the more convincing a reason why they should give the prisoner a chance of exculpating himself by giving evidence. But it must not be forgotten that if the contention of the Hon. and learned member for North Longford were correct and if there was an animus in the mind of the Irish judge and strong animus in the prosecution counsel, the prisoners under this Bill would be exposed to the risk of bitterly hostile cross-examination and it will enforce on him very serious disadvantage. It appeared to him (Mr. John Morley) the sheerest pedantry to insist that because this was a wise and desirable change in itself and in this country they were therefore bound to force it upon Ireland against the wishes of her representatives and against the opinion of so staunch a partizan of the Government on the Opposition side as the Right Hon. and the learned member for Bury. The Rt. Hon. and learned member for Bury was free from suspicion of motive which attached to Irish members below the gangway and he had shown that he was strongly opposed to the change itself and on both these grounds his opinion was entitled to the greatest weight. Would Government insist upon extending the legislation to Ireland against the wish of all the popular representatives of that country and against the opinion of the

partizan of their own who was most competent to give an opinion upon that subject ?

He wished to underline the argument of the Hon. and the learned member for the city of Durham (Mr. Milvain) which he was surprised Government did not see the force of. They considered they were engaged on the difficult task of restoring law and order in Ireland. They had now got a state of opinion in Ireland much more favourable than it had long been to the maintenance of law, order and respect for administration of law. They must admit, therefore, that it was most undesirable politically to arouse fresh jealousy by introducing a single element of suspicion or irritation into the administration of criminal law in Ireland at a moment like this and yet they must equally admit that this would be the effect of the provision which, with deplorable tenacity, the Government insisted upon extending to Ireland. (Hansard Volume 324, 1888 pages 95/96).

The Rowlatt Committe have said no doubt only experienced courts should try cases under these conditions in order to ensure that the ignorant prisoner does not misunderstand his position and is not unfairly dealt with. This safeguard is ensured when cases come before three judges of the highest rank and upon the whole, we think, a provisions should be introduced—if it were a question of the general application we should, having regard to the above mentioned considerations, be against it. Read in the light of the observations I have quoted above these remarks of the Rowlatt Committee afford slender support to the proposal to introduce a change of so serious a character in an exceptional and admittedly repressive legislation.

I would omit Section 18. If the whole of it is not omitted, at least Clause A. should be.

PARTS II AND III.

I entirely dissent from the principle which underlies parts II and III. I have shown above that it was in the exceptional times of 1914/15 that Sir Michael O'Dwyer suggested that an exceptional and temporary measure should be passed to provide, among other matters, for the taking of security from the persons of the class affected by a more rapid procedure than that prescribed by the ordinary law. Those times have happily passed away and the Defence of India Act will still remain in operation for six months after the termination of the war. In my opinion after the termination of that period, reliance should be placed on the ordinary existing law to deal with persons of a dangerous character, the cases of such persons should be brought before a Magistrate and the procedure prescribed for dealing with them should be followed, this will leave to

the person against whom an order may be passed an opportunity of seeking the protection of the High Court in revision. Executive action should not be substituted for judicial forms of inquiry. If the Government cannot see their way to accept the recommendation made above, sections 21 to 25 should be so modified as to secure that the case of a suspected person will be referred to the investigating authority before any such order is passed against him as is specified in Clauses (a) to (e) of clause 21 (1) and that only such an order shall be passed as recommended by the investigating authority. If the Local Government will pass an order against a person and then refer his case to the investigating authority that will seriously prejudice his case. The enquiry should not be held in camera except when the investigating authority, in its discretion, should rule to the contrary. Pleaders should be allowed to appear to help the person whose case may be under investigation. He should also be at liberty to adduce evidence. The ordinary rules of evidence should apply to the enquiry, the report of the investigating authority should be binding on the Local Government. Clause 29 should be modified to provide that the investigating authority shall consist of two District and Sessions Judges and one non-official Indian who should preferably be a lawyer. Clauses 33, 34 and 36—mutatis mutandis. The same procedure should be followed under Part III as I have indicated for part II. I would omit 124—A from the schedule. Cases under those sections should be tried in the regular way. There are certain other amendments which are suggested but it is not necessary for me to note them all here. I will move such of them as I think fit in the Council.

Lastly I strongly recommend that the Bill should be republished and circulated for opinion.

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The Rowlatt Bill No I.

(Criminal Law Emergency Powers Bill.)

Debate in the Imperial Legislative Council on Select Comm's Report.

Delhi—12th March 1919.

The Viceroy :—Before calling upon Sir William Vincent I think would be well if I were to inform the Council of a ruling which I have given on the question of the necessity of members of a Select Committee who wish to put in a dissenting minute signing the report. I have had this matter examined and have found that it has been the usual practice in the work of this Council for all members of a Select Committee who wish to append a minute of dissent to sign the report, and the reason of this is obvious. The Council has a right to know that the correctness of the report, as an account of the Proceedings of the Committee irrespective of the differences of opinion upon its details, is undisputed and this can only be secured by the signature of the members. In the case of members desiring to put in a dissenting minute, their signature to the report means nothing more than this that they agree to the correctness of the report. This has been the established practice of this Council, and as the custodian of the usages and practice of this Council, I have no alternative but to rule that a member of a Committee wishing to put in a dissenting minute can only do so when he was affixed his signature to the report. I am aware that there is one exception to the practice I described, but on that occassion no question was raised and the President's orders were not taken. I can only regard this instance as the exception which proves the rule, but in no sense affecting the general practice of this council. Further, there is no precedent for a minority report being admitted for the simple reason that the principle of the bill is affirmed when the bill is referred to a Committee and so no question of principle can arise on the report. It goes without saying also that no member of a Committee can invalidate a report by refusing to sign.

I am aware that under rule 7, it is open to the President to take the opinion of the Council upon such point. The practice however is so clear that I do not propose to adopt this course and therefore I cannot allow any discussion upon it.

I note that the first three motions on the paper are based on the alleged incompleteness of the report. It follows, however, from the ruling which I have just given to the Council that the report is in no sense invalidated or rendered incomplete by some members refusing to sign or by the consequent exclusion of the minutes of dissent which they desire to attach.

The first three motions on the paper challenge the report on the ground of its incompleteness. It appears impossible for the Hon'ble Members to support these motions without challenging my ruling. I shall, therefore, have to rule these first three motions to be out of order when we come to them.

Sir William Vincent then moved that the Select Committee's report on the Criminal Law Emergency Powers Bill be taken into consideration. He said that he did not propose to discuss in any detail the various modifications in the bill. They were very clearly expressed in the Bill and very clearly explained in the report but there were some matters of first importance to which he would refer. It would be in the memory of the Members of this Council that on the last occasion when this bill was under consideration the Government gave two undertakings in respect of this bill. The first was to convert it into a temporary measure and in the second place he had agreed to what was to his mind abundantly clear and apparent from the context, namely that the application of this bill will be strictly confined to revolutionary and anarchical crimes. In the third place he had promised to consider any other modifications in as far as he could accept them without rendering the bill ineffective for the purpose for which it was enacted. He could now say that all the three undertakings had been amply fulfilled. The operation of the act was now limited to three years. Then again the opening section of the preamble and other parts of the bill indicate most clearly that the application of the bill was restricted to movements to the character of which he had already referred. Then, again, in deference to their wishes they had made a number of substantial modifications in the bill. The Government regretted that they could not go further to meet the wishes of Hon'ble Members. They trusted that the members who were in the Select Committee would admit that Government had approached this case with the greatest care and had displayed the most reasonable attitude towards the suggestion of the Hon'ble Members. If it had been possible to meet the Hon'ble Members

further no one would rejoice more than himself, but there were responsiblities on the Government of India for peace and tranquility in the country which they could not subordinate to any other consideration. While he was on this he would advert to the insinuation that there was some form of compact or agreement between the Government and some Members of this Council. His duty was to repudiate that suggestion in the most emphatic terms. The Government always desired to obtain the co-operation of the Hon'ble Members in enacting measures, more so a measure of this kind on which depended the welfare of this country. If modifications made in the Select Committee has secured the support of one of the Hon'ble Members Government will be more than pleased, but there never was a question of agreement or compact between the Government and some of the Hon'ble Members. To his mind it was much to be regretted that any suggestion of that character should have been made. He wanted the members to believe that the Government were perfectly sincere in their conviction that there was absolute need to enact this measure. There was no Machiavalian plot to create political agitation in the country, nor was there any intention to frustrate or defer the advent of reforms. His Excellency as one of the authors of the reforms report, would be the last to allow the introduction of this bill, had there been any such plot or intention. On the other hand, the Government desired to safeguard India from the results of the movement which had done so much in the past to discredit the loyalty of a great body of the citizens of the country. Finally, he wished to make clear that this bill would not come into general operation. It could not be applied indiscriminately all over India. It would come in operation only by proclamations by the Governor-General-in-Council in places where anarchical movement was prevalent and even there it could not be used in any way to attack the liberty of law-abiding citizens. It could only be employed against the criminal whose activities were a menace to the whole state and even in dealing with this criminal every effort was made, so far as they could, to see that no innocent man suffered and to safeguard that no innocent man was being touched under the provisions of the law.

Validity of Report.

H. E. The President called upon Messrs. Patel, Khaparde and Sukul to speak on points of order relating to the notices of amendments they had given to the effect that the Select Committee's report was incomplete and invalid. Both Messrs. Patel and Khaparde spoke. Mr. Sukul declined in disgust to raise his points.

His Excellency the Viceroy said that the first three amendments according to his ruling were out of order. Mr. Patel wished to be heard before his motion was ruled out.

His Excellency :—You must not discuss my point of order.

Mr. Patel :—The motion I have given notice of will not touch Your Excellency's ruling. I will not question Your Excellency's ruling. I will discuss it from a different point of view.

He then moved his amendment as follows :—That the so-called report of the Select Committee is both an incomplete and invalid document and it be therefore cancelled.

Sir George Lowndes rose to a point of order saying that the Hon'ble member had already infringed His Excellency's ruling by moving an amendment which regarded the report of the Select Com-Committee as incomplete.

His Excellency said he was waiting to hear what Mr. Patel had to say. If he said it was incomplete in the fashion he (the President) had ruled it, he would rule him out of order.

Mr. Patel said in his humble opinion the report of the Select Committee was invalid and incomplete. At the first meeting of the Select Committee two preliminary points had been raised. The first was that the Select Committee should recommend to the Council that the bill should be dropped. The second was that the Select Committee should recommend to the Council that it was not in the competence of the Council to pass such measure. The Chairman of theSelect Committee gave his ruling that the Select Committee had no power to discuss the principle of the bill, but they would only recommend changes in details of the bill. With due deference to the Hon'ble Law member he would submit that his ruling was wrong.....

His Excellency : I have already ruled on the point that you cannot discuss the principle of a bill in the Select Committee. The ruling is as old as 1866 when Sir Henry Maine made it clear that in the Select Committee only the points of detail could be considered.

Mr. Patel said the second question raised was whether it was in the competence of the Select Committee to recommend to the Council that the Legislative Council of India had no power to enact such a law.

His Excellency ruled this point also out of order and said that the Select Committee were the servants of the Council. The Bill was referred to them to report on details and not on the competence of the Council to pass it.

Mr Patel said he had nothing further to add.

His Excellency said Mr. Patel had not convinced him that his amendment was not out of order, and he must rule it out. He asked Mr. Khaparde if he wished to say anything about his amendment.

Mr. Khaparde also said that the report was incomplete. It stated that certain amendments were moved at the meeting which in the opinion of the Chairman were destructive of the principle of the bill and he had therefore ruled them out. These amendments were not mentioned in the report of the Select Committee. He submitted they should have been included so that the Council could judge whether the amendments were destructive of the principle. He submitted the report was therefore incomplete.

His Excellency :—It is the same point put in a different way. I do not wish to interrupt you but I wish to appreciate your point before I rule you out of order.

Mr. Khaparde said the report of the Select Committee should include all that took place in the committee.

His Excellency :—I am afraid Mr. Khaparde, I cannot agree. It was ultra vires of the Committee to discuss the principle of the bill. The Chairman had ruled out certain amendments which touched the principle of the bill. I have laid down just now that it was beyond the competence of the Committee to discuss the principle of the bill. That was settled when the Council in their wisdom referred the bill to the Committee. I am not prepared to discuss the ruling of the chairman of the Committee. He was fully within his powers to do so. If this is all you have to say I must rule your motion out of order.

Mr. Shukl having nothing to add his motion was also ruled out of order.

Mr. Banerjee's Amendment.

Mr. Banerjee moved the following amendment :—That the Select Committee's report together with the bill and connected papers be referred to Local Governments, High Courts and public bodies for criticisms.

In doing so he repudiated the insinuation that there had been a compact with some section of the House and the Government. He said that upon the point raised in the amendment the non-official members of the select committee were unanimous, and he was sure the non-official vote of the Council would also be unanimous. In a matter of that kind, Indian opinion ought to go very far in determining the action of the Government. The proposed Legislation would affect the people and the people only. They were as deeply

interested as the Government could be in the maintenance of law and order and in the eradication of anarchical and revolutionary movements. They had been the greatest sufferers both in respect of life and property. Revolutionary movement was a menace to their political progress and was a blot upon their name, fame and reputation as a law-abiding people. They realised the gravity of the situation and the measure of responsibility they assumed in advising the Government to pause and wait. The Government, however, had not been quite insensible to public opinion and had shown their partial deference to it by making the bill temporary and restricting its scope to anarchical and revolutionary crimes, and by modifying its provisions. But that was not enough and in a matter of kind involving restriction of public liberties the Government should receive further light and guidance from High Courts, Local Governments and public bodies. There was no reason why the bill should not be postponed till the autumn sessions just like the second bill. The Government already possessed emergency powers which were more drastic and more summary. Referring to the growing volume of agitation, he said that if his safe suggestion was acted upon, the agitation would be allayed. All life would then have departed from it. It would be feeble, dead. Agitation and public temper would have been placed in a more conciliatory mood. He claimed to know something of agitations and said when the history of the time came to be written if they at all remembered him, they would paint him as the most obstinate, the most incorrigible of agitators who would not acquiesce in the doctrine of settled fact. He referred to his association with the Partition of Bengal agitation and said the passing of the bill at the present session of the Council would produce the same results and instead of allaying the agitation already started, it would intensify it. He asked the Government to give people time to let them think over the matter, to let responsible public bodies to record their opinions, to let the High Courts give their judgment, and the Government would have helped to create a calmer atmosphere.

Another important consideration in support of his amendment was the forthcoming introduction of the Reform Bill in Parliament. If it turned out to be a satisfactory measure that would help to create an atmosphere favourable to the dispassionate consideration of the present bill. The Sydenhamites were taking the fullest advantage of the Rowlatt report and they may block the reforms. The Government had an effective weapon in the Defence of India Act for the time being and could say they had fortified themselves with a bill which was under the consideration of the Imperial Council. Indian opinion may have a profound influence

in determining the trend of English opinion. If as a result of passing the bill this sessions intense and widespread agitation was started, the reactionaries in England may say, "let the agitation cease and then there will be time enough to pass the Reform bill." Therefore, in the interests of the reform scheme also to which they were pledged, Government should accept the amendment. It would be no sign of weakness but of strength. It would be the expression of deferential attitude towards dissipate public opinion which would gratify all. It would help to the cloud of suspicion and mistrust which hung thick and dark over the public mind of India. Above all, it would be worthy of the great Government about to enter upon a new period of responsibility in conformity with its own gracious message and the immemorial traditions of British rule in India.

The Hon'ble Dr. Sapru in supporting the amendment said that he could not shut his eyes to the wording of the preamble of the Bill. If the Criminal Law as it stood at present was inadequate and if the existing machinery had broken down, the best people to advise on these points were the very persons who administered law from day to day. They would be able to say if the present state of law was insufficient or if the legislation proposed went much further than necessary. If the Judges agreed in regard to the necessity of the present Bill then the position of Government would be infinitely stronger. He did not see any justification for hurry.

The Hon'ble Maharaja of Kassimbazar in supporting Mr. Bannerjee's amendment said that his conviction was that if the Select Committee's report was referred to the Local Governments and High Courts and to public bodies for considered and matured criticism the Bill would stand the chance of being considerably improved. Time was a great healer and if the Bill was put off for consideration till the next session the country would forget and forgive many things.

The Hon'ble Mr. Shukul supporting the motion said the Government ought to be aware of the storm of opposition which the Bill had raised in the country. He felt sure that nothing was to be lost by republication. There was no reason for unnecessary hurry.

The Hon'ble Mr. Khaparde said that much was to be gained by a prolonged discussion of the Bill and strongly supported the motion for republication.

The Hon'ble Mr. Shafi supported Mr. Bannerjee's amendment for republication of the Bill and acknowledged the conciliatory attitude of the official majority in the Select Committee. He supported the motion because the Government did not observe the procedure of publishing the Bill in official gazettes. Secondly because it was not

proved that there was any emergent necessity for the measures. If that had been proved he would have supported the Government He referred to a resolution moved in the Bengal Legislative Council recommending the release of the internees which was rejected, and said that the people of the country were ready to support measures of which the necessity could not be disputed. He said he did not remember any Government measure having been so emphatically and unanimously opposed by non-official members.

The Hon'ble Mr. Chanda said that he had a similar motion in his name, and he would like to speak on the present motion and withdraw his own. He did not see the beauty of Mr. Shafi referring to the Bengal Council resolution moved by Akhil Chandra Dutt. It had no bearing on the present motion. His main ground for republication was that there had been many substantial changes made in the Bill by the Select Committee, and he quoted several clauses from the Bill as amended by the Select Committee in support of his contention.

The Hon'ble Rai Sita Nath Roy strongly appealed to His Excellency to postpone consideration of the Bill till the next session. That he held was a very small concession to public opinion which would not be looked upon as a sign of weakness on the part of Government.

The Hon'ble Mr. Patel said that he thought His Excellency's announcement that the Council would sit again after six in the evening showed that the officials had decided to pass the Bill with their standing majority. He supported Mr. Bannerjee's amendment as it would defer the evil day and delay may bring about some change in the attitude of the Government.

The Hon'ble Mr. Sarma in supporting the amendment asked if Government would be prepared to allow the Government officials to vote as they liked. Past experience had taught him that non-officials could only influence either in Select Committee or before the bill was introduced. The Government themselves should consider the Bill in the light of the suggestions received from the Local Government, etc. Every opportunity should be given to Judges to show if the existing machinery had failed, and if so in what respect.

The Hon'ble Pandit Malaviya in supporting the amendment said that Sir William Vincent had asked them what had happened since the introduction of the Bill for all this change of view. He referred him to the happenings in connection with the Select Committee's report. The opinion of all the members were not before the council and such opinions that were before it radically differed. That was why the Select Committee's report should be

circulated for opinion and republished. Government was not right taking in advantage of rule 23 in a contentious and important Bill of that kind. He drew the attention to the existence of rules in Provincial Legislatures relating to Select Committee reports (Punjab, Bombay) in support of his contention that the present Bill ought to be published.

Another thing that had happened since the introduction of the Bill was the tremendous opposition they were witnessing when a saintly man like Gandhi was taking the lead inthe passive resistance movement. That was a matter for Government to ponder over. The opposition was deepening. The Government had at present power to override it, but that was not wise. He asked if the Government would not gain in moral strength if it gained the support of non-official members, at least a majority of them. Pandit Malaviya then referred to the Irish Act and said whereas that act required concurence of all 3 Judges for conviction, the present Bill required the concurrence of only the majority.

Mr. Ironside said he had listened to a great deal of eloquence, but he could not help feeling that many of his friends had failed to adduce any argument which would carry conviction to his mind. He did not think that any one had questioned the position taken up by the Government in the matter. One special pleading had been that more generosity from the Government was still needed. Now up to a point generosity and justice was necessary, but beyond that point generosity and justice was merely suggestive of weakness, which might be taken hold of by supporters of the movement against a generous Government. Mr. Bannerjee had told them that the Bill affected but a small and unimportant section of the community and he for his life could not understand why there was this extraordinary fear by the greater and saner section of the community which Mr. Bannerjee represented. It had been suggested that the Bill should be referred to the High Court. Now he might be wrong, but he had always been under the impression that the High Court read law which had emanated from that Council, and he asked was this council to form or make laws or the High Court? If the High Court were to tell them what they were to do, what was the use of this Council? Then they were told by Mr. Bannerjee that time was a great pacifier. From his experience of this country he had not any great faith in this idea of his Hon'ble friend. Then it was stated that this wicked measure was introduced by the Government to endanger the future of reforms. He was holding no brief for the Government but he refused to believe that there was one man in the service of the Government

of India who would so endanger the good name of Britain, the good name of the service to which he belonged, to think of such an idea as that. Personally he believed if this Bill had gone through, it would have gone a long way to assist the scheme. Then question of public opinion had been raised. In Calcutta he had an opportunity of discussing this matter with several Indian friends, for whom he had the greatest respect, and whom he was prepared to meet as equals anywhere and these people were of opinion that for the sake of the people of Bengal and for the sake of the saner proportion of the community the Bill must be pushed through.

Mr. Jinnah said that in answer to Mr. Ironside he would say the reason why they wanted postponement and reference outside was the peculiar constitution of their legislature. He did not believe that members of the type of their Law Member and sir Sankaran Nair and Sir George Barnes could possibly have in their heart of hearts liked the measure. He did not doubt the sincerity of the Government but Mr. Ironside forgot that the Government, as at present constituted, had no check whatsoever. They found that the Governor General in Council with an official majority at their back had decided that the Bill should go through. They found that the non-officials had decided to oppose it. Were the Government wrong, or were the non-officials wrong? Had non-officials gone mad that not a single member supported the measure? Were they wrong in asking the Government to stay their hands? The atmosphere in the Council chamber was surcharged with this spirit that the Government were determined to carry through and the non-official members were determined to oppose it. Was that not a situation that needed to be solved? The best thing was to get outside help. If Mr. Ironside was right in saying that Indian gentlemen told him they wanted the Bill in Bengal for the sake of sober people, they would hear that opinion. If they got such opinion would not Government's hands be strengthened? Mr. Jinnah said that the Law Member shook head. He had the greatest regard for the Law Member and he did not like to say anything against him but he would say this: he (the Law Member) was still an advocate and once he took up a cause he was an advocate and nothing but an advocate. He was surprised to hear Mr. Ironside, a Britisher, saying that the Bill was admittedly meant to apply to a small and wicked section of the community, and why should bigger and saner section take up this attitude. He would ask Mr. Ironside to study the history of his own country. Mr. Ironside's countrymen had fought and shed their blood since the time of King John for the principle that no man's liberty must be taken away without trial. It was not the wicked they wanted to protect, it was the innocent for whom they were pleading. If they were determined to carry the

measure through, all he would say was that he for one believed the consequences would be most unfortunate. It was said that if time were given agitation would grow worse. How could it be worse? At the present moment the agitation was at its height. The Law Member had said that the agitation would be what the politician choose to make it. If the Law Member had any experience of public life in this country the speaker was sure he would not have said this. In this connection he said he had received a telegram from the non-official members of the Bombay Legislative Council signed by Mr. G. K. Parekh, the mildest of mild men he had come across, saying that their association had unanimously resolved to request the speaker to express the most emphatic protest against the Bill. Referring to Mr. Ironside's remark that concession to public opinion on this point would at once be taken as a sign of weakness, he said it was a monstrous suggestion to make. He thought this argument was brought in to stiffen the back of the Government. In conclusion he begged the Government to consider this question. Did the Government doubt their sincerity? Did the Government think they were opposing the measure for the sake of opposition? Did the Government think they (Government) had the welfare of this country, and they had not? Did they think that he wanted revolution and they did not? Did the Government think he wanted disorder and they not? He had got up purely for the sake of convincing Mr. Ironside and he would now say if he (Mr. Ironside) were standing in the speaker's position and if he understood the Bill and if he had been brought upon the tradition of Great Britain, he would do the same.

The Hon'ble Mr. V. S. Srinivasa Sastri said Mr Ironside had suggested if the Government yielded on this occasion it would be a sign of weakness He thought that if the Government yielded in this matter it would not be weakening but strengthening their position. Instances in point were the Government's decision regarding indentured emigration, and publication of reforms report which had gone a great way to calm the situation. The vital issue was how were they to deal with anarchists and in this connection he would point out to Mr. Ironside that the principal feature of love of liberty was love of liberty for others. With regard to extending the Defence Act by Ordinance he said these measures carried on their character of being emergent. He thought by postponing the measures there would be a great moral gain to all. He would consider it a great blessing if the Government were induced even at this last moment on political grounds to agree to postponement. With regard to the argument about the reforms he said it was ominous that the Government of India showed so much anxiety to conciliate English opinion that was so unjust and so uncharitable. He submitted there was no urgency in the matter. Emergency had

already been coped with and the Government were well armed to meet any difficulty of this kind. He supported the amendment.

The Hon'ble Mr. Aiyangar said that he saw no reason why the Bill should be hurried through. The considered opinion in the country was growing against the Bill. The Council was not the proper place to condemn or sit in judgement on the passive resistance movement as has been done by one member. He drew the attention of the Council to the decision of Lord Loreburn's committee which arose out of a suit against the Secretary of State.

Sir William Vincent speaking on behalf of the Government said it was to his mind a matter of great regret, and he spoke with great sincerity, that the Government were unable to accept the amendment. He regretted because of the support it had received from a number of members who were frequently able to co-operate with the Government. The question of the urgency of the legislation of the measure was debated at great length when the Bill was introduced and referred to the Select Committee, and he should like to know what had happened since than to reverse the decision not to postpone the measure. Had the Bill been materially changed and made more drastic? Mr. Chanda had said there was a radical amendment of Clause 20. He thought it would be time enough to deal with the matter when specific amendments came up for discussion, but no member could suggest that the Bill, taken all in all, was not modified and that in the sense of making it less drastic than before. He submitted there existed no reasons now for republishing the bill which did not exist at the date of the first reading. Sir William then dealt with various criticisms of the members. The first suggestion he said, was that the public feeling was much agitated, and there was the prospect of passive vrsistance. He did not wish to deal with this question of passive resistance, but he was glad to see some members of this Council had repudiated the idea and did their best to discourage the movement. It must be a matter of regret that a man of Mr. Gandhi's character had lent his support to it, but he did not think the members of this Council should suggest that the attitude of the Government of India should be affected by threat of this character. Mr. Bannerjee had taken a different line. He had said;—If the measure were postponed the agitation would be less formidable. He wished he could believe that that were so. Dr. Sapru had taken a different view. The more the Government yielded in the matter the greater the force the agitation would take. He would not take that as the reason against the amendment. Another argument was that the Government had consented to republish the other bill and therefore they should take the same

course over this Bill. The answer to this was very simple and very short. The other bill was entirely different. It was a permanent piece of legislation and it stood on an entirely different footing. Another argument suggested was that the passing of the bill might prejudice reforms. He thought he did not need to say anything more on the subject. It was frequently said that Government did not believe this action could prejudice the advent of reforms. They believed on the other hand that failure to deal with revolutionary crime would impair the chance of political progress in this country. On the last occasion he told the Council what the actual position was. For the time being the movement was checked, but if the powers the Government possessed were removed he ventured to say that there would be such recrudescene of the movement and such discouragement to and disheartening of their officers, that the result would be disastrous to the peace and good Government of the country. The revolutionary movement was not dead and the measure was one of greatest urgency. On the last occasion he had read extracts to show what the intentions of the anarchists were. Then it was said that they had failed to consult local Governments, and also to ascertain public opinion. Now they had really had the best opinions on the measure. From one year before the war they had been discussing with the Local Governments the desirablity of passing similar measure. Had the war not intervened they should have had to pass special legistation to deal with this sort of crime earlier. It was not fair to say that they had not consulted local Governments fully and comprehensively. As a matter of fact the recommendations of the Rowlatt Committee were circulated to the Local Governments and had received their opinions on it, and they had also consultations with the leading officers sent by Local Governments. With regard to the opinions of public bodies, the Rowlatt Report had been public property for eight months, and every public body had ample opportunity to express its opinion. There had been no lack of criticism from public bodies, and he had received numerous criticisms. It was true they had not got the opinions of High Courts. On the other hand they had opinions of a number of judicial officers and the committee from whose recommendations the Bill was drafted consisted entirely, with the exception of one, of professional lawyer and another of judicial officers. The Bill was not hatched in the Chambers of the Secretariat nor did it emanate from bureaucratic civilians. It had emanated from a committee of three Judges, one Indian lawyer and one official, and it could not be said that judical opinion was not taken. The Government were not pushing this bill through with a light heart. Their reasons were that peace might be made at any movement and after that

the Government wished to be in a position not to make use of measures which were intended merely for the period of war. The Government had been accused of using emergency measures of war unfairly and the force of that accusation would be redoubled if after the conclusion of peace those measures were used. Moreover the Government could not take the risk of there being a gap between the date up to which the Defence of India Act would remain in force, and the date on which new legislation would come in force. Sir William then referred to the argument about the power to promulgate ordinance and observed that when the Defence of India Act was passed Sir Reginald Craddock had given an undertaking that the act would remain in force during the war only and the Government now might very well be accused of breach of faith.

Mr. Bannerjee in reply acknowledged the concilliatory speech of the Home Member, but he had not been able to meet the criticisms. The Local Governments had not been consulted, the opinion of the High Courts had not been sought, and public bodies had not been asked to submit their opinions. The Calcutta High Court specially deserved to be consulted, for that Court had the greatest experience of such cases. The situation had improved and it was not proper to legislate on an ancient report published a year back. He referred to the remarks of Mr. Fagan and said that he was proud that the representative of the province of the Punjab had said that the members of the Council represented the quintessence of the wisdom of the country but even Solomon was liable to make mistakes when deliberating on imperfect and insufficient materials. He took exception to the argument that concession to public opinion would be considered a sign of weakness on the part of the Government. He was sure if the Government yielded to popular opinion that would be considered to be a sign of strength not weakness. He hoped that the Government would reconsider the question and accept the unanimous opinion of the Indian members.

Amendment lost

The amendment was put to the Council and lost. Mr. Banerjee calling for a division the votes were recorded as follows :—For amendment 25 (all non-official Indians voting), against it 36.

Similar Amendments

The Council reassembled at six. The Viceroy continued to preside. Mr. Chanda withdrew his amendment which was to the effect that the Bill as amended by Select Committee be republished and circulated for opinion of, among others, High Courts and Chief Courts. Mr. Khaparde's amendment for republication of the bill and Mr. Iyengar's amendment for referring the Bill inclu-

ding the minute of dissent by Pundit Malaviya and Messrs. Khaparde and Patel to the Local Governments for opinion were rejected.

Mr Chanda's next amendment "that the revised Bill be recommitted to the Select Committee with instructions to report to the Council during the next Simla session" was rejected by 37 to 15. The loss of this amendment automatically set aside Mr. Chanda's next amendment which was to the effect that Sir Claude Hill, Sir Sankaran Nair, Messrs. Jinnah, Sarma and M. Haque be added to the Select Committee.

Mr. Patel next moved that the Select Committee's Report be taken into consideration with the addition of these words "this day 1921." This was he said a very reasonable demand in view of the Government's determination to pass the bill and not abandon it.

Sir William Vincent said that this measure was one of great emergency and he could not accept the amendment which was rejected by 37 to 10.

Mr Khaparde next moved "that the Bill be not taken into consideration until the Governor-General-in-Council receives from Parliament an express authority by an act of Parliament to pass it."

He said that the Indian Legislature was a subordinate legislature. He referred to the Government of India Act of 1916, Sections 32 and 65, and held that the Government of India had not the power to enact a law like the one before the Council, unless especially empowered to do so by Parliament, as it affected the allegiance of British subjects in India.

Sir George Lowndes dwelt at length on the point whether the Government of India had power to legislate which was questioned by Mr. Khaparde. He maintained the Government of India had full powers and said that Mr. Jinnah had only referred to the minority judgment of Lord Shaw.
The Amendment was rejected.

Original Motion Passed.

The motion that Select Committee's report be taken into consideration was adopted. The Viceroy congratulated the Council on the admirable temper throughout the debate on this very controversial subject.

Debate on the Amended Bill.

Delhi—13th March 1919.

His Excellency said before they proceeded with further discussion of the Bill he would inform the council of the procedure he intended to adopt. The Bill would be considered clause by clause and when an amendment to a particular clause was moved a question would be put whether the clause or the clause as amended formed part of the Bill. He said there was no amendment relating to the preamble and he therefore put the question to the council whether preamble do form part of the Bill. The motion was agreed to.

Mr. Chanda moved the following amendment to Cld. that after sub-clause 2 of clause I, the following sub-clause be inserted 2 (A) :—This Act shall not come into force till six months will have elapsed after the formation of the new Legislative Council in accordance with the reform scheme, provided however that if anarchical and revolutionary crimes become prevalent in any part of British India before that, the Governor-General may with the consent of the Legislative Council make a declaration to that effect in the Gazette of India and introduce any provisions of the Act or if necessary the whole act in such part. He called the law extraordinary as it tended to empower the executive with judicial powers and held that in the case of such an extraordinary law it would be only proper to consult them to make a declaration.

Sir William Vincent was unable to accept the amendment which wss opposed to the spirit and provision of the Bill that the details of the administration need not be referred to the Council.

The amendment was lost.

Mr. Chanda next moved that the duration of the act be for one year and that from the date of its commencement. He said one year was quite sufficient

Sir William Vincent said the Government could not agree to the amendment. There were many who thought that the period of three years was inadequate.

Pundit Malaviya thought three years was too long a period and if the evil existed after the expiration of one year the Government would still be in a position with its official majority to extend the operation of the Act.

The amendment was negatived,

Mr. Patel moved that the duration of the Act be for one year and it should come into operation from the date of the passing of the reform Bill in the Parliament. He said if necessity arose the operation of the Act could always be extended as His Excellency knew there was no real urgency, and he therefore suggested that the Act might be passed now, but its operation withheld till the reform Bill was passed.

Sir William Vincent in opposing the motion said he had endeavoured to make it clear that the measure was of the greatest urgency. The present argument was inconsistent with the previous argument that there would be no necessity for this measure after reforms were introduced. With regard to the period of duration the Government were satisfied that three years was the minimum.

The amendment was negatived and Clause (1) was passed.

On consideration of Clause (2) **Mr. Sarma** moved that the following definition be inserted in the clause :—Revolutionary movement means movement directed to the overthrow by force of His Majesty's established Government in India. He said the matter was not so simple as some imagined and it was necessary that the legislature should define the movement they wished to suppress. He was apprehending the danger that some official might think a particular movement revolutionary.

Dr. Srpru in supporting the amendment said it seemed to him the amendment was consistent with the avowed object of the Bill and declared the policy of the Government. It would assure the public mind, for no one would say that the Bill might be abused. Mr. Sarma's definition brought out very well the meaning of the movement.

Mr. Chanda in supporting the amendment said though he had seen the necessity of the amendment he had not given notice to move it as he was afraid his list of amendment was too long.

Pandit Malaviya also supported the amendment. He said unless a definition was given the language was liable to be misconstrued and it might lead some petulant Governor to take action which might not commend itself to sensible men. He thought it was necessary to put the matter beyond doubt.

Sir George Lowndes said it was at the express and unanimous request of the non-official members in the Select Committee that the word revolution was inserted in the Bill. The word was not defined because it was not a legal or technical expression and they could not translate the dictionary in the Bill. When a petulant Governor wished to ascertain the meaning, he would find that it

meant either an attempt to overthrow by force the Government established by law or the action of a celestial bodyin moving round a particular orbit !

Mr. V. S. Srinivasa Sastri admitted that the word was inserted at the instance of himself and his friends. At that time he was unaware of the ordinary meaning but as it was pointed out now, it might include peaceful revolutions. People would be frequently found to use the word in the innocent way, for example, in the recent political debates the Montagu-Chelmsford report was described as revolutionary, the Congress League scheme was described by a still larger body of men as revolutionary. He saw no harm in defining the word in the Bill.

Mr. Surendranath Bannerjea associated with the remarks of Mr. Sastri. He said the amendment did not interfere with the scope of the Bill and made the object of the Bill more transparent and clear.

The Hon'ble Mr. Shafi and Mr. Jinnah further supported the amendment.

Mr. Shafi said that we know that expressions even clearer than these have been differently construed by different High Courts. Mr. Jinnah said that though the word has been accepted in the Select Committee, were they not in the Council entitled to point out something new when there was a flaw? The point for the Council to consider was "was the clause right or not", and it did not matter that Government Members have accepted one term in the Committee.

Sir William Vincent replying for the Government said it would be more considerate to the Government if points like these were raised in the Select Committee. To the ordinary man in the street the meaning of the word revolutionary was clear. If members saw the Bill they would find the word was used in connection with the word anarchical and was therefore incapable of misconstruction. It could not be applied to any but a criminal movement. According to clause 3 Part I was to be applied if the Governor-General in Council was satisfied that anarchical or revolutionary movements were being promoted, and that scheduled offences in connection with such movements were prevalent. That indicated sufficiently the character of the word revolutionary. The word might be used loosely by partisan newspapers, but it did not follow that responsible authorities would place any but accurate definition upon the word. Then again under the Bill, the authority to describe what the word revolutionary meant was not the Court but the Governor-General in Council, and it had never been suggested and he hoped it would never be suggested that the Govern-

ment of India were not bound by the authoritative statements made in their behalf in this Council.

Mr Sarma in reply urged again that no harm would be done in inserting the definition in the Bill.

The amendment on being put to vote was negatived, and on division being taken at the instance of Mr. Patel it was declared lost by 33 to 18.

Clause 2 passed.

Mr. Patel moved that the whole of part one of the Bill be deleted. He said the object of this part of the Bill was to obtain speedy trial. Here the authors of the Bill had lost sight of the Criminal Amendment Act of 1908. The only difference between that Act and the present Bill was that commitment proceedings were provided for in the former. He thought this chapter was unnecessary.

Mr. Jinnah said if the object was to obtain still speedier trial the proper course was to amend the existing Act. If that was the object of the Government he assured the Government of greater support of the council. He could not understand the object of the Government.

Pandit Malaviya supported Mr. Patel's amendment. He thought they were moving in the wrong direction. Even the Irish Coercion Act did not seek to provide for speedy trial, but it provided for fair and impartial trial. The Government, he observed, should shudder to think of consequence of speedy trial if that trial was to end in the obliteration of a fellow being.

Mr. Sarma suggested that either the Act of 1908 should be repeated or amended to bring it in line with this part of the Bill.

Sir William Vincent said the gist of the point raised was that they had the Act of 1908, but the answer to that was pretty simple. Procedure under the Act of 1908 was entirely different from the procedure to be adopted under this Bill. After pointing those out the Home Member went on to say the Act of 1908 was in some respects wider. The existence of certain circumstances were not conditions precedent to the institution of proceedings under the Act of 1908. He repudiated the insinuation of Pandit Malaviyia that fair and impartial trial would not be obtained. In conclusion he said had this Act been made permanent it was the intention of the Government to repeal the Act of 1908 but even now the Government would have to consider that question.

Mr. Patel having replied the amendment was negatived.

Council then adjourned for lunch.

Mr. Khaparde moved that the notification to be made to

apply Part I of the bill should be made by the Governor General in Legislative Council instead of Governor General in Council. Mr. Khaparde said his amendment arrived at a formality which was calculated to reassure the people. It would give an opportunity for a public explanation as why the Government was taking action.

Mr. Patel, said that the next amendment which stood in his name was somewhat similar and he would like to support Mr. Khaparde. He asked the Government to share the responsibility with representatives of the people.

Sir William said this amendment and some others which followed raised constitutional questions of importance. This was an attempt to control the executive in matters of detail by legislature. Parliament did not interfere in details of administration. A deliberative body could not deal with the details of administration and was concerned only with principles. The responsibility for carrying out details should always remain with the executive. What was true of the Parliament was much more true of Indian Legislative Councils. Apart from this constitutional objection there were practical objections also. The necessity for bringing into operation a part of the act might arise when Council was not sitting. It might be argued that the Council might be summoned when required. That the Home Member said was difficult to work in practice.

He opposed the amendment which was put to the vote and lost.

A similar amendment moved by Mr. Patel was also lost.

Mr. Sarma then moved an amendment that the act should not be applied before opportunity was given to the Imperial Council or to the Council of the province to which the act was to be applied, and that notification of applying the Act should be withdrawn after one year on the recommendation made by three fifths majority of either Council. Mr. Sarma said there was no question of interfering in matters of detail. What it really meant was that they were vesting the executive with extraordinary powers subject to certain limitations. By passing this amendment the Council would be giving an opportunity to the public at the end of one year of stating their case. The executive would still have to issue another notification in respect of the area should necessity arise.

Sir William Vincent opposed the motion. The only difference he said, between the last amendment and this was that here the Hon'ble Member wished that the action of the Governor General in Council should be controlled by provincial legislature. The effect of the second part of the amendment was to give mandatory effect to the resolution which was opposed to rules and statute. He added that the Government of India were at present responsible to His Majesty's Government and not to the Indian Legislature.

The amendment was negatived and clause three stood part f the bill.

Mr. Chanda moved for the addition of a provise to clause (4) to the effect that the Chief Justice on information being filed before him should call upon the accused to show cause why his trial should not be held under this Act.

Sir William Vincent said this step would not contribute to speedy trials. The accused would be placed before a very impartial and strong tribunal, and besides, the Chief Justice would not be in a position to know the grounds of the State which make it expedient to hold a trial under this act.

The amendment was lost.

Mr. Chanda next moved for the addition of a sub-clause to the effect that the Chief Justice may order production of an accused before him and may grant bail.

Sir William Vincent said if this amendment was withdrawn he would move another to clause 19 which gave powers to the Chief Justice to make rules the effect of which would empower the Chief Justice to grant bail.

Mr. Chanda withdrew his amendment. Clause (4) stood part of the Bill.

To Clause (5) **Mr. Sarma** moved an amendment that the tribunal should consist of three permanent Judges of the High Court instead of three Judges of the High Court. Mr. Sarma said to inspire confidence of the public they should have permanent Judges and not officiating Judges. If they were put on the tribunal suspicion might arise that the Judge was appointed to try this particular case.

Dr. Sapru in supporting said the charm about a Judge of the High Court was not that he was abler but because he was thoroughly independent. A permanent Judge had no favour to expect and no frowns to fear. It was unfair to the accused to be tried by Officiating Judges yet to be confirmed.

Mr. Bannerjee further supported the amendment.

Sir Verney Lovatt said the Rowlatt Committee never for a single moment intended to convey that officiating Judges should not be appointed.

Sir William Vincent said they had followed the recommendation of the Rowlatt Committee. The Government were not choosing Judges but the Chief Justice was, and by passing this amendment they would be casting reflection on officiating Judges to which he for one would not be a party.

The amendment was lost.

Mr. Khaparde moved a long amendment providing for appeal and constitution of a court of appeal which was to be of five Judges other than those consisting the special tribunal. Mr. Khaparde said this provision existed in the Irish Coercion Act and there was no reason why this provision should not be inserted here, and the question of speedy trial would not arise in this case.

The Hon'ble Mr. Shafi here pointed out that the proper clause to which this amendment could be moved was Clause 17.

His Excellency asked Mr. Khaparde to first establish his court of appeal and in that case there would be no difficulty in constituting that court.

Mr. Khaparde obtained leave to move it as an amendment to clause 17. Clause (5) then stood part of the Bill.

Debate on the Amended Bill

Imperial Council, Delhi, 14th March '19

His Excellency at the outset said it would be for the convenience of the Hon. Members if he informed them that he proposed to sit until the amendments on the agenda were disposed of. There would be one hour's interval for lunch at 1-15, half an hour's interval at 5 for tea and he would adjourn again for an hour and a quarter at 7-45 for dinner. His Excellency said he regretted this pressure on the Hon. members, but the session was rapidly coming to a close and considerable business had to be gone through. They would have another day for the passing of the Bill after the drafting had been carefully examined.

PART II

Mr. V. J. Patel moved for the deletion of the whole part. He said these provisions had substituted rule of the executive for rule of law. They would strike a death blow to all constitutional agitation in the country, and he saw the end to all their political aspirations. These provisions would defeat their own purpose as they would drive all agitation in hidden channel, and disastrous consequences would follow, as the night followed day. The safeguards were in his opinion, illusory. He criticised the method to be followed by the investigating authority to be constituted under the Act, and said that the authority would condemn persons unheard. He said that the principle was not heard of in any civilised country. He drew attention to the fact that the investigating authority had no power to summon or examine witnesses, and the Local Governments might or might not produce witnesses. Further, the investigating authority was not bound to examine any witness produced by the accused under the Act. Mr. Patel further criticised the rule laying down that the accused should not appear through a Pleader, and concluded that the enquiry conducted by the investigating authority would only have the semblance of enquiry without being in any way a proper enquiry.

Mr. Chanda said he had a similar motion on the paper, and instead of moving it separately, he would speak on Mr. Patel's motion. There was one place he could think, Jedbagh in Scotland where execution used to take place before trial. The Bill was

opposed to all canons of civilised administration. Here the executive Government first punishes a man, interns him, compels him to dance on the Police-Station, orders him to desist from doing certain things—and we know that tortures have in the past been inflicted—and then having done all this, you give him a chance of some sort of enquiry, a Star Chamber enquiry—the *investigating committee* !!! "My Lord, every artist tries to improve upon his model—in Jedburgh they had a trial after the execution ! Here there is not even a trial"! Here is an *investigation* ! When the investigating authority comes to a finding and reports it is not binding on the Government. This is the sort of inquiry you give to the man after having punished him !!!

The Hon. Mr. Sarma had a similar amendment, and said it was most objectionable and most anti-British part of the Bill. The Government of India had nothing to go upon, except their bare opinion and the opinions of the Local Governments. The Government of India had enough powers to deal with revolutionary movement. What they wanted was to prevent the scrutiny of judicial authority ; they want to be free from judicial control ! The Indian Members were attempting to save the Government from a crisis.

Hon. Sir Verney Lovett said he supposed it was a hopeless endeavour, but he should like to make one last attempt to induce the non-official members to see the broad facts in the matter as they were and not as they saw in strange light. He had heard it frequently reiterated and some point of view with considerable exaggerations had been put forward in the press that the object of the Bill was to persecute the people and that the Government, in introducing this measure, was trying to erect a monstrous engine of tyranny and oppression. Their friends here were not so hard on the Government, but they had managed to persuade themselves that the Government was very hard on them. Yet the truth was the Government was not only not hard on them, but was simply performing a plain and obvious duty to society. There was an idea in the minds of some members that the British Government was doing in India or trying to do in India what it would not do or try to do in Great Britain. What were the facts ? Certain clever conspirators discovered in this vast continent in particular provinces that, where communications were extraordinarily difficult, where educated classes were poor and impressionable, it was possible to organise revolutionary associations over a wide area. Now he would remind the members that Great Britain was a small country endowed with excellent communications with homogeneous community, and there it would be impossible for any gangs to organise and keep going the system of robberies, murders and terrorism so successfully as it was in India. They might be certain

that, if anything of the kind received the smallest measure of success, people being extensively terrorised and police officers constantly shot, if the ordinary law was found inefficacious to cope with the evil, his countrymen would certainly devise remedies much more drastic than the Bill before the Council. The past history of the Government of India showed that they had always been most reluctant to undertake legislation of a preventive kind of the type of this measure. Now the Defence of India Act was what had helped them to defend the young educated men of Bengal as nothing else had helped, not even their own fathers, nor their teachers, for they were ignorant, nor their associates, nor themselves, for they were blind to danger. In deference to the views of the Hon. Members the Government had agreed to make this a temporary measure. Still they were asked either to abandon it or to make it entirely ineffective. He could not gather how such action was in consonance with the feasible obligation of the Government to protect lives and property of their servants and subjects from revolutionary members, which Mr. Bannerji himself had admitted had not expired.

Hon. Mr. Jinnah said he could not possibly express in words his feeling in regard to the part of the Bill under discussion. He quoted English constitutional authorities to show that extraordinary powers might be taken when there was danger to the Government. He asked: Who was going to determine the danger to the Govt. in India? It was the Executive Government and that was a wrong proceeding. Why had not the Government taken such coercive measure in Ireland. Were there no revolutionaries in Ireland? Was not Ireland seething with sedition? During the War in India the large body of people were absolutely loyal. There were possibly a few hundreds of revolutionary tendencies. Under this Act the innocent should suffer with the guilty. That was opposed to the teaching of history and the fundamental principles of the constitution. As soon as the Government spread its net with the arbitrary engine they were proposing, they would, no doubt, net in some more guilty people, but he asked the Government to consider how many innocent people they would be netting in at the same time. Sir Verney Lovett had given the Council a harrowing account of this sufferings of the innocent people. The speaker assured the Council he was an anxious as Sir Verney to protect them. Proceeding Mr. Jinnah said that, if he was convinced that the British Rule in India was in danger and there was clear indication of that, he would have no hesitation, although he personally loathed the principles, in ageeing to a bill of the kind proposed. He really could not understand, especially in view of the statement made by Sir William Vincent that revolutionary troubles were being brought to an end, why the Government wanted to pass this Bill.

The Government said the situation might any moment go worse, and therefore "please pass the Bill" That, again, was opposed in principle. Such powers could only be granted if there was a real need. The people were entirely opposed to the Bill. If the Government in England had introduced such a measure and the people were opposed to it, and supposing Sir Verney Lovett was the Premier and he dared to bring forward the legislation, his Premiership would not last for 24 hours. The Hon. Law Member had told them the Government was not going to surrender its considered judgment. The speaker had not that power, the Government had, but they, too, had considered the matter and were not going to surrender their considered judgment.

Dr Sapru said that he had carefully considered the provisions of the Bill and held that part II did not bear the least resemblance to any law in any civilised country. All pretence to conformity to judicial law was given up. The Government could say to the investigation authority they were of opinion that a man was guilty and they instructed him to investigate into his guilt. This was nothing better than mere mockery. Sir Verney Lovett had given a sad picture of Bengal. Assuming he was correct, could the Council believe that the proposed remedy would cure the cancer. The Government had often come to their Council asking for repressive measures, but the measures had failed to cure disease. They had not learned the lesson of history, the result of the coercive measures in Ireland, for instance, in vain. He referred to the opinion expressed by Sir Narayan Chandavarkar in his letter to the *Times of India*, and asked Mr. Verney Lovett to read those letters. Sir Narain had been quoted as an authority. He sat with Mr. Beachcroft to enquire into the case of internment in Bengal. He had expressed the opinion that the measure before the Council should be condemned, What, he asked, would Government to say that ?

Mr. Surendranath Bannerji said that reference and been made by more than one speaker to the conditions in Bengal in justification of the measure. He made bold to say that whatever might have been the condition in the past, the position to-day in Bengal had distinctly improved. About this time last year there were about 1,000 detenus, and now the number was about 400. The two main factors in tranquilising the situation were the policy of Government and the reforms. There was absolutely no justification, at any rate, for that part of the Bill (part 2) which was most objectionable. Laws based on the Rowlatt Committee recommendations, must not be prooceded with: It was bound to create an atmosphere of discontent, mistrust and excitement. Was it desirable, was it

expedient? If the State was in real danger, they would unanimously have supported the Government in passing any suitable measure. He strongly maintained that was not the case. He recalled the extraordinary circumstances under which the Bill was being rushed through. Was there ever a measure which had 187 amendments? Was there ever an all day and all night sitting? And still Government would force the measure through! He appealed to the Government still to reconsider their position.

The motion of Mr. Patel was rejected by 35 to 21.

Discussion on this motion lasted for more than two hours. On the motion of Sir William Vincent Part II was adopted.

The Council adjourned for lunch.

Mr. Chanda's amendment to substitute "Legislative Council" in place of "Executive Council"in Clause 20 was negatived.

Amendments directing notification of application of law be placed on the table of the Legislative Council, and another requiring sanction for notification either by the Imperial or Provincial Legislative Council also were negatived.

Mr. Patel next moved that in Clause 20 "Offences against the State" should be sustituted for "scheduled offences", The scheduled offences, he said, were numerous. The change made in the Select Committee was a boon which he respectfully declined on behalf of the country. This was negatived.

Mr. Chanda pointed out that in revising the Bill, the Select-Committee omitted to define scheduled offence. Mr. Chanda moved an amendment to Clause 21 suggesting enquiry by investigating authority before any order of internment wss passed.

Sir William Vincent, at this stage, informed the Council that the Government were prepared to accept an amendment on the lines of one that stood in the name of Mr. Srinivasa Sastri. It also very nearly corresponded with that which stood in the name of Mr. Patel. The effect of this would be that even before passing an interim order for internment, the Government would lay the paper before a judicial officer.

Mr. Sarma urged the Home Member to extend this concession a little further, and instead of taking the opinion of the judicial officer above mentioned, to take the opinion of the investigating authority on the whole case. That would facilitate matters and there would be only one enquiry instead of two.

Mr. Shafi urged Mr. Chanda to withdraw his own amendment and accept Mr. Srinivasa Sastri's amendment which was on the paper.

Mr. Chanda regretted his inability to do so, and pressed his own amendment which was negatived.

Mr. Srinivasa Sastri formally moved his amendment as indicated in Sir William Vincent's earlier remarks. Sir William Vincent accepted the amendment in substance only, alteration being that instead of the words "not below the rank of a District and Sessions Judge" he substituted the words "who qualified to be a High Court Judge."

Mr. B. N. Sarma moved that the amount of bond to be taken from a suspect should be prescribed. He also moved for the deletion of clauses authorising the Government to order a person to reside in a particular area, and reporting himself to the nearest police station.

Sir William Vincent, in opposing the amendment, said with regard to the bond they had followed the draft in the Criminal Procedure Code. With regard to the deletion of two clauses, he said these provisions were found to be an effective form of restraint. These persons' welfare was secured, for provision was made in fact for the subsistence of internees, and the visiting committee were also provided for in that connection. The amendment was negatived.

After consideration and rejection of many amendments, Clauses 21 to 24 were adopted.

Sir George Lowndes proposed a small change in clause 25 which was accepted. No less than 29 amendments were moved to Clause 25. Those relating to objection to enquiry by the investigating authority *in camera* and urging rrepresentation of the accused by a lawyer or appear personally were negatived after a long discussion, division being for the amendments 17 for and 33 against it.

B. N Sarma moved an amendment to Clause 25 (2) suggesting that the investigating authority should tell the accused the nature of the evidence as far as it may be disclosed.

Mr. Patel moved another amendment to the effect that the investigation should take place in the presence of the accused which was objected to by Sir James DuBoulay on behalf of the Government. The amendment was negatived.

Sir George Lowndes accepted the principle of the amendment moved by Mr. Chanda that the investigating authority shall, if the person in question applies to him for process to compel the attendance of any witness or the production of any document or thing, issue such process, unless for reasons to be recorded, he deems it necessary to do so, and for this purpose such authority shall have all the powers conferred by the Code on a Court.

Messrs. Chanda and Sarma moved that Clause 25 (2) be deleted. The motion was negatived.

Mr. Patel moved that investigating authority will record in writing the reasons for not disclosing to the accused the evidence against him. The amendment was rejected.

The Hon. Mr. Khaparde moved an amendment to clause 25 (3) urging the investigating authority to observe the law of evidence. Mr. Patel suggested that he shall observe the law of evidence as far as possible.

Mr. Kincaid dealt speciously with the law of evidence and jurisprudence at some length, when His Excellency asked himto come to the amendment. Mr. Kincaid, continuing, said that he was coming to the amendment when the Viceroy reminded him of tea time.

Dr. Sapru followed and asked Mr. Kincaid to enter Parliament and propound his jurisprudence there.

The amendment was negatived by 16 votes against 34.

The Government accepted two minor amendments moved by Mr. Patel and Mr. Khaparde and Clause 25 as amended was passed.

The Government also accepted some amendments to Clause 26 which provides for the disposal of the report of the investigating authority. The Clause thus amended was passed.

To Clause 27 which provides penalty for disobedience to the order made by the Government, Mr. Chanda moved that the imprisonment shall be simple. Sir William Vincent said that the person disobeying the order in these circumstances did not deserve more consideration. The amendment was negatived.

Mr. Patel moved an amendment that the maximum penalty of three months, instead of six and a fine of Rs. 500, instead of Rs. 1,000 be imposed.

Sir William Vincent agreed to the second part of the amendment referring to fine. The amendment was passed.

Mr. Bannerji moved an amendment that of the three members of the investigating body two instead of one shall be persons having held judicial office not inferior to that of a District Judge and one shall be an Indian. He said the investigating boards of the type in Bengal of which he gave instances had given satisfaction to them, and he wanted that should be embodied in the Statute.

Mr. Patel opposed the motion. He said that Indians took no responsibility for the passing of this measure, and he thought no Indian should serve on these committees.

Sir William Vincent, said that he was prepared to accept the first part of the amendment. With regard to the second part he said that it was most inadvisable to make racial distinctions in the Statute. He assured the Hon. Member, however, that there would be at least one Indian on the committee. Mr. Bannerji accepted this alteration. The clause was passed.

Clause 31 giving power to Local Government to make rules was next passed. This concluded Part II of the Bill which was adopted.

Third Part of the Bill.

Mr Patel moved for its deletion. About this part he said the

less said the better. He formally moved this amendment as he found it was hopeless to expect anything from the Government after the attitude they had taken up during the last three days.

Pandit Madan Mohan Malaviya, in supporting the amendment, said that there was no necessity for legislation as was provided in Part III of the Bills, and that it was not right that it should be so enacted. He said there was no reason why investigation of the matter be taken out of the jurisdiction of the Magistrate and placed in the hands of the investigating authority. Had the Government lost faith in their Magistrates? No justification was shown why the enquiry should not be by ordinary courts. They were anxious that injustice might not be done and that was the reason of their anxiety in asking that the judiciary shall not be replaced by the Executive. There had been cases of failures by the best constituted courts, but he had not heard it suggested that they should be replaced by unjudicial executive courts. It had been said that an impression would be created outside that the Indian members were not sufficiently alive to their duty to their fellowmen to secure peace, order and good government. He hoped this charge would not be seriously advanced by any man with the knowledge of facts. Their efforts in this Council during the last ten years had shown how they had been labouring strenuously to promote their welfare that made them oppose this measure. There had been instances where Local Governments had erred, and that was a circumstance they could not forget. He still urged the Government to reconsider the matter.

Mr. Jinnah said that Part III, if adopted, would bring about the result that public safety would be endangered, and, quoting the opinion of Lord Shaw, said that the result would be that Government would be at once "partly, Judge and executioner." He characterised Part III as the blackest in the Black Bill. He loved India which had been his home and the home of his ancestors too dearly, and this Bill was going to tarnish her fair name.

Dr. Sapru called the proposed measure a law which was no law or rather a lawless law, and said that, though he agreed with Mr. Patel that there was no hope of getting his amendment accepted, yet he could not help expressing his protest against the enactment as it took away from the accused the right of a fair trial.

The amendment was then negatived by 19 votes against 36.

Clauses of Part III were then considered. Amendments to Clause 32 to substitute Legislative Council for the Executive, were debated and the Clause stood part of the Bill.

To Clause 33 Mr. Patel moved that the word "actively" should be inserted in connection with person suspected of being concerned in any scheduled offences and he also wanted the addition of the words

to provide that the offences were concerned with any revolutionary and anarchical movement.

Sir William Vincent said the last part of the amendment would be met by inserting the words in the schedule itself. With regard to the first part he said he opposed it as it would not be possible to otherwise deal with instigation. The amendment was negatived.

The amendment by Mr. V. S. Srinivasa Sastri on the same lines as that accepted to Clause 21 for examining the case of a person concerned was accepted. The clauses thus amended stood part of the Bill.

Clauses 34, 35 and 36 were then passed without discussion.

To Clause 37 Sir William Vincent accepted the amendment that the maximum amount of fine provided in penalty should be fixed at Rs. 1,000. The Clause thus amended was passed and the Third Part of the Bill was disposed of.

Fourth Part of the Bill

Part four has only one clause dealing with persons already under executive control. Mr. Patel moved an amendment to that clause the effect of which he said would be to entitle certain detenus to judicial trial by a special tribunal under this Act. He said it was high time people confined for nearly four years should either be tried or released.

Sir William Vincent, in opposing, quoted the Rowlatt Report that there were dangerous characters still requiring control. He, however, was in readiness to meet the Hon. Member by making certain alterations in the amendment which he said would make the law more lenient in respect of these persons. The effect of Sir William's suggested alteration would be there would be not trial but their cases would be dealt with under the provisions of Part two of the Bill.

Mr. Patel accepted the suggestion. He said he would otherwise lose the little that was offered.

The Clause thus amended was passed.

Fifth Part of the Bill.

To Clause 39 **Mr. Patel** moved an amendment making it mandatory on the Governor-General in Council to cancel the notifications on the recommendation of the Legislative Council. The amendment was negatived and the clause passed.

Clause 40 was passed without discussion.

To Clause 41 which provided that orders made under this Act shall not be called in question by the Courts, **Mr. Patel** moved an amendment for addition of words to the effect that the High Court shall have power to revise the orders made under Section 26 and 36. The amendment was negatived.

Mr Chanda moved an amendment the effect of which was to enable the party to bring a suit or take other legal proceedings.

Mr. Khaparde in supporting the amendment, referred to the Privy Council ruling in the Moments case and to Lord Loreburn's remarks that the Government of India were going on infringing that ruling. The amendment was negatived and the Clause stood part of the Bill.

Other clauses of this part were passed without discussion.

The Schedule.

To the first clause of the schedule Sir William accepted Mr. Patel's amendment which was passed. Mr. Sarma's amendment to insert the words "anarchical or revolutionary" in the schedule was accepted and passed.

There was a lively discussion on Mr. Khaparde's amendment to omit Section 124 (A) from the schedude.

Mr. Patel said that in respect of this section as also Section 153A the Government had gone beyond the recommendations of the Rowlatt Commitee and the retention of these two sections of the Indian Penal Code would lead everyone legitimately to infer that the Government wanted to kill all constitutional agitation in India.

Sir William Vincent said : In including these sections they had followed the Act of 1908. He had taken every step to reassure the members of the Council and the public that the Government would not use the Bill to suppress constitutional agitation. These sections would come into operation only when they were connected with the revolutionary movement.

Pandit Madan Mohan Malaviya said : Neither Sir Verney Lovett nor the Home Member had answered Mr. Patel's argument. The point had been pressed in the Select Committee, but without effect. The Home Member had said that offence under 153A and 124A connected with anarchical or revolutionary movements alone would come under this law, but who was to decide ? Not a Court but the local Government. So this was a great danger for the people and he thought it was almost hopeless to hope. He hoped the Government would accept the amendment and remove much misapprehension. He referred to the trouble that might be created for the people whom the executive did not like, and whose honest criticism they misconstrued. Even trouble in no way connected with anarchical or revolutionary might be brought under this law if the amendment was not accepted.

Mr. V. S. Srinivasa Sastri, supporting, said : It was very necessary if they wanted it to be made clear beyond anyd oubt, that they did not want to suppress constitutional agitation, to exclude these sections.

The amendment was rejected by 19 votes against 34.

The schedule, as amended, was passed. With this concluded he consideration of the Select Commitee's report,

Imperial Legislative Council

18 March 1919

The Crimial Law Amendment Bill

(Second Rowlatt Bill)

Sir William Vincent moved that the report of the Select Committee on the Second Rowlatt Bill be republished. He said he did not need to discuss the details of the report because their intention was to republish the bill as amended and that the decision he might mention was arrived at in agreement with all the non-official members in the Select Committee. It would be premature to discuss the details and they could do so better in the light of criticisms that they might receive. He added however that the first clause of the bill to which great objection had been taken, namely to enact a new clause 124 B had been omitted in toto from the bill as amended.

Pandit Malaviya wished to know whether, when the opinion of various bodies were received, the bill would be referred back to a Select Committee.

Sir William Vincent replied it was premature at the present moment to prejudge what action would be taken on receipt of opinions.

Pandit Malaviya then moved an amendment that on the receipt of opinions, the bill should be recommitted to a Select Committee.

He said the statement in the Select Committee's report on the bill that he and others withdrew from the committee was partly incorrect. It did not state the reason why they withdrew. They did so in view of His Excellency's ruling that members not signing the main report were not entitled to tack on dissenting minutes. They wanted to keep out of the committee until that ruling was reversed.

(At this stage the President intervened and said it was not open to the Pandit to question his ruling.)

Pandit Malaviya said he was merely raising the question of privilege.

The Viceroy said he should do so without questioning the ruling of the Chair.

Pandit Malaviya said in that case he had nothing more to add and formally moved an amendment to Sir William Vincent's substantive motion.

The amendment was lost by 35 votes against 9.

Mr. Patel moved that the Bill as amended by the Select Committee be shelved.

The Viceroy ruled him out of order on the ground that the amendment was merely a negative one. His Excellency said Mr. Patel could, if he so wished, speak on Sir William Vincent's motion.

Mr. Patel thereupon opposed the motion. He maintained that the Bill as amended by the Select Committee did not in any sense amend the Indian Penal Code. It could not be called Indian Penal Code Amending Bill. He asked the Viceroy to consider what High Courts would think of this august assembly if they said that it was a bill recommended by their Select Committee to amend Indian Penal Code (Laughter). Another ground on which he opposed the motion was that the present Bill should be taken up along with the question of general revision and amendment of the Criminal Procedure Code which was already underconsideration.

Sir William Vincent said the principal argument of Mr. Patel was that it would be more convenient to discuss these proposals when the Council considered the amendment of Criminal Procedure Code. In this connection he might say that the amending bill had been published and circulated for opinions, and the course proposed by the Hon'ble member would mean that they would not have opinions of Local Governments and High Courts on the present Bill. With regard to other remarks of the Hon'ble Member Sir William said those comments made it more necessary that they should have further expert opinion on it. He thought in this matter the Government was treated with a little want of consideration.

The motion to circulate the Bill for opinion was then passed.

The Emergency Powers Bill.

Rowlatt Bill No. I.

Sir William Vincent then moved that the Anarchical and Revolutionary crimes Bill as amended be passed into law. He said in making this motion he must at the outset express his great regret that Government were not able to secure non-official support for this measure. The attitude of Government was not unreasonable; they had done their best to meet them in making important modifications. At the same time, he quite realised the feelings of the Hon'ble members. Their extensive dislike on the measure was based on the apprehension that powers under this Bill might be abused. He asked them to consider the position from the point of view of the Government. The Government had examined the position from their point of view and had done all they could to meet them and had made changes in the Bill which would commend to them as improvement. He then reiterated the piping tune of officials that there were revolutionaries out and some measures of repression were necessary.

Continuing Sir William said the main criticism had, however, been based on different lines. It was said the Bill was an unfair infringement of the liberty of the subject and that it was repugnant to all ideas of western justice. The Government admitted it was a very serious and drastic measure, but he asked them to look at things from the practical point of view rather than from the theoretical. He asked them to remember the authority by which the Bill had been recommended. All except one were judicial officers who would be entirely unlikely to suggest this remedy if there had been any other remedy which would satisfactorily cure the disease. He wanted them to remember that the circumstances in which the Bill could be brought into operation and the people to whom it would be applied were very special. He had heard a great deal during the debate of liberty of subject being infringed, but even now he asked the members to co-operate with the Government and authorities in crushing the movement through ordinary courts. He asked them to use their great power to induce the public to assist them (Government) by coming forward as witnesses, by doing their duty as jurors honestly and frankly, and if even now the Government secured that support from public he believed the necessity of bringing this Bill

in force would be very much less. He asked for co-operation of members again in crushing this movement. They recognised that repressive measures alone could not be effective. To remove the cause of discontent the Government had recommended changes in constitution and change in the system of administration and they all hoped that a measure would be shortly placed before Parliament. Anarchy and revolution were the greatest enemies of political advance, and for this reason they sought support of the Council for this measure. With regard to the apprehension that the provisions of the Bill might be abused, he reminded the Council of the steps taken by the Government to reform these young revolutionaries. He hoped the members would give Government credit for its efforts in that direction. It would be the earnest endeavour of the Government to continue that policy to lead young men into right path and away from their criminal propensities. He assured the Council for the last time that the Government would make it their duty to see the Bill was not used in connection with political agitation, but only in connection with suppression of this kind of crime which they believed would be a great danger to the future of the country.

Mr. Patel moved as an amendment that the Bill as amended by the Council be republished. He said that the country ought to have sufficient time to consider the measure so that they may be in a better position to know what people really felt about it. Speaking on the merits of the Bill Mr. Patel said the Government remained as unbending as ever in total disregard or rather defiance of the unanimous protest of the entire Indian opinion both in and outside the council. They did all that was possible to have some of the amendments accepted in order to make the Bill less dangerous. The only thing that now remained was to enter the last protest against the passing of the Bill into Law. He was of opinion that it was not within their competence to enact this law and it was not so free from doubt as the Law Member would have the Council to believe and discussed Sections 65, 106 and 32 of the Government of India Act 1915 to illustrate his points and also rererred to the discussion on the amending bill in the House of Lords in 1915, which was referred to a Joint Committee of both Houses. He then briefly dwelt on several parts of the Rowlatt Bill and said the evidence on which Rowlatt Committee based their findings had not been supplied to the members of the Council and they were asked to accept these findings as correct. The text of the Bill as introduced was not submitted to the Secretary of State and his sanction was obtained to the introduction of some sort of bill on the lines of Rowlatt Committee's recommendations. He reiterated that the Bill went much beyond these recommendations, in one very essential particular, namely the addition of section 24A and 153A I. P. C. to

the schedule, while the Rowlatt Committee recommended that the schedule of Criminal Law Amendment Act, 1908, might be adopted. Further, correspondence between the Government of India and the Secretary of State on the subject had been kept secret from members of the Council and in his opinion the whole proceedings in connection with this Bill since the presentation of the so called Select Committee's Report were invalid and illegal. No ruling of His Excellency the President could legalise what was not otherwise legal.

H. E. the Viceroy :—Order, Order. The Hon'ble Member has not to question the ruling of the Chair.

Mr. Patel Summed up and said :—

I protest against this Bill for the following among other reasons :—

(1) It is not within the competence of the Indian legislature to pass this Bill into law.

(2) It casts an undeserved slur on the loyalty of 300 millions of people and amounts in fact to an indictment against the whole nation.

(3) It substitutes the rule of the executive for that of the judiciary and thus destroys the very foundations on which British liberty rests.

(4) It will kill all political life in the country and thus make 'ordered progress' impossible.

(5) It will intensify and not mitigate the evil complained of. It will drive all agitation into hidden channels with the result that consequential evils will follow as surely as night follows the day.

(6) It is utterly subversive of the order of things hitherto recognised and acted upon in all civilised countries. It is unparalleled in the legislative history of any such country.

(7) It is being passed in defiance of the unanimous Indian opinion, both in and outside this Council.

(8) Repression is not the remedy for eradicating anarchical and revolutionary crimes. These crimes are the outcome of political stagnation which has resulted in untold miseries to the people of this country.

Remove the root cause and anarchy will disappear.

(9) It will plant in the minds of the people harsh memories which even time will not soften.

(10) Stability of British rule in India depends and must depend on the peoples' will and not on force.

(11) The Bill is being passed into law on an incomplete and invalid report of the Select Committee. All the proceedings of the Council since the presentation of such report are, therefore, invalid. Law passed in that manner would be *ultra vires*.

"No wonder then that under these circumstances you find some of us who care for liberty, who believe in liberty, who love liberty,

are prepared to disobey laws of this character and submit to the penalty of such breaches. Passive resistance, my Lord, is the last and only constitutional weapon of a despairing people. It is my duty to warn your Excellency's Government against the conse quences of driving the peaceful and law-abiding people as the people of India are to resort to passive resistance. I do so, my Lord, in the best interests of India and the Empire."

Mr. S. N. Bannerji replying to Sir William Vincent that India had not developed responsibilities of civic life, said that that was a reflection on a century of British Rule. He opposed the bill with regret and under a sense of overwhelming compulsion as a public duty which had to be performed. He thankfully acknowledged that the Government had made concessions, important from the Government's own point of view, though they might not be so from the non-official point of view. But what had been done was not enough. That was the verdict of public opinion. The character of the Bill remained unaffected. The Executive complexion was its dominating feature and it overshadowed every other aspect of the bill which remained the same in principle. Public opinion was not satisfied and their opposition remaind. The bill was really an executive order robed in the garb of legislation and in the words of an eminent jurist is a lawless law. It was a glorified ordinance with a judicial colouring somewhat thickly laid on. They could not see their way to be associated with the responsibility for such a measure. Responsibility meant power, and both went together. In the Imperial Council they had no power, they might only influence and persuade, but they could not direct. Never was their impotence in the Council more strikingly demonstrated than in connection with the Bill under debate. Amendment after amendment was proposed and lost. Their united voice counted for nothing in the Councils of the Government. Mr. Bannerjee pointedly referred to the defeat of his own amendment which did not seek to change the character of the Bill but only to postpone it for a time. Mr. Bannerjee asked if it would not have been better for the Government to have frankly recognised it as such and to have taken upon itself the sole responsibility for the measure. In any case he maintained that the Bill should not go forth as having behind it the authority of the Indian Members of the Legislative Council who to a man were against it. There were 187 amendments. Yet some of them were such as might have been accepted without the character of the bill being in the slightest degree changed. The amendment for appeal, which followed the Irish Crimes Act, was rejected. The same fate awaited his own amendment asking that there should be no conviction except on an unanimous verdict of the judges of the Court. The amendment asking that the accused persons should

be represented by a pleader was also lost. There was a strong feeling about this matter in the country. Lastly Mr. Patel had pressed hard for the elimination of sections 124, A and 153, A from the Bill, and the amendment was lost. That would have an unfortunate impression in the country. There was a general feeling that the Bill when it became law would cripple legitimate political activities, and cause stagnation of political life. The feeling might be well-founded or ill founded, but it was there and the Government could not ignore it. The Government would have been well advised and would have lost nothing if these sections had been eliminated. Their objection to that principle and policy of the bill must appeal to the instinct of every Englishman wedded to law and the reign of law. They objected to the supremacy of executive authority and partial suppression of judicial procedure even in a limited class of cases. They had been told that the opposition to the Bill argued their unfitness for responsible Government. To his mind it was just the other way and he asked the British officials to read their own history. Englishmen had strengthened and vitalised themselves for the great heritage of constitutional freedom which they were now enjoying. Indians were doing the same under their guidance and leadership, and were thus proving their capacity for responsible Government. Anarchists were only a handfull. Why should the Government make a departure from the ordinary law of the land against the protest of the whole community. Now that the Bill was about to become law, finally appealed to the Viceroy to withhold his assent to it until such time as it became absolutely necessary to extend it in any given area. Much would be gained by such an act of forbearance.

Mr. Srinivasa Sastri in opposing the motion said in the course of his speech :—When they were considering the measure the other day it was conceded that the investigating authority should be under obligation to record the express finding of the question that the scheduled offence was really committed in connection with anarchical or revolutionary movement. They asked that a similar provision should be made in Part I, but the Government were unmoved. By resisting that demand and by their refusal to take away sections 124 A and 153 A from the schedule, he thought that the Government had still laid themselves open to the criticism that the measure they were about to pass, whatever the intentions of the Government might be, might at times be used to deal with ordinary political offences. On this point it seemed to him that it was fully open to the Government without violating the fundamental principles underlying the Bill to meet them and he regretted that the Government found themselves unable to do so. The history of Legislation showed that when contentious Bills came to be shaped the air was full of prognostications of catstrophe from those who opposed the

bills, while those who defended them were equally full of promises of the millenium to come. Afterevents showed that neither the prognostications nor the promises came fully true. He hoped that this measure would not fufill to all events, all the prognostications given expression to here. No one would rejoice more than himself in that case. They felt very strongly that the Bill was not now necessary, was not now emergent, that it was inopportune and they believed it. The strength of their belief could not but be known to the Government. If it was necessary for the peace of Bengal and therefore for the peace of the other provinces, it was open to the Government with the knowledge they had to come with a measure conferring on them power to continue in custody the people they already held and to confine the people who were still at large against whom they possessed evidence. Instead, a general measure causing the widest alarm was brought before them. Why was there this anxiety on the part of the Government when there was no special emergent need? It was just as well speaking solemnly in this last hour that he should mention one or two things he had often heard. After referring to a paragraph in the "London Times", he said another cause which was put forward was that it was just as well that the Government were armed with this power before peace was signed, and the fate of the Turkish Empire filled the hearts of the Mahomedan community with dangerous discontent. Other people had said that when the report of Parliament on the Reforms came out political discontent might take forms which might not be grappled with successfully unless the Government had extraordinary power. Yet another reason was suggested and he might walk warily when he brought it to the notice of the Council. A little while ago his friend Babu Surendra Nath Banerjee made an appeal to the European Members of the Council and to the European community generally, and if he refrained from repeating the appeal it was not because he did not believe in it but because he wished for one moment to appeal to his friends on somewhat lower grounds. He asked them to remember this bill of downright coercion was not going to apply to them (Europeans) at all, unless some one member of their community out of his excessive zeal for love of liberty chose to cast his lot with the fortunes of the down-trodden people of India. So secure were they from the evil effects of this measure that it was proper for him to appeal to them for their sympathy and chivalry, if not for their support. If they could not support them they should at least refrain from casting any insinuations as to their loyalty, to refrain from saying that Indians who opposed this measure, were showing incapacity to govern themselves were exhibiting but criminal sympathy with the anarchists. Sastri then referred to a paragraph in the representation of the European Association which was a foul

libel on the character and motives of those who opposed this Bill. He said that the Europeans in India were alarmed at the coming changes as they dreaded that the criminals of India might attack their strongholds. This was another of the reasons suggested to provide in the great armoury of Government this bill in advance of its time. In a few moments the Bill would be law but it did not end there. They had still the aftermath consequence of the law.

The Hon'ble Mr. Shukul said that he fully realised the responsibility of his position as a representative of the Zemindars and considered it to be his duty to oppose the motion. The Bill was sub-versive of all principles of English Law. The unfortunate attitudes of the official members had made people think that the Bill was a settled fact and it had been a great disappointment to the people. The non-official members had asked for the rejection of the Bill, for its republication and had urged amendments without avail. Protest meetings had been held and passive resistance advocated by Mr. Gandhi. The verdict of the country condemned the measure. He read out an appeal from the non-official members of the Central Provinces Council and entered his emphatic protest against the Bill.

Sir Verney Lovett said with regard to the fear expressed about the danger that the active operation of the Bill would bring he wished to point out that the tribunals by which the accused persons in certain contingencies would be tried would be tribunals of the highest strength and authority. In considering the danger likely to arise in the case of internees it was necessary to bear in mind that of 806 persons interned by the Government of Bengal, after careful investigation only six were recommended for release and under the provisions of the Bill non-officials would be members of the investigating authority. He emphasised that particular precautions had been taken to prevent any mistakes occurring. The Act would not be brought in operation except for the gravest reasons. As an administrator of some experience he would say that should the need be imperative it would be unwelcome in the extreme. The anxiety and fears of the Hon'ble members, he said, were unjustified by facts or by probabilities. Sir Verney then replied at great length to some arguments to show that the loyalty of India had not been attacked and emphasised that the object of the Bill was to save loyal Indians from predatory criminal operations of a section of their fellow countrymen. He reiterated and emphasised his assertion that never would British Government nor British people tolerate the existence of revolutionary outrages in any part of the country but would take drastic measures to prevent it. He had not much experience of Ireland and when he visited that country he did not observe similarity of conditions.

The Hon'ble Mr. M. N. Hogg speaking on Sir William

Vincent's motion said that when the Bill was first introduced he voted for Mr. Bannerjee's amendment not because he thought it was the ideal solution but because he thought that the Government should make one more effort to secure the support of Mr. Bannerjee and his friends. That effort had been made and considerable and important modifications had been made, in the Bill and he regretted that the Government's efforts to secure that support had not been successful. When the Bill returned from the Select Committee and Mr. Surendranath Bannerjee moved his amendment he listened carefully to the speeches but he could hear nothing in the nature of a promise that if the amendments were carried they would in the September meeting support the Bill. No undertaking was given that during the interval they would endeavour to educate public opinion. That being so he could not see what was to be gained by postponing the measure. He supported the measure because he was satisfied that special measures were necessary to cope with anarchical and revolutionary crimes, because he was satisfied that no law-abiding citizen whatever his political views, had anything to fear from this measure. Referring to Mr. Sastri's observation about the paragraph in the representation of the European Association he said that he had not read that representation and therefore could not say how far it represented his views but he wished to point out that the paragraph said among those who opposed the Bill there might be some who sympathised with the anarchists. Mr. Sastri had complained of misrepresentation in this respect, but no misrepresentation could be more gross than one made by the Hon'ble Member. He saw no connection between the coming political changes, and the passing of this measure which was designed to deal with men addicted to anarchical crimes designed to protect India from their insidious doctrines and teachings.

The Hon'ble Pundit Madan Mohan Malaviya speaking on the Rowlatt Bill said that they now officially recognised that the Government must feel as if they had made all possible concession in regard to the Bill. Though the speaker and others thought otherwise he said it was a matter of satisfaction that the Bill was limited to three years. Some other useful amendments also had been made, but they did not at all touch the principles of the Bill. They did not quarrel with the statement of facts contained in the Rowlatt report. Their difference was with regard to the recommendations. Pundit Malaviya said that no English official could be more desirous than they were for the disappearance of anarchical crimes. Some of their finest young men had been drawn into revolutionary paths, and on a matter of that kind the Pundit maintained no Englishman could be more anxions than an Indian. They were all agreed that revolutionary crime had to be combated. The only

difference lay in the method to be followed, and they insisted on a judicial trial. Sir William Vincent had sermonised to them to do their duty courageously and realise their responsibility ; they might be trusted to understand and realise their duty The speaker then referred to the non-official support that was accorded to the Defence of India Bill. They were now happily in sight of peace, and did not desire to see the institution of Prussian militarism in some other way. The Pundit proceeding referred to Indian help in the war and said that nobody could say that India had not done its duty in in the war. It gave rise to a feeling that Indians must be treated better in the future and their hopes were of high order. After explaining the advent of the reform scheme the Pundit drew attention to the resolution passed at the Bombay Special Congress for a declaration of the rights of liberty, the repeal of the Defence of India Act Regulation of 1888, Press Act, etc. and said that that clearly showed that they (Indians) had hoped for substantial reforms, but where they asked for bread they were now getting a stone. They had asked for abolition of various repressive measures, but the Government of India had suddenly, before peace was signed, introduced a Bill which he characterised as a compendium of repressive measures. The speaker next dwelt at great length on the conclusions of the Rowlatt Report on which the Government has based the present legislation. He maintained that the report was not a complete statement and did not take notice of the circumstances in Bengal and quoted extracts from various statements in support of his contention.

H. E. the President enquired of the speaker if he was speaking on Sir William's motion or on Mr. Patel's amendment, or making a joint speech. If he was speaking merely on Mr. Patel's amendment, the Viceroy said, he would have to rule him out of order.

Pundit Malaviya said he was speaking on Sir William's motion, and the amendment was not in his mind at all.

H. E. the President asked him to proceed. It was a quarter to six and the Pundit said he had no objection if the members wanted to leave for a few minutes.

H. E. the Viceroy said that was not necessary and naively added that every member could leave whenever he liked.

Pundit Malaviya then proceeded and went on to show that it was greatly the repressive measures in the past, especially after the partition of Bengal that had helped the growth of revolutionary movement. If the government relied again on repression that would not stand them in good stead always. Dealing with the Bill he said that they opposed it because it was wrong in procedure and substance, and excessively and unnecessarily drastic. Local Governments had abused similar powers given under the Defence of India Act, etc, and they might abuse the power under the present

bill in times of excitement. In conclusion, Pundit Malaviya said that the Government had power, but it was not wise for them to disregard the feelings of the people over whom Providence had called them to rule.

Mr Sarma said that it was a time of sadness He asked the Government to consider why had all the non-official members agreed to protest against this legislation. The Rowlatt Committee said that there was a revolutionary movement, and the ordinary legal machinery had broken down. He declined to accept their conclusion. He could not allow the Government at a time of peace to say that without extraordianary powers they could not cope with an ordinary situation. The opposition of non-official members to this Bill rested on fundamental principles. If they were convinced of the necessity of the Bill they would have loyally co-operated with the Government but he considered it unnecesary.

Sir Dinshaw Wacha entirely agreed with what Mr. Bannerjee said. He held that the entire enlightened intelligece of united India joined in condemning the measure. As a practical politician he saw its unwisdom and thought that the Government ought to have accepted Mr. Bannerjee's amendment for republication in its own interests as well as the interests of the people. He appealed to the Viceroy to with hold his assent.

Mr. K. K. Chanda said that is a few brief hours the measure would become the law of the land. They had fought the hardest but failed to confirm the British tone of justice owing to the organised opposition of officials whose forefathers laid their lives to inagurate it. Their defeat was more glorious than victory and those who read the proceedings of the debate would realise that they were right and the Government in the wrong but won by means of constituted official majority, and they had the power to carry whatever they wanted. If the officials were left to themselves the voting would have been different, because as he still belived that some of them at any rate would not have surrendered their freedom of thought. The measure passed to-day would become a permanent record of the coalession of failure in the rule of India according to law. Aftor a rule of our hundred and fifty years the Government confessed that they were unable to govern one of the greatest nations of the earth by law and they had recourse to lawless law. There could not be a stronger proof of the bankruptcy of bureaucratic statesmanship. He appealed to the Viceroy to withhold his assent.

Mr. Sahay, associated himself with the remarks of Mr. Bannerjee and emphasised the importance of how the law was to be administered. He hoped local Governments could administer law in a way as to inspire public confidence. He opposed the Bill.

The Maharaja of Cassimbazar said that there could not be any doubt that the Bill was a drastic measure, and could not see the wisdom of the policy which had inspired this legislation on eve of the grant of responsible Government. The Bill would give a blank cheque to the Police and three fourth of the grievances of the people against British Rule were connected with the treatment they received at the hands of the Police. The bulk of non-official opposition was inspried by the dread of the police. In no other part of the world such a Bill would be wanted and even if passed would be so much dreaded.

Dr. Sapru said that His Excellency's name had for the last two years been associated with measures of reform and he was sorry that the name was going to be associated with the measure before the Council. The last 20 years had been a period of political agitation, but never during those twenty yeary had there been such an agitation as was found in the country now. Both outside and inside the council people of all schools of political opinion had combined in their condemnation of the proposed measure and why was it then that against the annanimous protest of the non-official members the officials had combined to pass this law. Were they to believe that common sense was wanting in the non-official members and natriotism and jadgment were comcentrated on the ministerral benches? Every student of constitutional history and law knew how English law differed from continental law. In England the powers of the Executive in matters of arrest and detention were circumscribed and therein lay the peculiarity of the English iaw. If there was one thing which reconciled the people of India to British rule that wss their faith in the reign of law which insured personal freedom. That reign of law this measurs would impair and lead the people and the Government into danger. He knew that the home member has assured the Council that the measure would be applied only to anarchical and revolutionary crimes but the experience of the past had not been encouraging and peoplu were justified in fighting shy of untimited powers being given to the Executive. The enactment of this measure would mean that the Government admits that the existing machinery of law had completely broken down. That was not so. And it would be dangerous to forearm the Executive In anticipation of a danger. The proposed measure was extraordinary and uncalled for. The Home Member had admitted that repression alone cannot uproot discontentment from the body politic. That was so. No one knew what the reforms would be like and if they would be like those recommended by the Viceroy. And before those reforms it would not be judicious to arm the Executive with extraordinary powers.

Mr. Patel's amendment was put to the Council and

lost by 35 votes to 11, some of the Indian Members not voting.

Sir William Vincent in winding up replied at some length to the criticisms levelled at the Bill by the non-official Indian Members and repudiated the suggestion that Government was callously regardless of public opinion. He said that the Government's desire was always to secure co-operation with Hon'ble Members, and if Government could secure the co-operation of educated opinion in dealing with this crime, it would be a great asset. "Much has been done, but much remains to be done, and it is really owing to a want of public spirit, a want of moral courage particularly in some parts of Bengal, that many of these criminals escape undetected and unconvicted though they are known to be guilty."

He also repudiated the suggestion that this bill was a slur on India's loyalty but he thought that as regards what India had done for the Empire during the war those who were most clamant were not those who had done most.

As regards Dr. Sapru's violent attack on the present Bill, Sir William said that he carefully noted what the Hon'ble Member said previously on Mr. Khaparde's resolution for the postponement of the Rowlatt Bill in the last Council, and at that time no member supported Mr. Khaparde. Even Dr. Sapru had been content to say only that "as regards the recommendations, I have considerable doubt as to the propriety or efficiency of these recommendations", and now Dr. Sapru was denouncing the Bill in the most, unmeasured terms imaginable.

Turning to the Passive Resistance movement of Mr. Gandhi he thanked the Moderate Members who had issued a manifesto against it. He believed that that movement had great potentialities for evil. He regretted that a man of Mr. Gandhi's character should have embarked upon this movement, and though Mr. Gandhi may exercise the greatest self restraint over his actions, younger men may be lead into violence which can but end in disaster. But whatever the character of the movement Government cannot in any way yield to it.

He finally repeated that with regard to this Bill the conscience of the Government was quite clear, that they have done what they thought right, and that they have proposed a law to meet what to their knowledge was a terrible danger.

The motion that the Bill be passed was put and carried by 35 votes against 20, only the officials voting in its favour.

Rowlatt Bill No. 1 Passed!