

“ My Lord, there is a provision giving retrospective effect to the Bill; that provision might be of some use to those who want this Bill in order to prevent any evil result which they do not desire in cases which they may institute. I do not know of any case which has been instituted. I believe the Punjab has been frightened out of description; the Punjabis have been terrorised in a manner in which I have not known the people of any other part of the country to have been terrorised. In spite of the presence of Sir Edward Maclagan in the Punjab that terror has not yet entirely been removed from the minds of the people. In this state of things they are not anxious, I do not know that many are anxious, to institute any suits. I do not know that any suits have been instituted and that many are anxious to rush forward with cases into the Courts. All that they desire at present is, to know what has happened and to have it established and then to consider what should be done. Indeed, they might well expect the Government to take such action as the Government might think fit. Because you cannot expect that where the number of persons to whom injury has been done is so large and many of them are poor, it is hard to expect that they will be able, that many of them will be able, to seek redress and to obtain it. It is only if the conscience of the Government, to which the Hon'ble the Home Member referred, if the conscience of the Government should be stirred by the recommendations of this Committee of Inquiry, if the Government should think it that they owe it to His Majesty's Government and to the name of Britain and to British justice, to bring certain persons, they may be Indians, they may be Europeans, to bring certain persons to justice, it is only then there would be a chance of justice being done.

“ My Lord, there is no reason why the Government should be in a hurry to proceed with the Bill.

“ Now, having said this much on the general aspect of the Bill, I shall now address myself to some of its provisions and to the remarks which the Hon'ble the Home Member made in regard to it. The Hon'ble the Home Member said that, when martial law is introduced, the officers of Government have no time to wait, to examine things that they must take action, that they may perform acts which are illegal, but so long as they perform acts which are moral and proper

they should be protected. From what I have said it will appear that it is very important to find out which acts come under that category, which though not legal are right and proper. Then he said that an Indemnity Bill of some character is the inevitable sequel of the introduction of martial law. I have myself said in the early part of my address that an Indemnity Act of a certain character may be inevitable, but this involves two important questions. What are the circumstances in which an Indemnity Act is passed? and what would be its nature? The Hon'ble the Home Member quoted Dicey, who himself says that the time the Act is passed must be one of national danger. I have shown that there was no national danger. In a few cases individuals lost their reason, were carried away by passion and committed acts, but we cannot say that these constituted national danger. My Lord, in this connection I wish to draw attention to the contrast furnished by a case I shall cite, and to which reference was made in the cablegram of the Indian Congress to which I alluded before in Council. At the time there was trouble at Lahore there was also trouble at Ahmedabad and Viratgam. His Excellency the Governor of Bombay allowed Mr. Gandhi to go to Ahmedabad and see the people and to work freely among them. He was able to satisfy the people and to quiet them, also to censure them for the outrages they had committed. Martial law was gone in a few days. That was all that was needed at places like Amritsar and Lahore at the utmost. I say there was no justification for martial law in Amritsar, because it was stated to be quiet after 5-30. Assuming even that there was justification for martial law on the 10th April, it should have been withdrawn by the 12th or 13th. The action taken in Ahmedabad forms a happy contrast and affords an instructive lesson in the light of what has happened here. The Hon'ble the Home Member says that there must be a period of national danger when martial law is introduced. I agree with him, but I submit that there was not a period of national danger in the Punjab to justify the introduction of martial law. The other point that he referred to in the quotation from Dicey was, that the acts done must be *bona fide* and solely in the public interest. It is only in such cases that the persons can be indemnified. I ask the Council, in view of what I have said, to judge whether

a Bill of such a sweeping character should be placed before the Council in the light of events that exist now, at a time of non-ascertainment of facts and of the allegations which have been put forward on behalf of the people. Then he referred to various Colonial Legislatures including the South African which have passed Indemnity Acts.

"I may mention here that members of this Council are put to great inconvenience for want of a good library for ourselves. We have at times to borrow books, not only from the library of the Legislative Department which perhaps caused a little inconvenience, but also to get them from distant places in order to carry on our work. I am indebted for a copy of the Cape of Good Hope Act to the Hon'ble the Law Member, who at my request allowed me to refer to it. The absence of such books hampers our work; if we had such books we might be able to save the time of the Council. In the case of this Cape of Good Hope Act the question was considered by a Commission consisting of the Lord Chief Justice, General Ardagh and Judge Bigham of His Majesty's High Court. It consisted of a court of gentlemen of the type I should like to have seen here. It would support some other points to which reference was made in a previous Resolution. Now to come to this Act, VI of 1900. This was passed while the Boer war was going on. It set out the circumstances under which the Act was introduced. It was to punish those persons who had taken up arms against Her Majesty the Queen or otherwise assisted her enemies. It was for the suppression of hostilities and for the maintenance of good order. My Lord, this Act cannot afford any parallel for the legislation which is now under consideration. The Act passed in 1902, No. 4 of 1902, is also important. It was an Act to indemnify the Governor of the Colony and the officer commanding His Majesty's forces in the Colony and all persons acting under their authority and in good faith in regard to acts done or committed during the existence of martial law, to validate certain sentences passed by courts-martial or military courts and to confer certain powers on Commissioners to inquire as to, and reporting on such sentences being still unexpired. And it promised indemnity in respect of certain acts, matters and things whatsoever that were ordered as necessary for the suppression of hostilities or the establishment and mainten-

ance of good order and government in or for the public safety of the Colony between certain dates.

"Now, my Lord, I submit that here again it had reference to the suppression of hostilities or the establishment of good order and government. It has to be shown that this was necessary.

"Secondly, my Lord, this Act which, I think, has been taken as a model for the Bill which is now before the Council points out that it is only acts done or committed during the existence of martial law which can be indemnified. The Bill in the Statement of Objects and Reasons does say that 'the object of the Bill is to indemnify officers of Government and other persons for acts done *bona fide* in the course of martial law during the recent disorders, and to provide for the continuance of the sentences passed by courts established under martial law.' Yet, the Council will see that the provisions of the Bill go far beyond it. Whether this was deliberate or unintentional, I cannot say, but the Council will see that the Bill says in clause 2 'No suit or other legal proceeding whatsoever, whether civil or criminal, shall lie in any court of law against any officer of Government, whether civil or military, or against any other person acting under the orders of any such officer for or on account or in respect of any act, matter or thing ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order in any part of British India on or after the 30th of March 1919 and before the commencement of this Act.'

"Now, my Lord, martial law as we all know was proclaimed in Amritsar, and it came into force in Lahore on the midnight of the 15th or rather at 12 o'clock of the night between the 16th and the 17th. By what justification events which took place from the 13th March to the date on which martial law was proclaimed have been included in this draft of the Bill, I am unable to understand. Ordinarily such a Bill should be confined to the period during which martial law prevailed, but this Bill goes beyond that period, and the second terminus which it fixes is the commencement of this Act. I should like to know what justification there is for that either.

"My Lord, the second point to which I would refer is this. This Bill says that 'provided that such acts matters or

things were ordered or done in good faith in a reasonable belief that they were necessary for the said purpose.' This, my Lord, is very objectionable. All that you ought to provide for is, that action should be done in good faith and were in fact reasonable, necessary or expedient. You cannot say that if a man were to shoot his fellowman he has acted in a reasonable belief or in good faith. Now, is that man to be indemnified? In this matter I would draw attention to a few observations of Mr. Justice Chamberlain in one of the State trials which took place in 1799. It was the case, my Lord, of Wright *vs.* Fitzgerald. Wright brought a suit against Fitzgerald for assault and battery. He had been flogged by the order of Fitzgerald. 50 lashes had been given to him and in addition 50 more. Now, in disposing of that case, Mr. Justice Chamberlain proceeded to charge the jury as follows:—'His Lordship said that the jury were not to imagine that the legislature, by enabling Magistrates to justify under the Indemnity Bill, had released them from the feelings of humanity, or permitted them wantonly to exercise power, even though it were to put down rebellion. No; it expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal; and every act should show a mind intent to discover guilt, not to inflict torture. By examination or trial he did not mean that sort of examination and trial which they have been then engaged in, but such examination and trial, the best the nature of the case, and the existing circumstances would allow of.' That was what Mr. Justice Chamberlain said. He said that 'every man, whether Magistrate or not, was authorised to suppress rebellion, and was to be justified by that law for his acts, it is required, that he should not exceed the necessity which gave him the power; and that he should show in his justification, that he had used every possible means to ascertain the guilt which he had punished; and above all, no deviation from the common principles of humanity should appear in his conduct.'

"My Lord, the Legislature is asked at this moment . . .

THE HON'BLE SIR GEORGE LOWNDES:—"Will the Hon'ble Member kindly give me the reference?"

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"It is State Trials, Vol. XXVII, 1820. Now,

my Lord, I submit that in these remarks of Mr. Justice Chamberlain, we get a great guidance for our work in which the Council is at present asked to engage itself. We are not a Court sitting here to consider whether a person charged for having committed any particular act during the recent disturbances should have a decree passed against him or should be exempted. The Legislature is sitting at present to lay down the principles and the provisions under which the case of such a man should be tried and considered, and, I submit, the remarks of Mr. Justice Chamberlain are therefore of peculiar help and guidance to us here.

“In the Bill what is provided is that—

‘It is expedient to indemnify officers of Government and other persons in respect of acts, matters and things ordered or done or purporting to have been ordered or done for the purpose of maintaining or restoring order, provided that such acts, matters or things were ordered or done in good faith and in a reasonable belief that they were necessary for the said purposes.’

“Now, my Lord, my particular objection is to the expression ‘in a reasonable belief.’ I submit that would make it impossible for any plaintiff, ordinarily speaking, to succeed in any suit which he might institute against any individual who had wronged him. And that is particularly so when you look at section 2, for it says that no suit shall lie against any officer of Government who may have done certain things, ‘provided that such officer or person has acted in good faith and in a reasonable belief that his action was necessary for the said purpose.’ §

“Now, my Lord, I submit that the officer must not only show, even apart from the rules of evidence in section 3, to which I shall refer later, that he had not only done the act in good faith, but he should have done it with reasonable and proper care and consideration. In the words of Justice Chamberlain ‘he should not have deviated from the common principles of humanity which should always appear in his conduct.’ Now, I submit, my Lord, that the Bill goes much further than this and gives a protection which is not justified by previous enactments, or by considerations of reason and justice. In that case, my Lord, the charge was that Fitzgerald had been wrongly flogged. In this case we have many cases in which flogging was resorted to rather freely. In that

case, in concluding the judgment of the case, Lord Elverton, speaking of the defendant, for whom it had been pleaded that he had done many acts of loyalty, said: 'he had indeed manifested his loyalty most fully for he had manifested it in blood and written it in blood on the plaintiff's back.' My Lord, here too the backs of many persons bear evidence of the deeds that have been done, and they should be allowed to ask those who so injured them to prove that they had acted with reasonable care and caution in the interests of public peace and good order, and not deviating from the principles of humanity.

"My Lord, these provisions to which I have drawn attention become much more objectionable when you come to clause 3 which says:—

'For the purpose of section 2 a certificate of a Secretary to Government that any act was done under the orders of an officer of Government shall be conclusive proof thereof, and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor unless the contrary is proved.'

"My Lord, what is given with one hand is taken away by this clause in section 3 of the proposed Bill, because if a certificate from a Secretary to Government that any act was done under the orders of an officer of Government shall be conclusive proof thereof, and all action taken for the aforesaid purposes shall be deemed to have been taken in good faith and in a reasonable belief that it was necessary therefor, I submit you are shutting out all chances of success for any plaintiff who may wish to have a suit instituted, to have an injury done to him investigated. You say, unless the contrary is proved, an action shall be deemed to have been taken in good faith and a reasonable belief that it was necessary. Let us assume—I may be doing an injustice to the gentleman, but I have him as an illustration—that Mr. Mani Lal, Barrister-at-law, instituted a suit, brings an action for compensation, for damage for the wrong done to him in his being confined in the manner in which he is confined, in a cell and otherwise, why should he be asked to prove that the person who caused him the injury acted without good faith and without a reasonable belief? Why should not the burden of proving that he acted in good faith and reasonable belief be cast upon the defendant? It ought to be sufficient for the purpose of

a fair trial of a character like that in any Court that the plaintiff should state before the Court on oath the facts of the case, and if the facts of the case did not show that he was either a criminal or had been condemned, or that he was guilty of any act for which he should be locked up, then it should be for the defendant to establish that the facts were such that he could not but act in the manner in which he did, and that therefore he should be excused for having so acted. It is a double wrong, my Lord, a double wrong to plaintiffs, to persons who are subjected to all these humiliations and wrongs, that they should be called upon to prove that those who oppressed them had acted without good faith and without reasonable belief. I submit, my Lord, this clause should be deleted, and it is only possible for anybody to think of having a chance of success if it should be deleted. Then, my Lord, in this connection I may say that to require the plaintiff to prove that he has acted in good faith and reasonable belief is entirely wrong. How can the plaintiff exercise an attribute of omniscience, how can he search into the heart of the defendant and show an intimacy with the motives of a stranger only known to him by his tyranny and oppression, and prove that the injury he received has been the consequence of malicious intention, a thing which it is impossible for him to prove, or that the act has been done in the suppression of rebellion. Motives can only be inferred from actions, and it is for the defendant to show that his motives were such as to justify his actions being excused. It will be entirely difficult for the plaintiff to prove things specially within the knowledge of the defendant. My Lord, I submit therefore that this portion of the Bill is open to grave objection, and that it takes away in one clause what it appears to give in another.

"Now, my Lord, there are other objections to which the Bill is open. I will go back to the preamble:—

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

"Now, my Lord, this would bring in other places. I do not know how this wide wording will affect acts done in Delhi, for instance, and in Calcutta. The object of the Bill should be clear and the language that is used should be modi-

fied in order to make it clear. I am not sure, as the preamble stands, whether it does not also cover places where no martial law was established.

"Then, my Lord, I come to clause 4, confirmation and continuance of martial law sentences.. This Bill provides that:—

'Every person confined under and by virtue of any sentence passed by a court or other authority constituted or appointed under martial law and acting in a judicial capacity, shall be deemed to have been lawfully confined. And, my Lord, it goes on to say: and shall continue liable to confinement until the expiration of such sentence, or until released by the Governor General in Council or otherwise discharged by lawful authority.'

"My Lord, I must say that this provision of the Bill has shocked me most. I think, my Lord, that the statement of the Hon'ble the Home Member made it clear that the Government of India are conscious that, unless an Indemnifying Bill of the nature now before the Council, that is to say, unless a legislative provision of the nature embodied in clause 4 is passed by this Legislative Council, the detention of men who have been sentenced by martial law courts will be illegal. I take it, my Lord, that that is the position. That being so, I submit it is wrong to these people that the help of the Legislature should be invoked, not for remitting or wiping off the convictions or sentences, but for confirming them and continuing them. My Lord, it seems to me that the Bill was not conceived with sufficient care and deliberation; that the various acts and provisions which were necessary were not fully considered at one time; and it seems to me that, if the model of even the Acts of South Africa had been kept fully before the mind of the Government, the Bill might have been drafted, might have been cast, in a different mould, might have consisted of different provisions. The Hon'ble the Home Member, and, I suppose, the Hon'ble the Law Member, perhaps on referring to the South Africa Act, Act IV of 1902 of the Cape of Good Hope, have noticed that there was a provision made for a revision of the sentences of those who had been convicted or sentenced by the martial law authorities. Now, my Lord, perhaps to make up for that omission, the Hon'ble the Home Member has to-day announced the decision of the Government of India that two Judges of the High Court will be appointed to revise

the sentences passed by summary courts. I welcome that announcement, but it only strengthens my suspicion that the matter was not considered in all its aspects when the Bill was drafted. Now, my Lord, I want to draw attention to the provisions of the Act of the Cape of Good Hope. May I ask the Hon'ble the Law Member for a copy of that Act, Act IV of 1902?"

THE HON'BLE SIR GEORGE LOWNDES:—"It might save the Hon'ble Member trouble if I were to inform him that that was not the Act which we took as a model at all, but the later Act of 1915, of which he does not appear to know."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"I thank the Hon'ble the Law Member. I did not know of the Act of 1915 or, at any rate, I did not remember it in the midst of the Statutes which were noted by my friends who have been working for me in this matter and helping me. But I am thankful to the Hon'ble the Law Member for informing me of it, and I shall feel thankful to him if he will let me have a copy of that Act also."

THE HON'BLE SIR GEORGE LOWNDES:—"Certainly, after the Hon'ble Member has finished."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"My friend, the Law Member, need not be so afraid of letting me look at the Act before I finish; I might find some help from it. However, I shall be content for such courtesy as he thinks fit to extend to me."

"Now, my Lord, this Act, Act IV of 1902, contains a very important provision regarding the confirmation of sentences passed by military courts. I beg to draw your Lordship's attention and the attention of the Council to this section, which runs as follows:—

"The several sentences pronounced by Courts-Martial constituted and convened by proper authority, and holden in districts of this Colony in which martial law was proclaimed or imposed, and during the existence thereof, upon persons not ordinarily subject to Military Law tried by such Courts for acts of high treason, murder, or for all or any other crimes or offences whatsoever, or for all or any contraventions of any Regulations expressed or purporting to be issued under martial law and commonly termed Martial Law Regulations are hereby confirmed: and all such persons confined in any prisons or other legal places of confine-

ment within the Colony under by virtue of such sentences shall be deemed to have been and to be legally confined there, and shall continue to be so confined, there or elsewhere, as the Governor may direct, until the expiration of the sentences respectively passed upon them or until they are discharged by lawful authority, and such sentences shall be deemed to be sentences duly passed by duly and legally constituted Courts of this Colony and shall subject in each and every case to the provisions of the ninth and tenth sections hereof be carried out or otherwise dealt with, in the same manner, and sentences of such Military Courts as aforesaid shall be followed by the same disabilities, if any, as sentences of the Courts of this Colony.'

"The second part of this goes on to say:—

'Each and all of the officers of the prisons or other legal places of confinement mentioned in the preceding sub-section who have, or had at any time in good faith received into, or kept in confinement any of the persons mentioned in the said preceding sub-section shall be deemed for all purposes to have acted legally.'

"And the third part is also important. It went on to say:—

'All persons in this Colony who have been deported without the limits thereof under and by virtue of any of the foregoing sentences referred to in the preceding sub-section shall be deemed to have been and to be legally deported without the limits of this Colony, and such acts or cases of deportation as aforesaid shall be deemed to be among, and shall be included under the acts, matters and things referred to in the second section of this Act.'

"Now, my Lord, the object of this, I submit, was to legalise the sentences which had been passed no doubt, but there was the important fact that there was a war waged against the Queen, I think it was then. Secondly, my Lord, it was to confirm the sentences, particularly in the case of persons not ordinarily subject to military law tried by such courts for acts of treason, murder or for other crimes or offences or for any contraventions of any Regulations expressed or purporting to be issued under martial law and commonly termed Martial Law Regulations. Now, my Lord, this provision was made and the object was that the punishments which had been inflicted should be regarded as legal and that a suit should not lie against persons because they had confined these men in imprisonment or deported them. Your Lordship will have noted that in section 2 jailors are indemnified, in part 3 certain acts are validated, and, therefore, I

submit, the object was more to legalise the acts which had been done and the punishments which had been suffered and which might be suffered as a matter of necessity until they were remedied later on. And this was accompanied, my Lord, by a very salutary provision, because your Lordship will be pleased to note that while this General Indemnity Act was passed on the 15th September, 1902, there was a Commission appointed at the same time, dated the 2nd of August, 1902. Edward VII, by the Grace of God of the United Kingdom of Great Britain and Ireland, appointed a Commission. That was in the first schedule of the Bill. It was not an extraneous announcement by the Hon'ble the Home Member that the Government of India would be pleased to appoint two High Court Judges—and here I may say that the public have come, my Lord, not to have the same confidence in High Courts after the troubles in the Punjab—to revise sentences passed by summary Courts. My Lord, this ought to be a part of the Bill so that the public might know that there is sufficient and adequate provision made for a revision of those sentences.

“The first Schedule, my Lord, sets out the Commission passed under the Royal Sign Manual and Signet appointing the Right Hon'ble Baron Alverstone, Sir John Charles Bigham and Major-General Sir John Charles Ardagh, to be Commissioners to inquire into the sentences imposed by the military courts established under martial law in the South African Colonies and Protectorates and appointing Gilbert Mellor, Esq., to be Secretary to the Commission. Your Lordship will see that the Lord Chief Justice of England was the President of the Commission and Justice Bigham ‘one of the justices of our High Court of justice’ was a member and also General Sir John Charles Ardagh, K.C.I.E., was a member. Now, I draw attention to certain provisions of this Schedule. It runs:—

‘WHEREAS in consequence of the war declared by the late governments of the South African Republic and Orange Free State against Her late Majesty Queen Victoria, it became necessary to proclaim martial law in our colonies and protectorates in South Africa; and whereas certain persons have been by military courts established under martial law in the said colonies and protectorates sentenced to terms of penal servitude and of imprisonment and to the payment of fines and are now undergoing the said sentences and have not paid but are liable to pay the said fines;

‘AND WHEREAS the aforesaid war having now ceased it is expedient that

inquiry should be made with regard to the aforesaid sentences with a view to ascertaining whether we might properly and without danger to the public safety of our said colonies and protectorates extend our grace and mercy to any of such persons and where such sentences and any and which of them might properly be by us remitted or reduced.

'Now, know ye that we considering the premises and reposing great trust and confidence in your fidelity and discretion and integrity, do authorise and appoint you the said (three persons) to be our Commissioners to inquire into the said sentences imposed by military courts established under martial law in our colonies and protectorates and with as little delay as possible to report to us in writing under your hands and seals respectively whether in the case of the said persons and of which of them respectively who shall be at the date of your report then undergoing any such sentence or who shall not have paid but shall then be liable to pay any such fines, it is expedient, having regard to all the circumstances relating thereto, that such sentences of fines should be remitted or reduced.'

'Now, my Lord, your Lordship will please note the expression 'and to report with as little delays as possible.' That, my Lord, was incorporated as part of the Bill. I shall feel grateful to the Hon'ble the Law Member if he will kindly give me Act VI of 1900 also

THE HON'BLE SIR GEORGE LOWNDES:—"I was in hopes, my Lord, that I had not got it, but I have."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"Now, my Lord, there is an important provision in this Act of 1900, to which I invite the attention of Council and the Government. My Lord, the whole attitude of the Government as disclosed in the case of these two enactments and as disclosed by the Bill presented to this Council shows, I am sorry to say, a regrettable difference. Now, my Lord, in the case of this Act of 1900 (VI of 1900), there was a provision to confirm sentences, merely to legalise, as I have pointed out already, what has been done. This is what it says:—

'All actions, indictments and legal proceedings whatsoever which might be brought or instituted in any of the courts of this colony against His Excellency the Governor of the Cape of Good Hope or the officer for the time being in command of His Majesty's Forces in this colony or against any person or persons acting under them or either of them respectively, in any command or capacity, civil or military, for or on account or in respect of any acts, matters, and things whatsoever in good faith advised,

commanded, ordered, directed or done as necessary for the suppression of hostilities in or the maintenance of good order and government or for the public safety of this colony between the date of the commencement of a state of war between Her Majesty's Government and the Governments of the South African Republic and the Orange Free State and the date of the taking effect of this Act, shall be discharged and become and be made void.'

"Then, my Lord, it is said in section 5:—

'In all cases of convictions for high treason or other crimes of a political character during the period specified in section 1 of this Act, where such convictions have taken place before courts-martial or military courts constituted, convened and held as in the last preceding section set forth or where they have taken place before the ordinary criminal courts having jurisdiction over them, it shall be lawful for the Governor, should he consider that any such case would, had it been dealt with after the taking effect of this Act, have been a case proper for the consideration of the Commissioners appointed under section 33 hereof, to order that the said sentences imposed upon such persons shall be altered into the sentence laid down in section 50 of this Act. The person affected by any such sentence shall thereupon become liable to suffer the penalty imposed by the said fiftieth section and no other.'

"That is to say a sentence under section 50 has been substituted for the one already imposed. Section 50 says:—

'The said Commissioners shall, after hearing the evidence, if any, for and against the accused decide whether he is guilty or not of the charge brought against him, and in all cases in which an accused person shall be found guilty, the said Commissioners shall adjudge that he shall be, for the period of five years and no longer, disqualified from being registered as a voter or from voting for the election of members of Parliament, or of a Divisional or Municipal Council, or of a Village Management Board or from being or continuing to be a member of Parliament, or from holding any public office, or continuing upon the Commission of the Peace or from serving upon a Jury in civil or criminal cases, anything contained in any Law or Act of Parliament to the contrary notwithstanding; and thereupon such person shall be in Law absolutely disqualified, in regard to all the aforementioned matters and his name, if upon any existing voters' list, shall be and is hereby removed therefrom, and vote of any such person given at any such election shall be null and void and may be struck out in any proceeding in which the result of such election is challenged in any competent court. Save as hereinafter provided the findings or decisions of the said Commissioners shall not be subject to appeal to or review by any Court whatever.'

"Now, my Lord, you will see what an important difference

of outlook and aim these provisions of the indemnifying Acts to which I am referring show as compared with the provisions of this Bill. My Lord, these Commissions were appointed as part of the Bill, and they were given power to wipe off all other sentences and to substitute a municipal disqualification. It was not in ordinary trifling cases, cases of not salaaming a European, but it was in cases of high treason and in all cases of convictions for high treason or for other crimes of a political character during the period specified in section 1 of that Act.

"The other day, my Lord, I brought forward a Resolution and urged that the Government might consider the advisability of the Committee of Inquiry (or the commission which I suggested) being empowered where they thought fit to recommend to His Majesty's Privy Council that convictions by Martial Law Commissions and Martial Law Summary Courts might be annulled or modified. My Lord, this Act to which I make reference shows further reason in support of my proposition. It is said by the Hon'ble the Home Member that the Government of India are going to appoint two High Court Judges to revise these sentences. My Lord, the Government of India cannot constitute a court. The Government of India cannot constitute a regular court. The Governor General can no doubt introduce martial law and constitute certain courts under martial law, but the Government of India cannot constitute a regular court.

"If these two High Court Judges are to revise the sentences that will not be court. They will only be advisers, very honourable advisers of the Government of India in respect of the cases which the Government of India may deal with. I submit with confidence, notwithstanding what the Hon'ble the Law Member may say to the contrary on this point, that the Government of India cannot by appointing two High Court Judges to revise sentences passed by martial law invest them with the authority of a legal court

THE HON'BLE SIR WILLIAM VINCENT:—"I never suggested anything of the kind."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"I thank the Hon'ble the Home Member for removing my doubts on the point. I should like to know what will

be the position of the two Judges. I should feel grateful to the Hon'ble the Home Member if he will make the point clear, it will save time. In do not know if they are merely to advise, whether their opinions will be merely recommendations to be considered by the executive Government, or whether they will have power to deal with sentences, wipe out convictions, reduce sentences or whether else they would like to do. I should be very grateful if the Hon'ble the Home Member will enlighten me on that point."

At this point the Hon'ble Mr. Malaviya resumed his seat.

THE PRESIDENT:—"The Hon'ble Member will proceed with his speech."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"My Lord, I take it, in the absence of any explanation from the Hon'ble the Home Member that the matter is left vague. I submit that in the absence of further information these two Judges will be merely advisers to the Government. I submit that that will not be a satisfactory position. Next, I should like the Government to consider the propriety of including in the terms of reference some direction such as that contained in Act VI of 1902 of the Cape of Good Hope. By this time, in view of what has happened and that has not been contradicted or controverted, it is time for the Government of India to make up its mind to release these persons who are undergoing imprisonment from further humiliations and hardships. I submit that this is a suitable moment for the Government to consider this matter. If the Bill proceeds as it is, then, I submit, the position will be this. We do not know how long these High Court Judges may take to deal with the cases of these men, the procedure has not been indicated, and therefore no one can form any idea of the time and therefore 'every person confined under and by virtue of any sentence passed by a court or other authority constituted or appointed under martial law and acting in a judicial capacity shall be deemed to have been lawfully confined and shall continue liable to confinement under the expiration of such sentence or until released by the Governor General in Council or otherwise discharged by lawful authority.' I submit that that is not a satisfactory position, particularly in view of the remarks which the Hon'ble the Law Member made. He said he had consulted the Government of

the Punjab, and it was of opinion that it would be dangerous to let off any of the men who were undergoing imprisonment at present and who were under sentence passed by martial law. I suggest that if it should be pointed out to His Honour the Lieutenant-Governor of the Punjab that if there are persons who are considered dangerous, there are provisions under the existing enactments by which they can be taken up and judicially proceeded against and confined. There are many provisions under the existing enactments which enable the executive Government or any Government to proceed against persons of doubtful character or dangerous and bind them over to keep the peace and to be of good behaviour. It is open to the Government to have them tried in the regular courts in the ordinary way. Great complaints have been made that these convictions and sentences are illegal. The Hon'ble the Home Member has practically admitted the truth of this contention and, unless some provisions such as I am referring to is enacted, these unhappy men will continue in jail. That being the position I submit that there should be some provision by which these men should at an early date be set free to enjoy the liberty to which they are entitled, and if they are not entitled to that liberty by a reason of any act of wrong doing the ordinary courts of the law should be allowed to deal with them. I need hardly draw attention to the remarks of Lord Halsbury, but it is my duty to refer to certain information which has been printed and reproduced in an excellent volume by Sheikh Nabi Bakhsh, a Vakil of the Punjab High Court. Your Lordship and the Council have noted what Lord Halsbury states in the 'Laws of England' that the powers of the military authorities cease, and those of the civil courts are resumed *ipso facto* on the termination of disorder. Disorder terminated long long ago and martial law was also discontinued partly in May and partly in June, and finally last month. I think it was about the 25th or 28th of August. Therefore the course I am suggesting is the right course to be pursued; let there be such a provision enacted as that to which I have drawn attention, unless it be a case of murder or arson; let the men be proceeded against in the ordinary way. They have the right to choose in the matter and some may not choose that course. This question of martial law has been very carefully explained in various

places. For instance, Justice Sir James Fitz James Stephen, a Judge of the High Court of the Queen's Bench Division, in his book the History of Criminal Law of England, says. I will read only his summing up to save time. He says, "I will sum up"

THE PRESIDENT:—"I understand it is your summing up also."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"No my Lord, I am reading the summing up of Sir James Fitz James Stephen."

THE PRESIDENT:—"All right, proceed."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"He says:—

"I may sum up my view of martial law in general in the following propositions. Martial law is the assumption by officers of the Crown of absolute power exercised by military force for the suppression of an insurrection and the restoration of order and lawful authority. The Officers of the Crown are justified in any exertion of physical force extending to the destruction of life and property to any extent and in any manner that may be required for the purpose." They are not justified in the use of the cruel and excessive means but are liable civilly or criminally for such excess. They are not justified in inflicting punishment after resistance is suppressed, and after the ordinary courts of justice can be re-opened."

The principle by which their responsibility is measured is well expressed in the case of Wright *versus* Fitzgerald. Wright was a French Master at the schools in Clonmell who after the suppression of the Irish rebellion in 1799

THE PRESIDENT:—"The Hon'ble Member really must not repeat himself. We have already had the case of Wright *versus* Fitzgerald for half an hour."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"My Lord, I am quoting the summary of Sir James Fitz James Stephen"

THE PRESIDENT:—"I am quite aware of that. But we have all heard the case of Wright *versus* Fitzgerald for half an hour this afternoon, and I do not propose that we should hear it again."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"Very well, my Lord. Then Sir James Fitz James Stephen proceeds to say:—

'The Courts-martial as they are called, by which martial law in this

sense of the word is administered, are not properly speaking, Courts-Martial or courts at all. They are merely committees formed for the purpose of carrying into execution the discretionary power assumed by the Government. On the one hand, they are not obliged to proceed in the manner pointed out by the Mutiny Act and the Articles of War. On the other hand, if they do so proceed they are not protected by them as the member of a real court-martial might be except so far as such proceedings are evidence of good faith. They are justified in doing, with any forms and in any manner whatever is necessary to suppress insurrection, and to restore peace and the authority of the law. They are personally liable for any acts which they may commit in excess of that power, even if they act in strict accordance with the Mutiny Act and the Articles of War.'

'Therefore, my Lord, after the resistance has been suppressed the ordinary courts of justice can be re-opened and cases of persons who cannot be released entirely might well be referred to such courts. I will refer to one other opinion, namely, that of Mr. Justice Spankie. Writing on this subject,—this is a written opinion, dated the 27th April, 1818:—

'The manifest intention of Government in its legislative capacity was, that none but cases of the simplest and most obviously criminal nature should be the subject of trial by the courts-martial; the fact, whether a person was taken in the actual commission of an overt act of rebellion, or taken in the act of openly aiding and abetting the enemies of the state or taken in open hostility, might safely be tried by such courts; and such a provision for trial was calculated to prevent military severity in the field becoming absolute massacre. But all complex cases depending upon circumstantial proof and requiring either a long examination of facts or a discriminating inference from facts in themselves equivocal were purposely withdrawn from the cognizance of these tribunals. It never was intended that courts-martial should try, as those have done, acts even of criminal nature, in which the prisoner was not taken and unless the acts were open overt acts and of the most material palpable quality.'

In another portion he says 'that the moment the order is ceased the ordinary jurisdiction of the courts can be resumed.' Now, my Lord, I submit that the provisions of the Bill as they stand are unsatisfactory, and leave should not be given to introduce the Bill in its present form. Now, if the Bill is not introduced, my Lord, in its present form, as I have said before, not much harm will be done, and the Government will be in a position to deal with the matter after the report of the Committee of Inquiry. I wish, my Lord, to point out the grave injustice and disadvantage which is likely to result

if the Bill is passed at present. Of course it is in the power of your Excellency's Government to pass the Bill. We know it. We have had recent experiences to convince us of it. You do command a large official majority in this Council. The representatives of the people are few. But I submit, my Lord, in this matter it would be right and proper that your Excellency's Government should consider what the public opinion of the country is. Shall we stop now?"

THE PRESIDENT:—"Is the Hon'ble Member concluding his speech."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"My Lord, I should like to conclude to-morrow."

THE PRESIDENT:—"The Council will now adjourn till 11 o'clock to-morrow. We shall sit from 11 to half-past 1, and we shall sit again from 3 until we finish."

19 Sep. '19.

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"My Lord, I would like to draw attention to two other matters relating to the Bill which are to my mind of great importance. One is that clause 6, the savings clause, says:—

'Nothing in this Act shall prevent the institution of proceedings by or on behalf of the Government against any person in respect of any matter whatsoever.'

This no doubt reserves to the Government the right of instituting any proceedings by or on behalf of the Government against any person. But, except for this, the right of private individuals to bring any suit or to institute any legal proceedings against any individual are restricted by the provisions of clauses 2 and 3. Now, my Lord, I have already submitted that clause 2 of the Bill bars a suit and says:—

'No suit or other legal proceeding whatsoever, whether civil or criminal, shall lie in any court of law against any officer of Government; * * * * provided that such officer or person has acted in good faith and in a reasonable belief that his action was necessary for the said purposes.'

"And then comes clause 3 which says:—

'For the purposes of section 2 a certificate of a Secretary to Government that any act was done by the orders of any officer of Government shall be conclusive proof thereof, etc., unless the contrary is proved.'

"Now, my Lord, the result of these two clauses taken together is, as I submit, practically to make the chance of success for any private individual very very small, and I submit this is not right. I want to illustrate how very unjustly the provisions of this Bill will operate to make it difficult for any individual who may have been injured to obtain justice. I would like to draw attention to one concrete case which occurred at Amritsar. That case is the case of Mr. Gurdial Singh Salariya, Barrister-at-law. This gentleman was in the District Court along with several others on the 10th of April, 1919, when he heard that there had been firing resorted to and that there was trouble owing to the deportations. He and other pleader friends consulted together and resolved to inform the Deputy Commissioner that they thought they might go and help, and, with his consent, went to try and quiet the trouble. They did go there, and this gentleman and his friends who were with him laboured for a long while to quell the mob and to turn them back. He succeeded also to a large extent in sending back part of the mob from the railway overbridge, and, in order that he might do his work better, obtained the loan of a horse from a policeman with the help of the Deputy Commissioner and rode about appealing to people to go back. While he was doing this, the military fired upon the mob. There was a crowd near the overbridge; he found the military ready to fire and he shouted out at the top of his voice to stop. He requested the Deputy Commissioner to give him some time to persuade the crowd to go back, and, while he was doing so, they began to fire all at once without warning this gentleman that they were going to fire. Luckily, he escaped. The Deputy Commissioner in his statement before one of the Martial Law Commissions said that this gentleman, Mr. Gurdial Singh, 'went with his permission to push back the mob and that he was genuinely trying to do so.' He further says that 'owing to a dangerous rush of the crowd, it was necessary to fire, while Gurdial Singh was trying to keep them back, and that he had been pointed out to the soldiers as a friend.

He ran serious risk of being shot and deserves credit for having tried to quell the mob in a brave and determined manner.' This was the statement made by the Deputy Commissioner of Amritsar in the case when Mr. Gurdial Singh was tried. Now, my Lord, having done this, this gentleman went home. This was on the 10th of April. On the 23rd of May a policeman, a constable in white clothes, went to him in court and asked him to accompany him to the Kotwali, where he was wanted by the police. He went there and was placed before the Deputy Superintendent, I think. He was asked a few questions and was politely told that he was to go to jail where he was to be confined. Now, my Lord, this gentleman was kept in Amritsar for two days or so and then he was removed, handcuffed, to Lahore. On the morning of May, the 26th, he was made to walk on foot from the railway station at Lahore to Montgomery Hall, was kept there the whole day sitting on the ground. Then, my Lord, he was removed to the Central Jail and was put in an iron cage, seven feet by 2½, although his guardian had paid Rs. 30 in order that he might be put in another place. Now, my Lord, he was removed the next morning to that other place. He was not long there and was sent on to another jail. This gentleman was arrested on the 23rd, was put on his trial on the charge of having taken part on the 5th April, 1919, to bring about *hartal* on the 6th. It was proved that he was lying ill at home on that day by the evidence of a surgeon, I think a civil surgeon. The second charge was that he was a speaker at the meeting of the 6th April, the great *Satyagraha* day meeting. He did admit that he did take part, and all glory to him for having taken part in that meeting. The third charge against him was that he had incited the mob at the railway bridge on the 10th April, when he had at the risk of his life tried to send back the mob to the city, and further that he had on horseback gone down to the city and delivered an inflammable speech. Now, my Lord, the Deputy Commissioner was examined and he deposed to the fact that this gentleman had honestly endeavoured at the risk of his life to quell the mob, and to send them back to the city. The question put to the Deputy Commissioner was 'Do you know as a fact that Gurdial Singh Salariya did his best to keep the mob back on the 10th April 1919?' The answer was 'Yes, this

is the only conclusion to be drawn from the action I saw. Then the question was 'Did you actually see him shouting and entreating the mob on the carriage bridge to disperse?' and the answer was 'Yes, I remember him distinctly as he swarmed up a lamp post to address the crowd better.' Then he was asked 'Did his attitude and efforts against the mob appear to you genuine?' The answer was 'Yes, I certainly think they were genuine.' Then again 'Was Gurdial Singh in danger of being shot when he was roaming about facing the mob and telling them to get back and thus did real service?' The answer was 'Yes, owing to the dangerous rush of the crowd it was necessary to fire while he was trying to keep them back and though he had been pointed out to the soldiers as a friend he ran serious danger of being shot. He deserves credit for having tried to keep the crowd back in a brave and determined manner.' Now, my Lord, this gentleman was put on his trial and kept in jail from the 23rd May for nearly a month and a half. He was subjected to all these indignities and to all the humiliation and trouble of being kept there. In the judgment in his case the Martial Law Commission said: This accused was present at the meeting of the 6th April. (That of course was a crime in the eye of the Commission.) But we are not satisfied that he had joined the conspiracy. His actions on the 10th April as deposed to by the Deputy Commissioner indicate that he was supporting the authorities to the best of his powers and at some risk to himself. Hans Raj (the approver) does not attribute any acts to him, merely saying that Gurdial Singh had told Bashir that he had done what he could on the 10th. Mr. Herbert (the Crown Advocate) did not press the case against him and we acquit him.' Now, my Lord, I should like to ask what would be the position of Mr. Gurdial Singh if he was to seek some compensation, some remedy for the gross, unjustifiable wrong done to him. Here is a man who at the risk of his life rendered service to the Government and the public at the time of the disorder, while the Deputy Commissioner and the Police Superintendent who saw him work at the railway bridge were still in Amritsar, this gentleman was arrested and *challanned* in a humiliating manner and kept in jail for a period of a month and a half, had to undergo all the anxiety, trouble and indignity and humiliation of ar-

ranging for his defence and had to be acquitted after all. Is he, if this proposed Bill is passed, to be defeated in a suit, unless he can swear that there was in the minds of his assailants and persecutors a malicious intent? Or is it right that he should be able to go into the Court, state the facts and ask his persecutors to plead whatever excuse or justification they may have to plead? Which will be the right course? Which will be the fair procedure? I submit, there can be only one answer. The man has been obviously unanswerably wronged. You want by this Bill to shut him out from having a chance of success in a suit for damages, by the provisions you seek to incorporate in this Bill. He goes with his suit or plaint into the Court, and the answer is that no suit will lie unless it is proved by the plaintiff that the defendant had not acted in good faith and in a reasonable belief that the steps that had been taken against him were necessary for the purposes of maintaining or restoring order. I submit, my Lord, I cannot imagine a grosser perversion of what should be the right procedure than what is incorporated in this Bill. I have drawn attention to this case for two reasons, first, that the provisions of clauses 2 and 3 are entirely unjust and ought to be entirely deleted, I mean so far as the proviso to clause 2 is concerned and so far as the new rule of evidence incorporated in clause 3 is concerned. I would also refer to it to show that though clause 6 of the Bill gives to Government the power to proceed against any person against whom they may think it fit to, the case of private individuals who may wish to proceed against those who have arrested or harassed or subjected them to oppression, is not taken sufficient care of. My Lord, it may be said that the Bill provides that the Government can proceed against any person in respect of any matter, and that it will be only reasonable to expect that in a case like the one that I have mentioned the Law Member of the Government would advise, and the Home Member would advise the Government of India to institute a suit to find out who were the persons who were responsible for all the humiliation and indignity and suffering inflicted upon Mr. Gurdial Singh and commit them to trial. That should ordinarily be the case, my Lord; but unfortunately in the circumstances of the situation, it is not given to private individuals who have suffered to expect, to have a reasonable ex-

pectation, that such a course would be pursued. I regret to say it, but it is a fact which I ought to mention that, while I have heard much indignation expressed at the acts of lawlessness that were committed by some sections of the mob, I have not heard one word of sympathy from the Government benches with those who have lost their lives, their relations or the other sufferers in consequence of these troubles, except my European fellow-subjects for whom I share the sympathy with members of the Government. My Lord, it has been a sad thing for me to reflect that while such outrageous events have happened, while the casualties have been ascertained to the extent that has been done, there should not have been one word of sympathy, expressed on behalf of Government with these men who have suffered

THE HON'BLE SIR WILLIAM VINCENT:—"May I offer a word of explanation? I said quite definitely in this Council that no one deplored the loss of life more than I did. It is unfair to say that I did not express any sympathy with those who suffered."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"My Lord, I take it, I will accept it, that the Hon'ble Member did mean to express sympathy with Indians

THE HON'BLE SIR WILLIAM VINCENT:—"Not only mean to, but I did do it."

THE HON'BLE PANDIT MADAN MOHAN MALAVIYA:—"I am glad to be assured, my Lord, that the Hon'ble Member did express sympathy with Indians as well as Europeans who had suffered. But I still expected a more sympathetic attitude on the part of Government in order to give an assurance to the public that if there are any cases in which these facts are found to exist, if the wrongs done cannot be justified, that the Government will itself proceed to bring the offenders, the wrong-doers, the oppressors of His Majesty's subjects to trial. This brings me to one other aspect of the question, and that is the question of compensation for the damage sustained. In the Cape of Good Hope Act, VI of 1900, there is a whole chapter devoted to the provision for compensation for damage sustained from military operations. Now, what does clause 5 of the Bill before us provide. It says—"Where under martial law the property of any person has been taken or

used by any officer of Government, whether civil or military, the Governor General in Council shall pay to such person reasonable compensation for any loss immediately attributable to such taking or using to be assessed upon failure of agreement by a person holding judicial office not inferior to that of a District Judge to be appointed by Government in this behalf.' My Lord, the Bill confines itself to loss of compensation for property used for military purposes. But what about the lives that have been lost in military operations? Lives that are much more valuable than any property lost. I submit that the proper course would be to incorporate in this Bill a provision to the effect that the Committee which is to be constituted under this Act should have power to decide what compensation should be given to those who have suffered loss of life or limb, for many have suffered in limb, as well as those who have suffered loss of property. In this respect the Bill is defective, and for this reason also I submit that the Government should reconsider the situation. The Council will have noted that my proposal is not that no Indemnity Bill should be introduced and passed, but that such a Bill should not be introduced at present, that it should be kept back until the Committee of inquiry has reported. I would point out in this connection that this is not such a wide suggestion as it may seem to some people. After the dark days of the Mutiny the Government was in no hurry to pass an Indemnity Act. The Indemnity Act was passed in the year 1860; it received the assent of the Government of India on the 2nd August 1860; that is two years after the mutiny had been suppressed. I submit, my Lord, that the Government would not be unwise, and that no interests would be jeopardised if the Government do not proceed with the Bill at present. I am strengthened in urging this before Council by the reports which I have received, both telegrams and letters have been coming from different places expressing the deep sense of dissatisfaction among the general Indian public at the Government proceeding with this Indemnity Bill. I will first read a telegram I have received from Lahore. It runs—'Members of the Indian Association, Lahore, respectfully enter their emphatic protest against the statement made by the Hon'ble Malik Umar Hyat Khan at the recent meeting of the Imperial Legislative Council that

the people of the Punjab do not want a Commission of Inquiry into the happenings of April last. As a matter of fact, the entire province demands a searching investigation by an Imperial Commission, unconnected with the administration of the country; the fact is that public meetings of protest cannot be held owing to Ordinances and official orders should not be misconstrued. They wish further to give expression to strongly felt public opinion of the Punjab that passing of the proposed Bill at the present stage will not only be premature but also prejudicial to the conduct of proper inquiry. There will be ample time for enactment of a law for the protection of officials after the Commission of Inquiry has pronounced its verdict as to the necessity of a declaration of martial law and suggestions of measures and methods adopted in its working. The Punjab Association feel in any case that there is absolutely no necessity for validating sentences illegally passed by Martial Law Commission and officers. They pray that the Government will be pleased to abandon the Bill at present. This is one of several telegrams received. I also wish to show how the public have expressed themselves. Sir Narayan Chandavakar, Vice-President of the National Liberal Association, cabled to the Secretary of State and to your Excellency a few days ago praying among other things that the Indemnity Bill at the present stage should be abandoned, as its necessity depends on the result of inquiry by the already appointed Commission. Then again, my Lord, 'Ditcher' in 'Capital' has said that it is obvious that the passing of the Indemnity Act and the findings of the Committee will be purely academic. The 'Daily News' of London has observed in referring to the proposed Commission that 'the provision for a complete whitewashing of the official policy of the Punjab is made doubly certain by the resolve to protect officials by the Act of Indemnity before the inquiry is entered on. This policy, for which there is no defence, recalls the direct action taken after the Ceylon disturbances in the first year of the war. By such un-British tactics the British name is besmirched.' The Indian papers have almost without exception written strongly against the policy of proceeding with this Bill before the Committee has made its report. There is hardly time for me to refer to the opinions of the 'Leader,' the 'Bombay Chronicle,' the 'Nation,' the 'Bengalee' and

other papers. But what, I think, is better is to invite attention to a very valuable article from the pen of Sir Narayan Chandavakar which has been published in the 'Indian Social Reformer.' The other day the Hon'ble the Home Member relied upon a letter published by an anonymous 'Indian student of constitutional law' for support of his view in introducing this Indemnity Bill. I was rather taken aback; it seemed to me to be a great fall for the Hon'ble the Home Member of the Government of India to refer to an anonymous writer for support of the policy decided upon by the Government of India. However, that is the concern of the Hon'ble the Home Member. I now present as a contrast a very valuable contribution to the discussion of this Bill, the opinion of a gentleman who has acted for years as an honoured Judge of the Bombay High Court, officiated as Chief Justice for some time and was also Chief Justice in Indore for several years. On important occasions he has laid the Government of India under an obligation by expressing well considered opinions on constitutional questions. Writing in the 'Indian Social Reformer,' Sir Narayan Chandavarkar writes: 'Surprise is expressed in some quarters that Indian politicians of all shades of opinion have opposed the decision of the Government of India in introducing an Indemnity Act in the Imperial Legislative Council at the earliest convenient moment for indemnifying all the officers in respect of their acts in connection with the recent disturbances.' Then he cites the authority of Mr. Dicey in support of the principle which is enunciated in Mr. Dicey's book, called 'A leap in the dark.' My Lord, I may mention that this book—'A leap in the dark'—was published in 1893. The purport was to examine the leading principles of the Irish Home Rule Bill which was introduced in that year in Parliament. In Mr. Dicey's opinion one of the most important defects of that Bill was, that its provisions relating to the restrictions on and safeguards against the legislative power of the contemplated Irish Parliament contain no prohibition against the passing of an Act of Indemnity by the Parliament. Mr. Dicey said:—

'Of all the laws which a legislature can pass an Act of Indemnity is the most likely to produce injustice. It is on the face of it the legislation of illegality, the hope of it encourages acts of vigour, but it also encourages violations of law and of humanity. The tale of flogging Fitzgerald in

Ireland, or the history of Governor Eyre in Jamaica, is sufficient to remind us of the deeds of lawlessness and cruelty which in a period of civil conflict may be inspired by recklessness or panic and may be pardoned by the retrospective sympathy or partizanship of a terror-stricken or vindictive Legislature.

Further on he writes :—

'An *ex post facto* is the instrument which a legislature is most apt to use for punishing the unpopular use of legal rights. There is not a landlord, there is not a magistrate, there is not a constable in Ireland who may not tremble in fear of *ex post facto* legislation. There is no reason as far as the Home Rule Bill goes, why the goaler who kept Mr. William O'Brien in prison or the warders who attempted to pull off his breeches, should not be rendered legally liable to punishment for their offences against the unwritten law of Irish sedition. No such monstrosity of legal inequity will, it may be said, be produced. I admit this, but the very object of prohibitions' (against the passing of an *ex post facto* law) 'is the prevention of outrageous injustice. The wise founders of the United States prohibited to Congress and to every State legislature, the passing of *ex post facto* legislation.'

"Now, my Lord, going further and dealing with the particular 'Home Rule Bill and commenting upon the absence from it of a prohibition against the passing of an Indemnifying Act, Mr. Dicey says that it was necessary that there should be a prohibition. He says :—

'Circumstances no doubt may arise in Ireland, as in other countries, under which the maintenance of order or the protection of life may excuse or require deviation from the strict rules of legality. But the question whether these circumstances have arisen will always be decided far more justly by the Parliament at Westminster than it can be decided by the Parliament at Dublin. Can anyone really maintain that a Parliament in which Mr. Healy, or, for that matter, Colonel Saunderson might be leader, would be as fair a tribunal as a Parliament under the guidance of Mr. Gladstone or Lord Salisbury for determining whether an officer, who, acting under the directions of the Irish Government and with a view to maintain order at Belfast or Dublin, should have put an agitator or conspirator to death without due trial had or had not done his duty.'

"Now, my Lord, as Sir Narayan Chandavarkar says, substitute India for Ireland and substitute Simla for Dublin and so on, and it would appear that the passage applies very much to the proposal now before the Council. I submit that in view of these very weighty expressions of opinion, the Government would be wise in postponing action in this matter of an Indemnifying Bill. My Lord, it is open to the Govern-

ment, it is in the power of the Government, as I said yesterday, to pass the Bill by the official majority which it commands. But I would appeal to your Excellency that your Excellency may reconsider this question and not flout public opinion which has been so widely expressed in this matter. My Lord, it may be that the Government can carry on the administration of the country without paying heed to public opinion, but it is not the right thing to do. The right thing to do would be to act in accordance with all the principles for which the blood of Britons and of Indians was shed in the last great war, to do that which is right, to do that which truth, justice and honour demand, and in this matter truth, justice and honour demand that where so many deplorable acts have been committed, where so much illegality has been committed, where so many indignities have been offered, when there are such serious allegations regarding the action of His Majesty's officers, civil and military, when there are serious allegations regarding the attitude of the Government of India itself in the matter of the Punjab administration during the last few months, I submit, my Lord, the right thing to do would be to stay your hand and to let this matter lie over until the Committee of Inquiry has reported. When the Committee of Inquiry submits its report, I venture respectfully to say that the right course for the Government of India would be to submit that report to His Majesty's Government and ask them, in view of the facts which may then be established, to consider which acts of the officers of His Majesty's servants, civil or military, should be indemnified, and to also consider what compensation should be offered on behalf of the public, that is the Government, to those who have suffered unjustly during these disturbances and riots. I ask, my Lord, for an attitude of greater sympathy, an attitude of greater desire to do justice between man and man, between Indian and European, between one subject and another, not in any vindictive spirit, not in any revengeful spirit, but purely with a desire that justice should be done, and that right should be done. For these reasons, I most earnestly appeal to your Excellency and to your Excellency's Government to reconsider the matter and not proceed with this Bill. If this is done, my Lord, the whole country will feel grateful; in England and in India public opinion will feel that your Excellency's Gov-

ernment have at the last moment even recognised the force and weight of public opinion and bowed to it. My Lord, the mightiest Government has to bow to public opinion. It so happens that in this matter the public voice is not strong, but, I submit, we must always appeal in this matter to what we find in England, and I submit with great respect that no Government in England would have dared to bring forward a Bill of this character in the circumstances which have been disclosed in this debate, and I submit, my Lord, that the Government here, though it has the power, it ought not to exercise that power, and ought to wait until the Committee of Inquiry has reported. I make this appeal in the name of those who have lost their lives, in the name of those who lost their limbs in these recent disturbances, in the name of those who have suffered indescribable indignities, in the name of those who are undergoing imprisonment at this moment unjustly in His Majesty's jails, in the name of those women who are in mourning by the loss of their husbands, their relations, or sons, in the name of all those, my Lord, I appeal to your Excellency's Government to stay the hand of Government and to wait for the Committee of Inquiry, and then to decide what should be done. When the Committee of Inquiry has reported, the public can see what are the facts, and what is the right course to pursue in those circumstances. Every reasonable man in this Council will then offer his support to the measure that may then be proposed.

"My Lord, I submit this is what the situation demands. I hope that your Excellency's Government will not judge this matter merely by the opinions of a few members who have the privilege of sitting in this Council. I hope, in deciding this matter, your Excellency will have referred to the vast multitude of Indian opinion outside this Council and also to the opinion in England. If you decide having regard to that opinion, I have no doubt that your Excellency will come to only one conclusion, and that is, to postpone the introduction of this Bill till the Committee of Inquiry have reported."

APPENDIX.

Questions by the Hon. Pt. Malaviya.

Re Martial Law in the Punjab.

The Hon. Pt. Malaviya gave notice of the following questions which he intended to put at the Imp. Lagistative Council, Sep. 1919. They were however disallowed.

Arrests, Trials, Convictions.

I. Will the Government be pleased to lay on the table a statement showing :—

(a) The number of persons actually arrested and detained in custody in connection with the recent disturbances in the Punjab, classified according to town or village, and showing the names, parentage, caste, profession and place of residence of the persons arrested or detained ;

(b) The number of persons out of the above list who were actually put on trial ;

(i) Before the Commissions constituted under the Martial Law Ordinance of 1919 promulgated by the Governor-General ;

(ii) Before the Summary Courts established under the orders of the General Officers Commanding the Lahore and Rawalpindi Divisions ;

(iii) Before the Area Officers constituted by or in virtue of the powers conferred by the General Officers Commanding the Lahore and Rawalpindi Divisions for offences against the Proclamation issued on the 19th April, 1919, (Notification No. 10,766 of Home Department Military, dated 21st April, 1919) ;

(iv) Before the ordinary Municipal Courts in districts where Martial Law was not declared ; and

(v) Before the Special Tribunal constituted under the Defence of India Act ;

(c) number of persons convicted out of those mentioned in clause (b) and the offence or offences of which they were convicted and the sentences passed in each case ;

(d) the number of persons discharged or acquitted out of these mentioned above in clause b ;

(e) the number of persons arrested but released.

II. Will the Government be pleased to lay on the table a statement giving the following particulars regarding all cases tried by the Summary Courts established by the General Officers Commanding the Lahore and Rawalpindi Divisions and also by the Area Officers appointed under Notification mentioned in Q. 1. (b) iii ;

RE MARTIAL LAW IN PUNJAB.

(a) The total number of cases decided by each of the said courts and officers from day to day.

(b) The number of cases in which summaries or memoranda of evidence and reasons for findings arrived at were recorded ;

(c) the number of cases in which only reasons for findings arrived at were recorded, and

(d) the number of cases in which no summary or memorandum of evidence, nor any reasons for the findings arrived at, were recorded, and

(e) the number of cases in which the record does not show even the offence charged.

Application for Copies of Judgment.

III. Will the Government be pleased to lay on the table a statement showing

(a) the number of applications for copies of judgments and evidence and other proceedings of the Summary Courts and of the Courts of the Area Officers made on behalf of the persons convicted, to the Legal Remembrancer, the District Magistrates, Martial Law Administrators and other Civil or Military Authorities :

(b) the number of cases in which copies have been supplied ;

(c) The number of cases in which such copies have been refused and reasons for such refusal.

Flogging.

IV. Will the Government be pleased to lay on the table a statement showing :

(a) the number of persons flogged in each town or village within the Martial Law Area in the Punjab whether

(I) Under Martial Law

(i) on conviction, or

(ii) without conviction.

Or

(2) under the ordinary Criminal Law during the period Martial Law was in force, giving names, parentage, age, caste, profession and residence of the persons flogged :

(b) the offence for which each such person was convicted and the name and designation of the officer who passed the order :

(c) the number of stripes inflicted on each such person, and

(d) the name of the locality where the flogging was administered.

V. Will the Government be pleased to state :

(a) the number of persons who were sent under the Martial Law to the Central Jail, Lahore, to be flogged there and were actually flogged ;

(b) the authority under whose orders they were so flogged :

(c) whether there is a record of all such cases of flogging. If there is, will the Government be pleased to lay it on the table?

VI. Will the Government be pleased to give the names, ages and other particulars of persons who were flogged on being arrested and subsequently put on trial in what is known as the Sherwood case of Amritsar.

VII. Will the Government be pleased to lay on the table lists of persons who, after being sentenced by Martial Law Commissioners or other Martial Law officers were

(a) executed

(b) transported,

(c) confined in the Lahore Central and Borstal Jails and various District Jail in the Punjab?

Killed or wounded by Firing.

VIII. Will the Government be pleased to lay on the table a statement showing the total number of persons who were (1) killed or (2) died of wounds, or (3) were wounded but recovered during the recent disturbances in the Punjab, giving the names, percentage and other particulars and specifying the place where each person was killed or wounded?

IX (a) Will the Government be pleased to state how many people (a) killed and (b) wounded by the firing that took place on

(i) the Upper Mall, Lahore, on the 10th April,

(ii) outside the Lahori gate on the 10th April.

(iii) in the Hira Mandi Chauk on the 12th April?

(b) Will the Government be pleased further to state the number of persons injured, if any among the Police or the Military specifying the nature of their injuries received in the places and on the occasions mentioned above?

X. Will the Government be pleased to state what steps were taken by the Police or the Military to disperse the crowd in the three places mentioned in the preceding question before they resorted to firing; also to state what was the immediate cause which necessitated the firing on each occasion?

XI. Will the Government be pleased to state if it is a fact that some of the wounded on the Upper Mall, Lahore, who had been taken possession of by the Police, were removed to the Charing Cross Police Station and not to the hospital which was nearer, and that some out of this number died at the Police Station, without any medical aid? Will the Government be pleased to state the number of persons who so died at the Police Station, with their names and other particulars?

Deportation of Drs. Satyapal and Kitchlew.

XII. Will the Government be pleased to state (a) whether

orders had been issued at the end of March or the beginning of April, 1919, against Dr. Satyapal and Dr. Kitchlew, of Amritsar, under the Defence of India Act requiring them to abstain from addressing public meetings and whether these gentlemen had submitted to those orders? (b) if so, what was the reason for deporting these gentlemen on the 10th of April?

XIII. Will the Government be pleased to state if it is a fact that the Government apprehended public excitement at the deportation of Dr. Kitchlew and Dr. Satyapal and for that reason piqueted the carriage-overbridge with the Military or mounted Police?

XIV. Will the Government be pleased to state if it is a fact that on the morning of the 10th April, business in Amritsar was going on as usual till the news of the deportation spread through the city, when all shops were suddenly closed in consequence thereof?

XV. Is it a fact that after the shops were closed an unarmed crowd started from the city to go to the house of the Deputy Commissioner to urge the release of the deportees and on the route passed by the National Bank, the Alliance, the Chartered Bank, the Church, Town Hall and other public buildings without making any attempt at mischief?

XVI. Is it a fact that the progress of the crowd towards the Deputy Commissioner's bungalow was barred by the piquet mentioned above which fired upon the crowd? If so, what was the immediate occasion for the firing?

The Firing Order.

XVII. Will the Government be pleased to state

(a) the number of times the crowd was fired upon at the foot and carriage overbridges at Amritsar on 10th April?

(b) Is it a fact that no violence against person or property was committed by any section of the crowd till after they had been fired upon?

XVIII. Will the Government be pleased to state (a) whether any proclamation prohibiting meetings under the Seditions Meetings Act was issued on or before the 13th April, 1919, at Amritsar? If so, at what time, in what manner and in what parts of the city was it published?

(b) If no such proclamation was published, will the Government be pleased to state if there was any prohibition of meetings by any other authority on or before the 13th April and if so, when, under what law and by whom such prohibition was issued, and in what parts of the city and in what manner it was published?

Jalianwala Massacre.

XIX. Will the Government be pleased to lay on the table a plan of the Jallianwalla Bagh where a large number of people were

shot while assembled at a meeting on the 13th April, 1919, drawn to scale, and showing,

- (a) all the entrances and exits to the Bagh ;
- (b) the height of the houses and the walls surrounding the Bagh ;
- (c) the spot where the Military were posted at the time of the firing on the 13th and its height above the ground where the people were assembled ;
- (d) the position of the armoured car posted in or near the Bagh on that day and
- (e) the position of the audience and their distance from the firing party.

XX. Will the Government be pleased to state what was the number of persons assembled at the Jallianwalla Bagh on the 13th April at the time they were fired upon ?

XXI. Will the Government be pleased to state

- (a) how and when and by whom the meeting at the Jallian walla Bagh held on the 13th April was advertised in the city ?
- (b) when did the authorities come to know that such meeting was going to be held ?
- (c) what steps, if any, were taken by the authorities to make it known to the persons assembling that the meeting was prohibited.
- (d) when did the people begin to assemble in the said Bagh ?
- (e) at what time did the proceedings begin and how long did they continue before the arrival of the Military ?

(f) whether there was any reconnoitering by aeroplane over the Jallianwalla Bagh at the time the meeting was going on and before the Military arrived ?

(g) What steps, if any, were taken by the authorities to disperse the meeting from the time people began to assemble to the time when the Military arrived ?

(h) At what time did the Military arrive on the scene and how long after did they open fire on the crowd ?

(i) What was the strength of the Military, what was their equipment and who were the officers in command ?

(j) Did any, and if so, which Magistrate or other responsible civil officer accompany the Military to the garden or was present there at the time of the firing ?

(k) By whose orders were the Military sent there and with what instructions, if any ?

(l) Were the people assembled entirely unarmed and were there also a number of children among them ?

(m) Was the order to fire given by any Magistrate or did the Military act on their own initiative ?

(n) Did the officer who ordered firing warn the people assembled and give them time to disperse before giving the order ?

(o) How long did the firing last and how many rounds were

fired? What was the nature of the ammunition used? What was the total number of bullets actually fired?

(p) What was the total number of persons (i) killed (ii) wounded, who subsequently died, (iii) wounded who recovered, at Jallianwalla Bagh together with the names, parentage, age, residence and other particulars?

(q) Whether there were any ambulance or first aid arrangements previously made by the authorities for the wounded, on the spot? If not, were any steps taken, after firing, for the disposal of the dead bodies and the treatment of the wounded?

(r) Of the persons wounded at the garden how many were admitted to any hospital?

(s) Was any order in force at Amritsar on the 13th April last, prohibiting people from leaving the houses after 8 P. M.?

(t) How long after the firing was the Bagh cleared of all corpses and by what agency?

(u) Will the Government be pleased to state if some of the dead and the wounded lying overnight in the garden were mutilated and despoiled of their valuables during the night?

(v) Will the Government be pleased to state whether any boys or children were shot or otherwise killed or injured at the Jallianwalla Bagh on the 13th of April, 1919, and if so, will the Government be pleased to give a list of the children, stating their names, ages etc.?

XXII. Will the Government be pleased to state whether there were any casualties among people who were in the houses or streets in the neighbourhood of the Jallianwalla Bagh when the firing took place there on the 13th of April? If so will the Government be pleased to state the names, age and other particulars of the sufferers?

XXIII. Will the Government be pleased to state if any steps were taken by the authorities and if so, when to ascertain the names and prepare a list of all the persons killed and wounded in the Jallianwalla Bagh?

XXIV. Is it a fact that the 13th of April was the Baisahk festival (New Year's day) on which the biggest *mela* in the province is held at Amritsar which is attended by thousands of persons from all parts of the province? Will the Government be pleased to state if a large number of such persons from outside were also present in the meeting at the Jallianwalla Bagh on that day? If so what steps were taken and when, to trace out the casualties among them?

XXV. Will the Government be pleased to lay on the table a statement giving the names of persons who were wounded at the Jallianwalla Bagh, who have been prosecuted and convicted or

discharged, stating in cases of conviction, the offence or offences with which they were charged and the punishments awarded to them ?

Martial Law Orders.

XXVI. Will the Government be pleased to lay on the table copies of all orders, proclamations, posters, notifications and notices issued,

(a) by the administrators of Martial Law in the Panjab in their respective areas,

(b) by civil authorities in the same areas during the operation of Martial Law,

(c) by civil authorities after the withdrawal of Martial Law notifying that certain acts by the civil population will be treated as offence, and dealt with by military officers ?

XXVII.—(a) Will the Government be pleased to state if it is a fact that in the lane known as Doggalan-ki-gali in the quarters known as Kanriyanwala Khuh, where Miss Sherwood was assaulted, every Indian, irrespective of age or position in life, wishing to pass through the lane, was made to crawl on his belly through the whole length of the lane and British soldiers were posted from morning to 8 p. m., to enforce the observance of this order ?

(a) Whether as a consequence of the enforcement of this order, houses in the lane remained unscavenged for many days.

XXVIII. Will the Government be pleased to state,

(a) If all the legal practitioners of Amritsar, nearly hundred in number, were compulsorily enrolled as special constables, and irrespective of age and physical fitness, not only were made to patrol the city for nearly a month, but also required to walk several times a day to a place outside the city, to answer the roll call ?

(b) Were they allowed to attend to their professional duties during the period ?

(c) Is it also a fact that these lawyers were made to fetch and carry tables, chairs, etc., for Europeans ?

(d) Is it also a fact that the said lawyers were all summoned and made to stand in rows in front of the flogging stand and that two persons were actually flogged in their presence ?

XXXIX. (a) Will the Government be pleased to state if it is a fact that the electric and water-supply of the whole city of Amritsar, exclusive of the civil lines was cut off for four or five days about the 12th of April last ?

(b) Is it also a fact that a large number of wells in the city of Amritsar had been closed in recent years when Mr. King was Deputy Commissioner there ?

XXX. Will the Government be pleased to state :

(a) If it is a fact that several very respectable undertrial

prisoners, including bankers, lawyers and doctors of Amritsar, were handcuffed in pairs and confined for several days in an open racket court in April last at a time when it was hot during the day and cold during the night ;

(b) whether they remained so handcuffed continuously for all the 24 hours of the day for several days together and whether they had to eat, drink, sleep and attend to the calls of nature while so hand cuffed in pairs ;

(c) Whether the said prisoners were subsequently removed to cells in the forts and kept there so hand-cuffed ; if so what were the dimensions of such cells and the number of prisoners confined in each ?

Machine gunning at Gujranwala.

XXXI. Will the Government be pleased to place on the table plans drawn to scale of the town of Gujranwala and of Gharjak Bhagawanpura Dhulla and other neighbouring villages thereof where bombs were dropped or machine guns were used, showing

(a) the situation of the properties to which damage was done by the mob on the 14th April, last ;

(b) houses actually occupied on the 14th and 15th April by the Europeans ; and

(c) the spots where bombs were dropped or to which machine gun fire was directed indicating in each case whether it was part of a house or other building or an open space ?

XXXII. Will the Government be pleased to state

(a) how many aeroplanes were sent from Lahore to Gujranwala on 14th April 1919 and by whose order ?

(b) How many of these aeroplanes were equipped with machineguns or armament of other kinds ?

(c) How many bombs were dropped from these aeroplanes and how many shots fired from machine or other guns ?

(d) What was the total number of casualties due to such, giving the names and other particulars, bombing and firing, of the persons wounded or killed ;

(e) Whether any bombs were thrown, or shots fired from aeroplanes at any place in Gujranwala town or in neighbouring villages on any date after the 14th April. If so how many and where ?

XXXIII Will the Government be pleased to state the sex, ages, designations and other particulars of Europeans who were in Gujranwala town at the time of the arrival of the aeroplanes on the 14th April.

XXXIV. Will the Government be pleased to state the names and places, if any, in the Gujranwala district other than the town of Gujranwala and its neighbourhood, where any firing was

resorted to by the police or the military? If so, will the Government state the nature of arms or ammunition used in each place and the number of casualties with names and other particulars.

Messrs. Melaram and Labh Singh.

XXXV. Will the Government be pleased to state,

(a) if it is a fact that on the 15th April last, Col. O'Brien, Deputy Commissioner of Gujranwalla, with a strong body of police and European soldiers and with an armoured car marched to the house of Lala Melaram, B. A., LL. B., pleader and arrested and handcuffed him and took him away without allowing him to dress himself or to speak to his family,

(b) Whether the party then met Mr. Labh Singh, M. A., (Cantab), Barrister-at-Law and arrested and handcuffed him and chained him with Lala Melaram.

(c) Whether the party then proceeded to the houses of twenty other gentlemen, pleaders, bankers and other respectable citizens, and arrested and handcuffed and chained them all together?

(d) Whether the persons so arrested and chained together were marched to the city two and two, headed by a Hindu and Muhammadan to ridicule Hindu and Muhammadan unity, as was stated at the time by Col. O'Brien?

(e) Whether under the orders of Col. O'Brien two Municipal Commissioners walked in front of the procession thus formed and pointed to the aeroplanes hovering overhead, and kept on shouting to the people to make way for the prisoners on pain of being bombed or shot down?

(f) Whether after being thus paraded through the principal streets of the town, the prisoners were taken to the railway station and put into an open coal truck which was guarded by a number of European soldiers with fixed bayonets and by an armoured engine with a gun directed towards the prisoners.

(g) Whether the prisoners were not allowed to leave their places even for the purposes of attending to the calls of nature; and whether some gentlemen had to relieve them even where they were huddled together,

(h) Whether on reaching the Lahore Railway station, and before being removed to the jail, the prisoners were kept for about ten hours along with thirty other prisoners in a room which opened by means of an iron barred unpanelled door into another room which was used as a latrine.

XXXVI. Will the Government be pleased to state whether a number of pleaders and other respectable citizens in the town of Shekhupura in the district of Gujranwala were arrested and treated in a manner similar to that adopted at Gujranwala and were subjected to similar inconveniences when being taken to Lahore?

XXXVII. Will the Government be pleased to state whether almost the entire population of the town of Shekhpura above the age of 10 years irrespective of rank or social position was summoned by Mr. Bosworth Smith, I. C. S., Joint Deputy Commissioner and one of the Martial law officers, and made to sweep a large open piece of ground ?

XXXVIII. Is the government aware that a marriage party of certain Muhammadans of village Rajgarh within the municipal limits of Lahore was arrested and the members thereof were convicted by Mr. E. A. Penhearow, one of the martial law officers of Lahore ?

If so, will the Government be pleased to state :—

(a) the number of persons tried and convicted ?

(b) whether the bridegroom and the Mullah Priest were also among the accused ?

(c) the offence for which they were arrested and tried, and

(d) the sentences passed upon each person ?

Correspondence between Imp. Govt. and Punj. Govt.

XXXIX. Will the Government be pleased to lay on the table the correspondence which passed between it and the Punjab Government leading to the declaration of martial law in the Punjab ?

XL. Will the Government be pleased to state :—

(a) the facts and circumstances, which in its opinion constituted a state of open rebellion against the authority of the Government in certain parts of the province of the Punjab, within the meaning of Regulation X of 1804, on the date on which Ordinance I of 1919 was promulgated by the Governor-General, and,

(b) the date or dates up to which such state of open rebellion continued in each part of the Punjab to which the said Ordinance had been applied ?

Gurdaspur Next !

XLI. Will the Government be pleased to state :—

(a) Whether a number of barristers, pleaders and other respectable persons of Gurdaspur district, where martial law was never proclaimed, were arrested on or about the 2nd May, 1919, brought in hand-cuffs to Lahore, confined in the central jail there and released at Gurdaspur on the 8th July without trial after having been kept in solitary cells for most of the period ?

(b) If so will the Government be pleased to give the names and other particulars of the persons arrested, and state the reasons for their arrest and the law under which they were detained in custody without trial for such a long time ?

XLII. Is it also a fact, that at the time of the release of the Gurdaspur lawyears referred to in the preceeding question, the District Magistrate of Gurdaspur, Mr. Harcourt, I. C. S expressed

his regret in open court that Government had taken no action against them, and told them that he, however, was taking steps to move the High Court at Lahore to proceed against them under the Legal Practitioners Act ?

General Dyer !!!

XLIII. Will the Government be pleased to state :—

(a) Whether General Dyer visited Gurdaspur on the 18th April, 1919 and held a Durbar in the Government School hall to which lawyers, honorary magistrates, Government servants, bankers, traders, ziladers, lambardars, etc., were invited by the Deputy Commissioner.

(b) Was the hall guarded by the military with armoured cars and machine gun ?

(c) Did General Dyer address the audience as *Budmashes* and use other insulting language ?

XLIV. Did General Dyer address similar remarks to a similar meeting at the town of Batala in the district of Gurdaspur ?

XLV. (a) Is it a fact that Sardar Gauhar Singh, a retired inspector of police of Sheikarpura, was arrested and sent to the Central Jail at Lahore as a hostage for his three sons named Amar Singh, Atma Singh and Santokh Singh, the last aged 16 years, who were wanted by the police but could not be found at the time in the station ?

(b) Is it also a fact that though he has been released, a report has been made by the executive authorities recommending forfeiture of his pension ?

And then Hafizabad !!

XLVI. Will the Government be pleased to state :—

(a) If it is a fact that the Gujranwalla police proceeded to the town of Hafizabad with a warrant for the arrest of 121 persons, containing neither names nor the descriptions of the persons to be arrested and that the said police did arrest 121 residents of Hafizabad under the warrant.

(b) Will the Government be pleased to place on the table a statement giving the names and other particulars of the persons so arrested, the dates of their release and of conviction, the offence or offences for which they were arrested or convicted and the sentences awarded to those convicted ?

XLVII. Has the attention of the Government been drawn to a letter published in the *Leader* newspaper of Allahabad, dated the 14th August, 1919 and signed 'Justice,' detailing the humiliation to which the people of Hafizabad were subjected during the martial law period, in particular that school children and even infants of four or five years of age had to be present at the roll call twice a day before a military officer ?

RE MARTIAL LAW IN PUNJAB.

XLVIII. Will the Government be pleased to state if it is a fact that certain district officers or their subordinates in the Punjab have imposed and collected by coercion and threats large sums of money as fines from several villages and small towns for their alleged misdeeds during the recent disturbances? If so will the Government be pleased to make a detailed statement showing the amount so collected from each village or town, the law under which, and the authority under whose orders the money was so collected and the manner in which it was disposed of?

Aeroplane Bombing of School boys !!!

XLIX. Will the Government be pleased to state:—

(a) Whether on the 14th April last a bomb was thrown from an aeroplane at the Bhalsa High School boarding house at Gujranwala, which is situated at a distance of over a mile from the buildings against which any violence had been committed and the places where any mob had collected?

(b) Did the bomb burst and injure the platforms and some of the walls of the premises?

(c) Were over 150 students present at the time in the boarding house?

(d) Is it a fact that shots were fired from one of the aeroplanes and injured a *halwai* who had a shop on the premises?

Kasur.

L. Will the Government be pleased to state whether Lala Dhanpat Rai, pleader of Kasur, aged over 70 years, was arrested on the 15th April, four days after the riot that took place there, handcuffed and marched to the railway station surrounded by a strong military guard with fixed bayonets, and from there taken to the Lahore jail where he was kept for nearly two months and then released without any charge or trial?

LI. Will the Government be pleased to state, if amongst others, Maulvi Ghulam Mohi-ud-in, pleader of Kasur (who had last year been publicly rewarded for his services in connection with the War) and Maulvi Abdul Qadir, a senior pleader of Kasur, were arrested and kept in confinement for some weeks in an improvised lock-up in the railway station, and were then released without any charge or trial?

LII. Will the Government be pleased to state if it is a fact that three gallows were erected in a public place at Kasur, and were not taken down till after several days? If so, what was the object with which they were so placed?

LIII. Will the Government be pleased to state if it is a fact that several school boys at Kasur were flogged, and if so to state their names, ages and other particulars together with the number of

stripes administered in each case and the offence for which the boys were so punished?

LIV. Will the Government be pleased to state if it is a fact that during the martial law period, permits to travel were refused to several pleaders of Kasur, who had to attend to their cases before ordinary municipal courts at the head-quarters of the district, *viz.*, Lahore?

LV. Will the Government be pleased to state if it is a fact that on or about the 1st of May, 1919, practically the whole population of the town of Kasur, was summoned to the railway station for the purpose of identification, and that they were made to stand bareheaded, exposed to the sun, for six hours or so? Is it also a fact that while the male population was thus withdrawn from the town, several houses were searched by the military or the police accompanied by the Ward member, and that in some cases, even the Zenana apartments were entered in search of possible hidiers?

Lala Manohar Lal.

LVI. Will the Government be pleased to state why Mr. Manohar Lal, M. A., (Cantab), Bar-at-law, formerly Minto Professor of Economics at the University of Calcutta and now a prominent member of the Lahore bar and a syndic of the Panjab University, was arrested on the 18th April, 1919 and kept in jail for nearly a month, including one week of solitary confinement?

LVII. Will the Government be pleased to state if it is a fact that on the date Mr. Manoharlal was arrested his bungalow was locked and sealed by the police and his wife and children turned out and obliged to live in one of the outhouses used as servants quarters, until the bungalow had been searched about a week later?

Rai Saheb Ram Prasad.

LVIII. Will the Government be pleased to state—

(a) Why Rai Sahib Seth Ram Prasad, Municipal Commissioner, and one of the largest house proprietors and bankers of Lahore, was arrested in April last and marched in handcuffs to the Central Jail, a distance of nearly three miles, kept in solitary confinement, and then released without trial after several weeks?

(b) Will the Government be pleased to state the sums subscribed by him and his son towards the War loans and war charities and other services rendered by him during the War.

Lala Ratan Chand.

LIX. Will the Government be pleased to state if the following incidents connected with the arrests and detention without trial, of Lala Ratanchand, Secretary of the Punjab Provincial Congress Committee, and Lala Dhaniram Bhalla, a merchant of Anarkali, Lahore, are correct? A letter from the deputy commissioner of Lahore

was received by Lala Ratanchand on the 19th of April asking him to produce his carriage before the martial law officer in charge of the transport. Lala Ratanchand immediately wrote in reply that he had never possessed and was not then in possession of any carriage at all. In spite of this, on the 20th of April, he was sent for by the Deputy Commissioner and asked why he had failed to produce his carriage. Lala Ratanchand explained that he had no carriage at all. After further questions his statement to this effect was recorded by the Deputy Commissioner, and he was allowed to go.

On the evening of the 22nd at about 8-30 P.M., Lala Ratanchand was arrested by a police Inspector and taken to the police station where he was told that the reason for his arrest was his failure to produce a carriage in accordance with the orders of the Deputy Commissioner. On his again representing the facts of the case, the police officer had enquiries made from Lala Ratanchand's neighbours and relations, and after having satisfied himself, he released him.

In the afternoon of the 24th April the superintendent of police C. I. D., went to his house with a military guard in motor-car and arrested Lala Ratanchand again and took him to the Delhi Gate police station while he was under high fever. Here Lala Ratanchand and Lala Dharamdas Suri, Vakil, High Court, and Dhuniram Bhalla, who had also, in the meanwhile been arrested, were surrounded by about a hundred European and Indian soldiers, with fixed bayonets and made to walk through the city to the Fort, a distance of about a mile, where they were confined. Here Lala Ratanchand and Lala Dhaniram were kept for fifty days during which time no statement was ever taken from them nor were they ever told for what offence and under what law they had been arrested and detained.

LX. Will the Government be pleased to state the circumstances under which the following persons were arrested and released without trial after being kept in custody for several days —

1. Lala Dunichand, piece-goods marchent, Bazaz Hatta, Lahore.
2. Lala Vaid Raj Sardarilal, managing director, Ayurvaidic and Pharmaceutical Company, Ltd, Lahore.
3. Sardar Wadhawa Singh, dealer in perfumes, and jams, Lahore.
4. Lala Amirchand, proprietor, Swadeshi Stores, Anarkali, Lahore.
5. Lala Jagannath, Secretary, Arya Samaj Wachhowali, Lahore.
6. Lala Hiralal Kapur of the Punjab *Samachar*, Lahore.
7. Lala Kaluram Kohli, proprietor Simla Hindu Hotel, Lahore.
8. Lala Diwanchand, proprietor, West End House, Lahore, (arrested at his shop at Amritasar).
9. Lala Mohanlal Saraf, banker, Suha Bazar, Lahore.

10. Lala Kishenchand, carpet merchant, Lahore.
11. Lala Saligram, proprietor, Aror Bans Press, Lahore.
12. Lala Rajaram, Jeweller, Bazaz Hatta, Lahore.
13. Lala Daulatram, goldsmith, Cunt Bazar, Lahore.
14. Mistri Karimbaksh, gas contractor, Gumti Bazar, Lahore.
15. Pandit Amarnath Sharma, estate agent, Jauri Mauri, Lahore.
16. Lala Chunilal, shopkeeper, Moti Bazar, Lahore.
17. Sirdar Mohan Singh, hardware merchant, Dabbi Bazar, Lahore.
18. Lala Hemraj, banker and landed proprietor, Shadara.
19. Mian Sardar Mahammad, *alias* Saradhara Munshi, Shahdara.
20. Mian Siraj Din, Munshi, Shahdara.
21. Mian Nurdin, *alias* Madha, Mochi Gate, Lahore.
22. Mian Zahur Din, son of Nurdin, house proprietor, Rang Mahal Bazar, Lahore.
23. Lala Jagannath, cloth merchant Bazar Hatta, Lahore.
24. Desraj, stamp vendor and deed writer, Bazar Hatta, Lahore.
25. Lala Mulk Raj, shopkeeper and Chaudhri of Gumti Bazar, Lahore.
26. Badshah Bhusowela, Bhati Gate, Lahore.
27. Nalha Khan *alias* Malha, Halwai, Delhi Gate, Lahore.
28. Mian Shadi Khan, Kakenai, Mohalla Kalal, Lahore.
29. Mian Ibrahim Khan, cloth merchant, Lohari Mandi, Lahore.
30. Pt. Jairam Das, Khatri Kucha Kaghzian, Machhi Hatta, Lahore.
31. Lala Jairam Das, Khatri, Kucha Kaghzian Macchi Hatta, Lahore.
32. Pandit Hukumal, son of Pandit Thakur Das, Wachhowli, Lahore.
33. Lala Beliram of the firm of Ganeshdas Shankar Das, Bazaz Hatta, Lahore.
34. Mian Rajadin, umbrella maker, Dabbi Bazar, Lahore.
35. Mian Muhammad Hassan, son of Shadi Khan Kakezai, Mohalla Kalal, Lahore.
36. Mian Jalal Din, son of Azizuddin, shopkeeper, Akbari Mandi, Lahore.
37. Swami Sevananand, physician-in-charge of the Ramakrishna charitable dispensary, Sutar Mandhi, Lahore.
38. Lala Ganeshdas, merchant, Bazaz Hatta Lahore : and
39. Tarachand, barber, Wachchoowala, Lahore.

LXI.—Will the Government be pleased to state if Dr. Kedar Nath of Amritsar, a retired civil Surgeon, aged 60 years, who had been invalided in 1909 on account of heart troubles, was arrested and hand cuffed and marched through the streets with 62 other prison-

ers, to the Jail, and kept in confinement for a fortnight with two other prisoners, in a cell which was meant for one person only and then released without trial. If so, for what offence?

Martial Law Posters.

LXII. Will the Government be pleased to state :

(a) If it is a fact that Martial Law notices were posted at the houses and shops of a number of people at Lahore with directions that the occupants must guard the posters, and that if they were damaged, torn or disfigured, the occupants would be severely punished under Martial Law.

(b) Is it a fact that mostly the people who had taken part in public movements or had any interest in any of the persons arrested were selected for this form of harrassment?

LXIII, Will the Government be pleased to state if it is a fact that even after the arrest of the persons at whose houses the Martial Law notices were posted at Lahore, Martial Law authorities continued to post such notices at their houses, making the members of their families responsible for duly exhibiting and protecting them, thus forcing them to keep anxious and continuous personal watch over the said posters?

LXIV. Will the Government be pleased to lay on the table a statement showing the number of persons punished for tampering with the Martial Law posters giving in each case the name, age, parentage, etc., of the said persons and the punishment inflicted upon them?

LXV. Will the Government be pleased to state if it is a fact that (a) the name of the Sanatan Dharma College Hostel, Lahore, was not included in the first published list of places at which Martial Law notices were to be exhibited?

(b) That notwithstanding this some posters were put up on the boundary wall of the hostel without intimation to the College authorities or the inmates of the hostel;

(c) That one of the posters was torn by some unknown person whose identity has not yet been discovered and on this all the students in the Hostel were called by the Martial Law authorities and were marched in the sun carrying their bedding on their shoulders to the Fort, a distance of nearly three miles, and interned there in a body.

(d) That the students were not released until the principal and the president of the Committee of the College gave an undertaking on the following day to the authorities to be personally responsible for the proper exhibition and safety of the notices?

Dayalsingh College Poster !

LXVI. Will the Government be pleased to state if it is a fact that (a) one morning during the Martial Law period, the

Principal of the Dayalsingh College, Lahore, was served with an order of the Administrator of Martial Law, Commanding Lahore Civil Area, to the effect that it had been reported to him that a certain objectionable poster had been found put up on the outer wall of the College premises and had been removed by the police and brought to his notice, and that if the College authorities did not find the writer and report him before 12 noon the same day, drastic measures would be taken against all concerned with the College.

(b) On this the trustees (Raja Narindra Nath, M. A., once Commissioner of Lahore, Rai Bahadur Sundardas Suri, M. A., and Lala Shiva Dayal, M. A., retired inspectors of school and Lala Kunwar Sain, M. A., Barrister-at-Law and Principal, Law College) and the staff made a careful inquiry and came to the conclusion that none of the students of the College was the writer of the notice.

(c) That meanwhile Col. Frank Jhonson, the Martial Law Administrator, arrived there in person and it was pointed out to him that there were no signs on the wall at all to indicate that the poster in question had been nailed or posted there. But he replied pointing his finger to a certain spot on the wall that he decided that it had been posted at that spot.

(d) That the next day the Principal was sent for at the Martial Law headquarters and was informed that he must pay a fine of Rs 250 or in default undergo three months imprisonment and then he was taken in a motor car to the College with two soldiers, with fixed bayonets, and was released on payment of the fine to the latter.

(e) That from that time onwards the students began to keep careful secret watch all round the extensive College and hostel premises day and night in batches and kept a regular diary.

(f) That after a few weeks' continuous watch and ward, the batch of students on guard at the time caught hold of a person red-handed trying to put up on the College wall, a spurious poster and were about to take him before the Martial Law authorities when several other persons arrived on the scene and rescued the offender saying that they belonged to the police and would themselves take him before the Martial Law officers.

(g) That on this incident being brought to the notice of the Martial Law authorities by the Principal the fine which had been previously imposed on him was remitted.

Will the Government be pleased to give the name and other particulars of the offender, and state what action if any has been taken against him?

LXVII. Will the Government be pleased to state if it is a fact that all the students of the D. A. V., the Dyalsingh and the Medical Colleges at Lahore were required to attend roll-calls before mili-

tary officers when they were made to stand in the sun, guarded by the military with fixed bayonets and that this process was continued for three weeks, immediately preceding the university examinations.

(b) Is it also a fact that in the case of the King Edward Medical College, the total distance which the students were made to traverse on foot in the summer heat for attending the roll-call amounted to not less than 16 miles a day?

(c) Is it a fact that some students actually fainted while going to, attending, or returning from such roll-call parades and that thereupon a nearer place was fixed for taking the roll-call?

LXVIII. Will the Government be pleased to state if it is a fact that the Principals of certain colleges in Lahore were coerced by the Martial Law Administrator to inflict very severe punishments on a certain percentage of their students without regard to any evidence of their guilt? If so, will the Government be pleased to lay on the table all the orders issued by the Martial Law Administrator and all the correspondence relating to this matter between him and the Principals of the said colleges?

LXIX. Will the Government be pleased to state how many motor-cars, cycles, carriages, bicycles, electric fans, lamps, and telephones were commandeered from the inhabitants of Lahore and what was the military necessity justifying such a course?

LXX. Is it a fact that most of the Europeans whose motor-cars had been commandeered were supplied by the military authorities with conveyances commandeered from Indian gentlemen?

LXXI. (a) Will the Government be pleased to give the names and addresses of all the residents and institutions from whose premises electric fans, lights, and phones were removed?

(a) Have the fans, lights, telephones so commandeered been in all cases returned to their respective owners since the withdrawal of Martial Law? If not, why not?

LXXII. Will the Government be pleased to state if it is a fact that electric fans and lamps were removed by the Martial Law authorities from places of worship like the temples of the Brahmo Samaj and Arya Samaj, thus hurting the feelings of and causing discomfort to the worshippers? And is it a fact that in spite of representations having been made both to military and civil authorities these fans and lamps have not yet been returned?

LXXIII. Is the Government aware that in some cases tried by Martial Law officers, specially towards the close of the Martial Law period, the accused were convicted without the whole of the defence evidence being heard, even though witnesses were present in court on the ground of want of time. *e.g.*, in the case of Lala Gurdasram and Lala Shivaram, pleaders of Hafizabad, in the dis-

trict of Gujranwala who were sentenced to two years' rigorous imprisonment each by Mr. Wace, I. C. S.

LXXIV. Will the Government be pleased to state if it is a fact (a) that Ramlok, son of Daulatram, aged 17 years, a student of the Government High School, Lyallpur, was arrested on the 25th April, and having been detained in police custody for 3 weeks was released for want of evidence against him; (b) that several days after his release his father Daulatram appeared as a defence witness for one Ramditta and deposed that the police had asked Ram Ditta to turn an approver but he had refused to do so.

(c) That on this his son Ramlok was re-arrested on the following day and put on his trial for the very same offences for which he had been arrested and released before;

(d) That the trial of Ramlok was fixed for the 9th and 10th June, but as Martial Law was going to be withdrawn at midnight on the 9th June without any previous intimation having been given to the accused or to his father, and

(e) That the accused was tried and sentenced to one year and seven months' rigorous imprisonment for offences under section 147, 426 and 506, Indian Penal Code by Mr. A. L. Hoyel I. C. S., officer presiding over Summary Courts under Martial Law, without any chance being given to him to produce his defence?

LXXV. Will the Government be pleased to state if it is a fact —(a) that one Bhagwan Singh, a meat-seller of Lyallpur was arrested on the 6th June last and placed before the Martial Law Summary Court on the 7th June, (b) that on the 8th June, part of the evidence was heard and the case was adjourned, (c) that as the Martial Law was to be withdrawn at midnight on the 9th June the case was taken up at 11 o'clock that night without any opportunity being given to his counsel to be present, and the accused sentenced to three months' rigorous imprisonment?

Queer Judicial Procedure.

LXXVI. Is the Government aware that in some cases tried by the Martial Law Commissions constituted under Ordinance No. I of 1919, no record of evidence of witnesses either for the prosecution or the defence has at all been made nor judgments recorded, though heavy sentences have been awarded, *e. g.*, (a) the case of Crown *versus* Farzala, son of Gumardin, Kakazai, convicted under section A and sentenced to transportation for life by the Commission presided over by Lt. Col. Irvine on the 26th of April 1919 and (b) trials No. 20 and 21 of Hansraj and Hariram of Amritsar before the Commission presided over by the Hon. Mr. Justice Leslie Jones, I. C. S., Judge of the High Court of Judicature at Lahore, convicting the aforesaid persons to 7 years, rigorous imprisonment each under section 412. I. P. C.?

LXXVII. Is the Government aware that in several cases tried by the Martial Law Commissions constituted under Ordinance No. 1 of 1919, examination of outside witness for the defence was refused except by interrogatories and when in pursuance of this order of the Commission interrogatories were actually put in, they were referred by the Commission to the convening authority who disallowed such as he did not think proper, without hearing the accused or his counsel in contravention of the provisions of section 85 (7) of the Indian Army Act ?

LXVIII. Is the Government aware that in several instances the convening authority refused to issue interrogatories for examination of defence witness unless money was deposited by the accused to defray the expenses thereof.

LXXIX. (a) Is the Government aware that in the trial known as the Gujranwala Leaders case, held before the Commission presided over by the Hon. Mr. Justice Broadway, a Judge of the High Court of Judicature at Lahore, one of the accused Jagannath who wanted to establish an *alibi* by production of state records and other evidence from Kathiawar was ordered to deposit Rs. 250 before the interrogatories could be issued ?

(b) Is the Government also aware that though Jagannath did deposit the above sum and interrogatories were actually issued, the learned commissioners delivered judgment convicting Jagannath and sentencing him to transportation for life and forfeiture of property without waiting for the return of the interrogatories, in spite of the written and oral protest of his counsel ?

LXXX. Will the Government be pleased to state if it is a fact that in the case known as the Lahore Conspiracy case (King-Emperor *vs.* Harkishen Lal, etc.) tried by the Commission presided over by the Hon. Mr. Justice Leslie Jones, I. C. S., though the Public Prosecutor was present throughout the trial to conduct the case on behalf of the Crown, the cross examination of the defence witnesses was conducted by the commissioners themselves and the public prosecutor put only half a dozen questions to 21 out of more than 600 witnesses examined for the defence, thus depriving the defence of the right of re-examination ?

LXXXI. Will the Government be pleased to state.—

(a) Whether it is a fact that the Convening Authority issued written order which were exhibited in the Court room prohibiting the taking of shorthand notes of proceedings before the Commission even when an undertaking was offered on behalf of the accused that such notes would be used solely for the purpose of the cases and would not be published ?

(b) Is it also a fact that on protest being made by defence counsel that the Convening Authority had no power to pass such an order the Commission presided over by the Hon. Justice Jones, I. C. S., expressed its inability to interfere with the order of the Convening authority?

LXXXII. (a) Will the Government be pleased to state the grounds on which the Martial Law authorities prohibited the entry of counsel from outside the Punjab into the Martial Law area?

(b) Will the Government be pleased to state if Sir Earle Richards, senior counsel for the Secretary of State for India, who opposed the application of Ratanchand and Bugga Choudhry for special leave to appeal to the Privy Council, was right in stating that the prohibition was confined to persons coming from Bengal?

(c) Is it a fact that besides Mr. Eardley Norton, Mr. J. N. Roy, Mr. B. Chakravarti, Mr. Gregory, Mr. Langford James, Mr. C. R. Das, Mr. B. C. Chatterji of Calcutta bar, permission to appear before the Martial Law Commission at Lahore was refused to the Hon. Pandit Motilal Nehru of the Allahabad High Court, Mr. Syed Hasan Imam of the Patna High Court and Sir Chimanlal Setalvad and Mr. Azad of the Bombay bar?

LXXXIII. Is the Government aware that the administrator of Martial Law at Lyallpur issued an order prohibiting the entry into that district of legal practitioners who ordinarily practise in the districts in the Punjab, other than Lyallpur?

LXXXIV. Is the Government aware (a) that Maulvi Muharam Ali Chishti, a Vakil of the High Court at Lahore who was unaware of the order referred to in the preceding question appeared in the last week of May before the Sessions Judge at Lyallpur in ordinary criminal case (No. 116 of 1919) without any objection being raised by any one to his entry in the district, (b) that about a fortnight later, on the 11th June two days after the Martial Law had been withdrawn from Lyallpur and on the day on which it was to be withdrawn from Lahore, Mr. Moharram Ali Chishti was arrested by the Lahore police and placed before Major Ferrar, one of the Martial Law officers at Lahore, on the charge of having acted in contravention of the Lyallpore Martial Law order referred to above and fined Rs. 100.?

Rev. C. F. Andrews.

LXXXV. Will the Government be pleased to state (a) the reason why permission to enter the Martial Law area was refused to Mr. C. F. Andrews, who had been appointed as the representative of several leading Indian papers; and (b) why later on when Mr.

RE MARTIAL LAW IN PUNJAB

Andrews was coming to Lahore on his own account he was taken out of the train at Amritsar railway station, detained there for several hours and finally sent back out of the province ?

LXXXVI. Will the Government be pleased to state :—

(a) If it is a fact that after the declaration of Martial Law at Lahore no Indian was allowed to travel by train either from or to Lahore, without a special permit granted to him by the Martial Law authorities ?

(b) Whether as a matter of fact such permits were granted to Indians only on the recommendation of a European or Anglo-Indian irrespective of his position in life ?

Hon. Mian Mohd. Shafi.

LXXXVII. Will the Government be pleased to state if it is a fact that the Hon. Khan Bahadur Mian Muhammad Shafi, C. I. E., at that time a member of the Viceroy's Legislative Council and president of the High Court Bar Association, Lahore, asked for a permit for his agent to enable the latter to travel to his lands in the Montgomery district and that his application was refused ?

Must Salam Sahibs.

LXXXVIII. Will the Government be pleased to state if one of the orders issued by the Martial Law authorities at various places in the Punjab was that every Indian of whatever status in life must *Salam* every European ? If so, will the Government be pleased to state :—

(a) the areas in which such orders were issued and enforced ;

(b) the number of persons arrested and punished for infringement of such orders, and

(c) the names, ages and occupation of persons who were flogged for breach of this order and the number of stripes inflicted in such cases ?

LXXXIX. Will the Government be pleased to state if it is a fact that one Gopaldas, son of Deviditta Mal, caste Arora of Akalgarh, who was a telegraph peon at Lyallpur during the Martial Law days, was arrested for not *salaming* a European officer to whom he had gone to deliver a telegram and that he was given five stripes for it in jail although he protested that he had actually *salamed* the officer and was willing to do again ?

LXL. Is it a fact that in some districts in the Punjab where Martial Law was in force, orders were issued that every Indian driving in a carriage or riding a horse must get down when he

passed by a European, and further that Indians carrying open umbrellas must close and lower them when they met a European ?

LXLI. (a) Will the Government be pleased to lay on the table a statement showing the number, names, and other particulars of persons, if any who have been arrested, detained, tried and punished on the railway station by the Martial Law officers, since the withdrawal of Martial Law from the districts in which those stations are situated ?

(b) If so, will the Government be pleased to state what is the nature of the punishment inflicted in each case ?

LXLII. Will the Government be pleased to state if there is any reason for the continuation of Martial Law on the railway stations in the Punjab ? Is the Government aware that such continuance of Martial Law exposes Indians to unnecessary humiliations and hardship and causes needless irritation ?

EXTRACTS FROM

EVIDENCE BEFORE

THE

HUNTER COMMITTEE

(The Punjab Disorders Enquiry Committee)



Extracts from

Evidence Before Hunter Committee

(The Disorders Enquiry Committee)

Mr. Barron, Chief Commissioner of Delhi at the time of the disturbances, tendered evidence on the 3rd November 1919 before the Delhi sittings of the Committee.

In answer to Lord Hunter, he said : The local Satyagraha Sabha was founded on the 7th March. Thirty or forty joined, mostly Home Rule Leaguers. The idea of the Sabha was the repeal of the Rowlatt Act by passive resistance by disobedience of orders. At first my information was that the hartal would not be of a general character but the organisation was more complete than was expected and the hartal was a general one. I hear that the contractor was selling sweet-meats at the third class entrance to the railway station when a body of men went and tried to stop. A certain amount of property was destroyed. As far as he could gather, 8 people were killed and two died in hospital and about a dozen people came to the civil hospital for treatment.

Q: On the morning of the 9th was any order made by you with reference to Mr. Gandhi?

A. Yes, with the permission of the Government of India, we issued an order on Mr. Gandhi excluding him from entering Delhi.

Q. What was your reason for asking that?

A. He advocated passive resistance and the presumption was that he was going to Delhi to continue the movement. That would probably have led to his arrest and to very serious disturbances and possibly to greater loss of life.

Q. Was he not arrested?

A. No, he was taken back under surveillance.

Q. So far as the leaders of the Satyagraha Sabha were concerned, were they taking any part as regards the closing of shops at this time?

A. I do not think they were. But they were not able

to control the crowd—I mean some of the principal leaders. But there were a few minor leaders who were.

Witness further said nothing of a serious nature occurred on the 10th but the time was one of great anxiety, judging from the temper of the crowd in the city. The meeting which the Deputy Commissioner had with the leaders was attended with very little result. Very early in the morning of the 14th the telegraphic message was received that there was trouble in the railway yard at Shakurpur. That was dealt with by Mr. Currie in his magisterial capacity. In a way it was connected with the disturbances in Delhi. In the morning of the 14th the railway authorities reported that the men were being stopped from going to work and some officers in the city reported the same thing. In consequence of that witness issued an order under Section 188 of the Penal Code prohibiting intimidation. Telephonic message was also received from one of the banks the their clerks were so thoroughly frightened that they could not attend office. After that a C.I.D. Inspector who was attending a meeting in Edward Park was assaulted. That was a meeting called by some of the minor leaders. That meeting was dispersed by the Magistrate with troops. There was no firing on that occasion. Witness then described the further meeting he had with leaders and the shopkeepers. When this meeting was held there was a large crowd outside the Chandney Chawk. It was getting more and more threatening until it disappeared.

Q. At this time what was the attitude of the principal leaders ?

A. They were very anxious to put a stop to this. This is true of the principal leaders.

Proceeding witness said on the morning of the 17th a number of shops in the city opened under Police protection. A large crowd attacked the picket—a constable was nearly killed. There was firing which stopped all trouble and the crowd at once left Chandney Chawk. In the afternoon the Government of India extended the Seditious Meetings Act to Delhi and witness issued a notification immediately after this witness suggested to Simla that Martial Law should be extended to Delhi. Simla authorities instructed witness to send a report in writing and witness submitted it that evening. On the 19th the hartal came to an end.

Q. What did you attribute the termination of the hartal to ?

A. Chiefly to the action of the Police and to the rumour that Martial Law was about to be declared in Delhi and another reason was the economic factor that people were tired of the loss they were suffering.

Q. Was this period through which you passed difficult and anxious for those in authority ?

A. They were of a very great tension and we were extremely anxious during the whole period lest there should be a collision between the Police and the Military and the people and there should be more bloodshed.

Continuing witness said the mob consisted of the lower order of people. They had another hartal since then on the last 17th. October. There were two attempts to tamper with the loyalty of the troops and the Police. At this time there were a large number of rumours, one being that the Golden Temple had been bombed and a party of Sikh girls had been maltreated in the train. They came down to Delhi and it was not possible to ascertain who circulated it. They appeared in a number of newspapers also, of Delhi and of Allahabad and Bombay. There were also misleading rumours about the powers conferred on the Police by the Rowlatt Act.

Q. Did you find trace of any organised attempt to destroy property or take life on the part of the crowd ?

A. No, not in Delhi. The whole damage that occurred comes to about Rs36,000-

Continuing witness said: No public institutions were attacked. There was no indication of any special attack on Europeans but they were asked to get out of motor-cars and bicycles on account of the hartal. About this time an order was made for censorship of certain papers. The effect of this was entirely good and as a result certain newspapers ceased publication. Delhi did not entirely settle down to normal conditions. There was considerable excitement on account of the events that occurred in the Punjab and Ahmedabad. After the declaration of war by the Afghans in May, a meeting was held expressing detestation of their action.

Q. Had that meeting good effect on the state of the people ?

A. It was a good thing that such meetings should take place but it had not very much effect.

Q. There was no connection between the disturbances in Delhi and other places ? A. I could not say that. I do not quite agree with that.

Q. Do you suggest that any people from Delhi went and stirred up disturbance in the Punjab or at Ahmedabad ? A. No, I did not find any evidence of that.

Q. Then you spoke of minor leaders and major leaders. Whom do you call minor leaders ? A. Those usually working behind the principal leaders.

Q. Can you name any of them ? A. One or two. With regard to the major leaders I put down Dr. Ansari, Lala Sultan Sing and Mr. Pearey Lal. Of the minor leaders, one is the Secretary of the Home Rule League (Lala Shankerlal) and the other is Abdulla Churiwalla who has been absconding.

Q. These principal leaders never intended to resort to any violence and they assisted the authorities in restoring order ?

A. They never intended any violence but they did not realise what their actions would lead to.

Q. They did their best to restore order ? A. They did, but I am sorry to say that the result was not effective. Several of the minor men were working against them.

Q. So far as in them lay they did their best to restore order ?

A. I think they did.

Q. You spoke of the total value of the damage to be Rs. 35,000. Did you make out any list ? A. It was made by the District Magistrate.

Q. There was no attack on life or property except what happened at the railway station ? A. There was no organised movement to attack life or property.

Q. There was no attack on banks or public buildings as at other places ? A. Nothing of it.

Q. Was the meeting that evening which Shradhananda was addressing orderly ? A. I thought it was safe to allow it to continue.

Q. And the meeting dispersed quietly and there was no disturbance except the Manipuri incident ? A. Yes.

Q. You seem to imply that the fact that the meeting was orderly was due to the presence of the military. Was it possible that it was due to the restraining influence of the leaders ? A. Quite possibly.

Continuing witness said: On the 31st. of March there was a funeral procession in which both Hindus and Mahomedans took part but there was no disturbance but a great deal of noise. Then on the 14th. of April there was a meeting at the Jumma Masjid at which Shradhananda addressed. There was shouting but no breach of the peace. On the 6th. April there was a general hartal. There was no disturbance but people were prevented from riding motor cars and tram cars. On the whole the thing passed off quietly. Witness did issue that order about Mr. Gandhi which did excite the people but the result of Mr. Gandhi's coming would have been worse.

Q. Do you not think that he would have been instrumental in pacifying the people ? A. It did not look at all likely in view of the temper of the crowd.

Continuing witness said: He knew that Mr. Gandhi commanded great respect and influence with the masses of the country. He knew that Mr. Gandhi had openly preached against all sorts of violence but the witness was of opinion that the result of his visit was sometimes detrimental to public peace. Witness thought that the people of Delhi in general came to know of the Punjab happenings on the morning of the 11th. But in consequence of that there was no disturbance in Delhi but the temper of the crowd became more sullen and the tension became greater. There was no actual disturbance.

Q. With regard to the railway strike you agree with Mr. Orde that the causes were mainly economical? A. It seems so. But it was political to the extent that it showed sympathy with the hartal in Delhi. Yes, the causes were mainly economical.

Q. You told us that on the 14th. you issued an order under section 188 of the Penal Code prohibiting people from interfering with those who wanted to open their shops? But that section does not authorise the issue of any order? I want to know under what section you issued that order? Ans. It was a general order.

Q. But you described the order as one under section 188?

A. That was shortening the description.

Q. You spoke of the meeting of the 15th. that you had with the leaders? You said that the temper of the crowd outside was very threatening? Was that due to the fact that they suspected that the leaders were going to be arrested? A. There was such a rumour and that excited the people.

Continuing witness said that he had been consulted by the Government of India with regard to the suggestion of the Punjab Government that Martial Law should be extended to Delhi. He had made a report which he could make available to the committee in a confidential manner. He admitted that there was no organised attempt at alienating the sympathies of the Police and the Military but the effect of the rumours that the golden temple had been bombed and that excess profits tax would be realised from zemindars would be very great.

Q. You spoke of a meeting on the 30th. May in connection with the Afghan war. Do you think the people were sincere? A. Yes.

In answer to General Barrow witness said that the employment of buckshot was for the purpose of saving life as far as possible.

Mr. Yule, D. S. P.

In answer to questions put by Sir Setalvad witness said that at the time firing took place the strength of the crowd was between

800 and 1000. The mob were simply demanding the release of the two men but nobody offered bail. When he arrived at the station the crowd was doing no mischief but they stopped all traffic. When witness told them to go out they went and jammed the entrance and they went out of the compound after the arrival of Mr. Currie. When Mr. Currie arrived some of the crowd went and spoke to him about this matter. Witness sent a chit to Mr. Currie saying that the Manipuris were available. These soldiers had their rifles and bayonet but no ammunition.

Q. With the 250 Manipuris and the Police constables you had, would it not have been possible to drive the crowd away?—A. I could have done that.

Q. Without firing?—A. I should think so.

Q. Then why was firing resorted to?—A. I do not know. I did not see the actual firing.

Witness added that at that moment, with the help of these Manipuris, Mr. Currie could have driven the mob out, but it could not have been done later. At no time did the crowd number more than one thousand. At the time firing took place witness was taking his lunch in the soldiers' canteen on the platform.

Q. There was no difficulty in getting the Manipuris out?

A. No.

Q. With the strength you had it might have been possible to get rid of the crowd without resorting to firing?—A. Yes, if that strength had been utilised.

Mr. Lawrie

In reply to questions put by Lord Hunter, witness said : On the 30th March when he went to the station, he found a mob in the station yard which he estimated at about 300. They were shouting and making noise. Two or three men seemed to be encouraging the crowd but he could not say who they were. He distinctly heard one man crying 'burn the station down'. There were railway police present at that time, but they were not in sufficient numbers. The second time when he arrived at the station the rioters were on the main road with the Police round and the station yard was clear. There were a certain number of soldiers from the Fort and a certain number of constables. The crowd seemed to be out for a row. They seemed to be a body of men with clean clothes and white caps. He suggested to Mr. Currie to arrest the ring-leaders. If they were surrounded by the Police they could not do anything worse. They were stopping traffic and shouting. Under Mr. Currie's instructions

the crowd was moved back. They began to throw small stones at first and then big brickbats.

Q. Did you hear an order to fire upon the crowd?—A. I did not hear any order.

Witness proceeded further: When fire was opened the crowd rushed towards the garden and only some students remained. Almost at once he left the party with Colonel Beadon and the Manipuris. About this time the crowd was jeering at the Europeans a good deal. He had great difficulty in feeding his staff.

In reply to questions put by Sir Setalvad witness said that the crowd seemed to be out for a row as it was impossible to talk to them and they would not listen to what they said. Of course initially they came to induce the sweetmeat-sellers to close their shops. Just before his arrival they had smashed a heavy iron gate.

Q. What was the number of the crowd?—A. I put it down at 800.

Q. All that was done by the Police and the military?—A. Yes.

Q. Up to that stage no violence seemed necessary?—No.

Q. With all the forces available would it not have been possible to drive out the crowd from the Queen's garden and make them disperse?—The trouble began when the stones began to be thrown.

If his suggestion had been accepted there would have been no necessity of firing.

Witness further said that if his suggestion that the crowd should be pushed down towards the Fort had been accepted there would have been no necessity of firing but this was not done as Mr. Currie thought that they would disperse of themselves. Instantly they got into the garden they began to throw stones. Throwing of stones began after they went into the garden. Fifty per cent. of the Police and soldiers were hit with stones. The distance from the railway compound to the Queen's garden was about 80 or 100 ft.

General Brockman.

In reply to Lord Hunter's questions witness described the various military arrangements that had been made to cope with the disturbance.

Q. From what you saw during this period did you form any opinion as to the attitude of the civil authorities with reference

to the occurrence ?—A. Yes, I did. I think they were extremely moderate.

Q. From your own observations could you form any opinion as to whether the crowd was bent on violence ? A. I should say it was.

Q. Was there a considerable responsible element ?

A. Yes.

In reply to questions put by Sir Sitaivad witness said that on the 15th April when they were holding a meeting at the townhall a large crowd was waiting outside.

Q. Did you hear that the crowd suspected that the leaders were going to be arrested ?—A. I heard of it afterwards but I do not know the source.

Q. Was not the excitement of the people due to the rumour having spread—A. Possibly so.

In reply to questions put by General Barrow witness said there was no unnecessary display of the military.

In reply to Pandit Jagatnarain witness said that after midday he received telephonic message that a large number of natives had assembled at the railway station and were interfering with the people in or about the station.

Q. I think you were for using more force than was actually used ?—A. The mob was very leniently dealt with.

Q. Had the matter been left to you, you would have used more force ?—A. Yes.

Q. I think you believe that the only way to deal with Indian crowds is to use more force ?—A. Undoubtedly so, if they disrespect constituted authority.

Q. And you think that if more firing had been resorted to it would have good effect—it would have done a lot of good to the people ?—A. It would have a salutary effect.

Q. That is your firm opinion :—A. It is.

Q. You are against every sort of political agitation ?

A. No, not against that conducted on right line.

Q. Do you think that a strike is a sort of showing disrespect to the authorities ?—A. In India or in other country ?

Q. Do you make any difference between England and India.

At this stage the President intervened and said perhaps that was not what the witness meant.

Witness further said that his statement about sending of emissaries from Delhi and other place was based on certain information received from the Punjab Government.

Mr. Smith then put one single question to the witness.

Q. What was the feeling amongst your Indian officers then with regard to the disturbances?—A. They could not understand why it was not put down with a firm hand.

In answer to Mr. C. R. Dass witness said that it was about 84 or 86 rounds of ammunition that was fired. The cartridges that were given to the soldiers were service cartridges. He could not testify as to whether the cartridges used were marked No. 6 or 7. They some times use 6 and sometimes 7. There was a record of it.

Mr. C. R. Das requested the President to call for this record.

Q. Cartridge No. 7 is very deadly, in the sense that it leaves a very large wound?—A. Oh, no.

Q. Would it be right to say that if 4 persons were standing one behind the other bullet No. 7 would go clean through all the 4?

A. It is possible.

In reply to questions put by Sir Setalvad witness said that the crowd at the station could not have been less than 1500.

Q. Mr. Lawrie and other witnesses have said that the crowd numbered about 800. You would not contradict them. Will you?—A. I should not agree with them.

Q. With the Military and Police force that you had and with the 250 Manipuris at the station, would it not have been possible to push the crowd further back and make them disperse without resorting to firing?—A. The spirit of the crowd was such that they would not have dispersed.

Q. Supposing the 250 Manipuris were placed at your disposal, then with them and your forces could you not have dispersed the crowd?—A. I do not think so.

Q. Why do you think so?—A. It was a very deep crowd. They had a lot of strength after them.

Q. Could you not, with these 300 men and more at your disposal, disperse the crowd?—A. By moral effect a small party of British infantry would have done that.

Q. A party of 300 men would have impressed the crowd much more than a party of 20 or 30 British soldiers?—A. I should think the crowd would have remained there until force was used.

Q. You think that the crowd would not have dispersed unless they were fired upon, whatever the number of the soldiers might have been?—A. I am of that opinion.

Q. Even if you had 2000 military against a crowd of 1500 or 2000?—A. Yes, that is my opinion.

Q. You have said that the crowd was in a threatening mood and would have struck any European. Do you think that it was an

intentional discrimination on their part? Or you merely happened to be present when a European was struck?—A. They disliked Europeans very much.

Q. Your view is that there was any manifestation of such discrimination on the part of the crowd?—A. I don't think I can say anything more than I have done.

Witness further said that when firing took place near the Town Hall the Manipuris had been called out and were holding the Queen's garden and protecting the front station. They were near the place where firing took place.

General Barrow then questioned the witness.

Q. When you say that 300 soldiers could not have dispersed the 1500 men, you mean that 300 men could not have pushed back.

A. The crowd was illtreating men, throwing bricks and stones and some of them had received very nasty cuts. One man I know had received a knock on the head.

Pandit Jagatnarain then questioned the witness at length. He admitted that only 14 men had reported their injuries and that most of the stones had fallen on their topees. Four men were badly cut.

Witness continued: The fact that he went to the station for ammunition was not because they had spent nearly 87 rounds altogether.

Q. Ordinarily speaking how many people out of a crowd would have been injured by the firing of 87 rounds of ammunition?—A. I think more people would have been hit. (then added) I think the men were taking their mark on men and not on boys and in doing so they might have missed the fire.

Q. The boys were mixed up with the crowd?—A. Yes.

Q. Was any warning given to the crowd before firing took place?

A. Yes. Mr. Currie was trying to speak to them for sometime.

Q. Did he say: "Look here, unless you disperse I will give order to fire"—A. Mr. Currie was talking to them and I know he was asking them to disperse. But I cannot tell you as to what he said as I do not know Hindusthani.

Mr. Currie.

The next witness was Mr. Currie, Additional District Magistrate of Delhi at the time of the disturbances. It was he who gave the permission to fire. His evidence is interesting in as much as it shows how lightly he gave the order to fire. He said: "Mr. Marshall came told me, give me permission to fire. I said very well."

Examined by Lord Hunter he said : He received information that there was trouble on the 30th March at 1 o'clock. He saw the Chief Commissioner with the object of informing him that military assistance was necessary. When he arrived at the station he found the crowd was shouting, they were very noisy. They were not destroying any property at the time. The crowd was large—the station yard was full and it was overflowing. Witness asked the crowd what the trouble was. He assured the crowd that the men were not in custody and that he would make enquiries but they did not go away and continued making noise.

Q. Did you form any opinion as to the size of the crowd?—A. It is very hard to say because I was in the middle of it.

Witness continued : Mr. Jeffreys arrived after him and cleared the station yard. At this time the crowd threw some small stones only at Mr. Jeffreys. Some of them had lathies. When Mr. Marshall arrived with mounted and foot Police they proceeded to clear the Queen's Road.

Witness further said : As they pushed the crowd they receded towards the Queen's garden and began to throw stones and brickbats. Before they got into the garden they did throw stones.

Q. At this time what was the cause of resentment given to the crowd?—A. Nothing as far as I know of. We had employed no force except pushing them back.

Q. When did you consider it necessary to give order?—A. When Mr. Marshall was trying to clear the crowd but was unsuccessful. He then came to me and said that he will have to fire. I said "very well." I told him to give order to fire.

Witness further went on that after firing the crowd ran away. Some of the railing in front of the Queen's garden was torn—how he could not say. As a result of firing two persons were killed. He gave instruction for the removal of the wounded and dead. He was informed of the existence of some Manipuris there. As soon as they were armed, he called on their services. Then he went to the Chief Commissioner to arrange for more military assistance. He then returned at 3-30 p.m. and learnt of the disturbances at the town hall. In consequence of that the party of Manipuris were sent. He with General Brockman went there and thence to the meeting in the People's Park where Shradhdhananda was speaking. The meeting did take place but there was no disturbance.

Witness said further that the hartal commenced from the 10th and continued onwards. It gradually became threatening and specially on the occasion of the meeting with the leaders in the town.

No actual violence did take place. He was told that they were under the impression that their leaders would be arrested. The emperor of the crowd was ugly.—He meant that they were bent on mischief. They tried to do mischief to the Municipal lamp posts. But there was no use of force. The leaders were going round to prevent the closing of shops.

Q. Did you form any opinion that the crowd was not subject to the influence of the leaders or so-called leaders?—A. They were certainly not.

Q. Were such measures necessary to maintain order?—A. Certainly we did what was absolutely necessary.

In reply to questions put by Mr. Justice Ranken witness said : As far as he recollected he learnt of the existence of the Manipuris about the time the station yard was cleared of the crowd. He remembered that a suggestion had been made to him to bring out the Manipuris to surround the people and arrest the ring-leaders but it could not be done unless they were armed. He took the view that it would be extremely wrong to use troops unless they were armed. Further the Manipuris were men who would be unable to cope with the people of Delhi even if they had rifle and bayonet but without ammunition. At the time he gave orders to fire he persuaded them to disperse.

In reply to questions put by Sir Setalvad witness said : He did not like to be definite as to the number of the crowd in the station compound when he arrived. When the crowd became biggest, it was about 2000. Before Mr. Marshall arrived they had cleared the station compound with the force he had at his disposal. The Police sowars and the British troops cleared the Queen's garden. At this time the Manipuris were in the station. He presumed the station armoury was in the station. He could not tell the exact time when the Manipuris were supplied with ammunition. They were first moved out at 2-15 p.m.

Q. If you had so desired you could have supplied them with ammunition earlier?—A. I do not know.

Q. You never did that?—A. I do not appreciate your point.

Q. I don't want you to do that. I want the fact from you?—A. What fact do you want?

Q. You did not consider the desirability of supplying ammunition earlier?—A. I did not know that the ammunition was there at all.

Q. Did it strike you that if you had the assistance of these men then with the force you had you could have driven the crowd out of

the Queen's garden ?—A. That idea did not occur to me at the moment.

Q. When the suggestion of firing was made, you did not consider this alternative suggestion that I am putting to you ?—A. Well, there was no time to consider anything. It was time to act immediately.

Q. Stoning was going on for some time ?—A. Yes, in a moderate degree. After we cleared the yard there was some throwing of stones. When the crowd got inside the garden there was a regular fusilade of stones

Q. When Mr. Marshall suggested that fire should be opened you accepted his opinion ? A. Yes, it coincided with my own.

Q. When did Mr. Lawrie make the suggestion of surrounding the crowd ?—A. He might have done that but I do not recollect that.

Witness further said that the funeral procession consisting of many thousands of people and the hartal of the 6th of April passed off without any disturbance. The news of the arrest of Mr. Gandhi and the happenings at Amritsar and Lahore did not lead to any disturbance. The people were allowed to go about in the Chandney Chak as they liked. They did not attack the Police but they interfered with the passengers in the tram cars.

Q. My question is very simple. Please answer it: They did not cause any disturbance except pulling people out of tram cars ?—A. No.

Witness was then questioned at length by Pandit Jagatnarain.

Q. Is it not a fact that for the next 26 hours the corpses were not handed over to the relatives and that it was done only on the kind interference of the Chief Commissioner ?—I could not tell you that.

Q. You were in charge ?—Not on the 31st.

Q. You do not know when the corpses were delivered ?—A. No.

Q. Is it not a fact that the authorities were approached on the 30th and again in the morning of the 31st to get back the dead bodies from their possession ?—A. I do not know that.

Q. Is it or is it not a fact that some of the leaders wanted to see the dead bodies ?—A. That I do not know.

Q. May I take it that your statement—that the shooting by the Manipuris was accidental was based on the statements of these people or of Police officers ?

A. That was the report which reached me.

Witness was then closely examined with reference to the Manipuris brandishing kukris and aiming several guns at Swami Shraddhananda

He replied that he could not tell and that he did not recollect if any report on this point had been made to him. If this was published in the newspapers he must have read it. He had had no reason to contradict it.

Q. Did not Khan Saheb Maniruddin give you the information that he several times asked the crowd to go away and they said they were prepared to go away if their men were released?—Yes. They would not believe when we told them that the men were not in custody.

Q. These negotiations were going on through a man named Bishenswarup?—A. Possibly. I do not know his name.

Q. Except this stone throwing was any man, Indian or European assaulted in your presence during the time you were at the Town Hall?—A. No.

Further cross-examined witness admitted that he was in the midst of the crowd and if they so liked they might have done injury to him. They were shouting but he could not distinguish whether it was "Mahatma Gandhi Ki Jai" or anything else.

Q. You know Hindusthani. From the shouts of the crowd could you make out that there was an incitement to assault anybody or do any other mischief?—A. I do not recollect hearing anything.

Witness was then cross-examined by Mr. C. R. Das.

Q. You have heard of the movements in Delhi, The National Congress, The Moslem League, The Satyagraha Sabha and such things. You think they are mischievous?—A. Well, no. I can not say that. Certain aspects of these are mischievous.

Q. The same idea prevails generally amongst the Police of Delhi?—A. I can not say.

Q. Have you had any discussion with them on this point?—A. Well not specifically.

Q. At the time when it was suggested to you that the crowd should be fired upon did it strike you that you should send for some of the people who are looked upon as leaders such as Mr. Ansari, Hakim Ajmal Khan and Lala Sultan Singh?—A. No, it did not strike me.

Q. As a matter of fact, when popular leaders say there will be no disturbance, no disturbance does take place, they have got that control over the populace?—A. Yes, when attended with that amount of Police force.

Q. There was no disturbance at the meeting of the 30th?—

A. No.

Q. Up to the time when the crowd was pushed into the Queen's Garden nothing serious had happened?—A. No.

Witness further said that the Sowars came upon them and pushed them back into the Queen's Garden. It was not possible for the Sowars to press them further back as there was the wall. He admitted that the whole difficulty arose out of these people asking the Sweet-meat-sellers to close shops. He did not hear that as a matter of fact the shops had been actually closed and that the railway authorities objected and then there was trouble. He did not recollect if Mr. Mathews had made statements to that effect. He admitted that the disturbance on the 17th arose out of the arrest of one man Gauri Shanker.

Q. Is it not a fact that a Head Constable Mohammed Afzal Khan deposed before you in Court that they fired point blank and when he gave order to fire all fired?—A. I have no recollection of it.

Q. As a matter of fact it was the Head Constable who gave the order to fire?—A. No.

The Hon'ble Pundit Malaviya then put two or three questions.

Q. At that moment did you think what the result of firing would be: On the one hand the possible danger of somebody being seriously hit by stones and brickbats and on the other danger of many people being killed as the result of firing:—A. When you are in an arm-chair you can think what is best. But at that time you cannot.

Witness was then re-examined by the President: He repeated he could not say anything about the asking of dead bodies by relatives for he was not in charge then.

Q. In your opinion the situation at the station was such that it was essential in the discharge of your duty to give order to fire:—

A. Yes.

Mr. Jeffreys, Sup. of Police.

Examined by Lord Hunter he said that on the morning of the 30th March he and Mr. Marshall motored to the Chandney Chawk to see to the police arrangements. At a certain point the crowd came up to them and implored them not to drive the car and a man fell at Mr. Marshall's feet. That day in the evening he was asked by Mr. Marshall to clear the station yard. The crowd poked his house and followed him to the Queen's road making a great deal of noise. At 1.45 p. m. he went to Mr. Currie to talk to him. At that time the crowd was creeping forward. At that time an armoured car came which had the effect of stopping the advance of the crowd. Three bricks were hurled from the Queen's garden, one of which

struck him and the situation seemed to him to be very dangerous. After the crowd was pushed into the Queen's garden they began throwing stones. The situation seemed absolutely desperate. He heard Mr. Marshall giving the order to fire.

Witness was then examined by Mr. Ranken.

Q. So far as your experience goes the firing into the air at the clock tower was not very successful?—A. It was absolutely disastrous.

Witness was then examined by Sir Setalvad. He said at the station Mr. Currie was right in the middle of the crowd and if they so wished they undoubtedly could have assaulted him. Some men including Mr. Bishenswarup were taken round the place to show that the two men arrested were not in custody. This took some considerable time. In the meantime the crowd was not fighting but they were holding up all traffic. Ultimately they were not able to satisfy them. So far the crowd was quiet.

Q. If at that time you had the 250 Manipuris available you could have overrun the crowd without firing? A: Yes.

Q. What I want to know is this: The disturbances on the 30th 14th and again on the 17th—all these took place when the Police was near—Yes, just as many others were there.

Q. Now, kindly tell the Committee when you arrived at the station on the 30th did you see any riot at that time?—A: Yes, there was rioting going on.

Witness went on: As soon as he arrived at the station riot began. Before that there was another riot on the contractor's men. He explained the fact of there being riot directly he appeared by saying that he was a known man. At that time there were about 40 sowars in Delhi—not all of them available but in the Police lines.

Q. Am I right in saying that throughout these days starting from the 30th March till the 17th April, there never has been a single disturbance in the city except when the Police was near by?

—A. You are absolutely wrong. Every day without exception there was a large crowd holding up traffic, stopping all commerce and industry, threatening the Police, whenever they saw individual Policemen on the roadside. They have been accusing them, boycotting them, starving them, endeavouring to upset all merchandise and causing considerable difficulty to Europeans—all illegal.

Q. Is it not a fact that the attitude of the Police is against these movements? A. No.

Q. Police officers never discussed these things?—Not officially.

Rai Bahadur Sultan Singh

Examined by Lord Hunter witness gave an account of what they did on the morning of the 31st of March and what steps they took to get back the wounded and the dead. He said that on the 31st between 3 and 4 p.m. four or five dead bodies were delivered. There was a crowd of about 10,000 people in the hospital compound who carried the dead in procession, the Mussalmans to the graveyard and the Hindus to the cremation ground. That night they went over to see some of the wounded and pacified the relatives of those who were killed and wounded.

In connection with the hartal on the 6th April witness said that it came about through a misunderstanding and he generally corroborated the statement of Swami Shradhdhananda on the point. Witness said that another reason of their not opening the shops was the resentment caused by Col. Beadon's notice. People said those who had been called 'badmashes' were not going to open shops under Col. Beadon's threat.

In answer to Mr. Justice Rankin witness said that on the 16th they were making strenuous efforts for the resumption of business but the people did not want to resume business under compulsion. So on the night of the 16th a request was made to the authorities to keep the police out of sight on the 17th till business was fully resumed. Witness was of opinion that if the police had abstained from interfering for two hours more, as they had done in the morning, there would have been no trouble at all on the 17th.

In reply to Sir C. Setalvad witness said that the resentment caused by Col. Beadon's notice was so great that people complained in his very presence at one of the meetings and Col. Beadon said that it was a mistake in translation, but the people resented all the same.

Examined by Mr. C. R. Das.

Q. Are you aware that the man who was telling people not to open shops was charged under section 506 of the Code?—A. Yes I am aware of it.

Q. You were a member of the Legislative Council?—A. I was.

Q. You were appointed Special Constable?—Yes on the 18th April.

Q. At that time was any other order passed on you?—Yes an order was passed requiring us to use puggree and baton and sleep in the Thana which we considered to be very humiliating. We represented matters through friends to the Chief Commissioner and

through his kind intercession in the evening, that order was rescinded.

Witness here handed in newspaper cuttings containing the order which had been served on them by Col. Beadon. He added that the original order had never been given to them.

Q. When this order was served, in what light did you take it ?
—A. We thought it could not serve any useful purpose. It was simply done to humiliate us in the eyes of the public.

Q. In your opinion was there any real necessity for it ?—A. I do not think so. We were helping the authorities, we were running about from morning till evening and we could not have done anything more by being appointed special constables.

Q. When you represented matters to the Chief Commissioner, they were not enforced on you ?—A. We reported ourselves to the Thana, sat there, and then represented matters.

Q. The police baton was not handed to you ?—A. It was.

Rev. Mr. Rudra

(Principal, St. Stephen's College, Delhi)

Examined by Lord Hunter he said.—On the 31st of March he had been out to the Chandney Chawk to see how things were going on. He saw a big crowd and a great deal of noise but no disturbance. On the 6th of April there was hartal again and he thought it was a very wise thing that a meeting was held in the evening. Because otherwise the masses would be without any occupation. He did not see himself but complaints had been made to him that there was a parade of military strength and people felt irritated. On the 17th all the shops had opened, at least in his part of the city, but as soon as news of shooting came they all shut their shops,

Questioned by Sir Chimanlal Setalvad witness said : The Police in Delhi was very much disliked. He could not say if more than at any other place. And the reason was very simple viz., on account of their dealings. They used always to oppress people. People believed they were being oppressed,

With regard to the feeling of the people towards Colonel Beadon, witness said the strange thing was that Colonel Beadon was liked in one way and disliked in another, and he was known to be a strong and blunt straight-forward man but he had his peculiar ideas of things. The first cause of irritation was given by him some years ago at the time of the Ramlila procession. Since then that feeling had increased against him. Before, the masses of Delhi did not take part in public life, Delhi was as a sort of Sleeping Hollow but

it had completely changed and Colonel Beadon found it exceedingly difficult to reconcile himself to that change but he was a very well-meaning person, as he had gathered from personal contact with him. His notice was a most unfortunate thing and caused resentment amongst the populace. People said they would not open their shops. But for this notice he thought there would have been no hartal on the 6th.

With regard to the enrolment of special constables witness said that he was of opinion that this caused very great resentment. People felt it was a rather humiliating thing. It might be that respectable people in London gladly became special constables but that day was far distant when the Police of Delhi would be as efficient as that of London. In this matter the authorities did not enter into the feelings of the people. At that time he felt exceedingly anxious for he knew if the orders which had been passed on the special constables had been carried out there would have been very great trouble. It was the subsequent orders on the special constables which irritated the people most. At this time it was only through the splendid actions of the Chief Commissioner, Mr. Barron, that the situation was saved.

Witness was then examined by Pundit Jagatnarain.

Q. You heard the address of Shradhananda at the burial ground?—A. Yes.

Q. Did that exercise a great restraining influence?

A. I must say, sir, it was one of the very best addresses I ever heard. It seemed to soothe the feelings of the mob which had been excited and it really lifted people right up into a spiritual level. I was able to follow and joined in every word of the prayer.

Q. Is it not a fact that the leaders did their very best to help the authorities?—They did their very best. There is not the slightest doubt about that.

Q. Is it not a fact that the leaders of the city were not in sympathy with the excesses that were done by the mob?—They were not in sympathy and they tried their very best to keep the shops open, and to make people reasonable.

Q. There was a feeling of indignation at what happened at the railway station?—Most certainly.

Q. At 4 o'clock on the 31st the dead bodies were given up?

A. They died at noon of the 30th and from noon till 4 o'clock in the afternoon on the 31st they were not delivered? A.—No.