9th September, 1925

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

THIRD SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY, 1925

SIMLA
GOVERNMENT OF INDIA PRESS
1925

CONTENTS.

VOLUME VI, PART II—*7th September to 17th September, 1925.*

LEGISLATIVE ASSEMBLY.

Wednesday, 9th September, 1925.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President in the Chair.

QUESTIONS AND ANSWERS.

Potash Mines in India.

803. ***Raja Raghunandan Prasad Singh :** (*a*) Has the attention of the Government been drawn to the article on "Potash manures" in Vol. X of "The Standard Cyclopedia of Modern Agriculture" which gives the information that Germany began to work its potash mines in 1860 and that the output rose from 2,293 tons in 1861 to 11,607,000 tons in 1913 and that 90 per cent. of the products go for agricultural use only ?

(*b*) Will the Government be pleased to inquire and let the House know if potash manures are imported from Germany into this country ? Are there potash mines in this country too ? If so, by what agency are they worked and what is the output thereof ? If not, do the Government see the desirability of an inquiry being instituted through the Department of Geological Survey into the possibilities of such an industry in India for the economic development of the country ?

The Honourable Sir Bhupendra Nath Mitra : (*a*) No.

(*b*) The import of potash manures from Germany is on an extremely small scale. The total imports from Germany of artificial and chemical manures other than nitrate of soda amounted in 1923-24 to 1,497 tons, and the Government of India understand that the bulk of this consisted of manures other than potash manures. Potash salts are found in small quantities in the salt mines of the salt range in the Punjab. There is no mine from which potash salt is at present being extracted. The Geological Survey have investigated the occurrences of potash in the salt range and their reports have already been published.

Settlement of White Persons with small fixed Incomes within the British Empire.

804. ***Mr. K. C. Neogy :** 1. Will Government be pleased to state their reasons for publishing, as an annexure to an Indian Army Order, the report of the Empire Community Settlement Committee—which is described therein as "a movement designed to further the policy of the Government of the United Kingdom and of the Governments of all the Great Dominions, for the more effective distribution of the white population of the Empire, by

facilitating settlement within the British Empire of persons with small fixed incomes ?"

2. Do the Government of India accept the policy enunciated above ?

3. What steps have Government so far taken in furtherance of the objects of the aforesaid movement, or in carrying on a propaganda on its behalf; and at what cost ?

Mr. E. Burdon : (1) and (2). The report of the Empire Community Settlement Committee was published in Army Orders, for the information of British officers and men serving with the Army in India, for some of whom this scheme to assist British settlers in the Dominions and Colonies is likely to have a personal interest. It does not appear that the Government of India will be in any way affected by the scheme, nor does any question of their acceptance of the policy of its promoters arise.

(3) None, beyond the publication of the report in Army Orders.

CONSULTING ENGINEERS TO THE GOVERNMENT OF INDIA AND THE INDIA OFFICE.

805. ***Mr. K. C. Neogy** : Has the attention of the Government of India been drawn to question No. 3 by Mr. Walter Baker, M.P., and the answer by the Under Secretary of State for India, as reported in *Hansard* of 21st July 1924 ?

CONSULTING ENGINEERS TO THE GOVERNMENT OF INDIA AND THE INDIA OFFICE.

806. ***Mr. K. C. Neogy** : Who are the Consulting Engineers to the Government of India and the India Office ? What is the remuneration paid to them ? When and how were they appointed ? What is the period of contract with such Consulting Engineers ? What are the engineering matters for which they are consulted ?

The Honourable Sir Bhupendra Nath Mitra : With your permission, Sir, I should like to reply to questions Nos. 805, 806 and the latter parts of 808 and 809 together.

The attention of the Honourable Member is invited to part (*a*) of the reply given by the Honourable Mr. A. C. Chatterjee to question No. 2177 on the 18th September 1924.

As regards the name of the present Consulting Engineers, the nature of the duties performed by them, the amount of remuneration paid, the period of contract, etc., the attention of the Honourable Member is invited to Appendices I and II of the proceedings of the meeting of the Standing Finance Committee, Volume V, No. 2.

Mr. B. Das : The Honourable Member has not replied to Mr. Neogy's question No. 805, regarding Mr. Walter Baker's question in the House of Commons, whether any Indian Consulting Engineer practising in England is consulted by the India Office ?

The Honourable Sir Bhupendra Nath Mitra : If the Honourable Member had kindly listened to my reply, he would have found that the answer is there.

RETENTION BY THE GOVERNMENT OF INDIA AS CONSULTING ENGINEERS OF INDIAN ENGINEERS PRACTISING OUTSIDE INDIA.

807. ***Mr. K. C. Neogy :** Have Government any information as to how many Indians practise as Consulting Engineers outside India ? Has any of them ever approached the Government of India for Indian work, or *vice versa* ? Has any of them carried out important engineering undertakings in their scheme, for clients outside India ? If so, do the Government of India propose to encourage Indian talent and give them a trial by retaining them as additional Consulting Engineers and Technical Advisers (for purchase of Machinery and materials) ?

The Honourable Sir Bhupendra Nath Mitra : Government have no information as to how many Indians practise as Consulting Engineers outside India. As regards the remaining parts of the question, the attention of the Honourable Member is invited to parts (*b*) and (*c*) of the reply given by the Honourable Mr. A. C. Chatterjee to question No. 2177, on the 18th September 1924.

Mr. B. Das : Are Government aware that Mr. B. Dey is a Consulting Engineer in London and that his services have been well appreciated by English engineering firms and by some of the States in India ?

The Honourable Sir Bhupendra Nath Mitra : Government are aware of the first part of the question ; they have no information in regard to the second part.

ENGINEERS EMPLOYED IN THE LONDON STORES DEPARTMENT.

808. ***Mr. K. C. Neogy :** In connection with the Stores (Railway and Engineering machinery and materials) purchased by the High Commissioner for India or Director General India Stores, London, for the Government of India, how many qualified engineers are employed for inspection work ? Are there any Indians among them ? Or, do the above agents for the Government of India leave the matter of inspection with their Consulting Engineers ? Who are these consulting engineers ? What is their remuneration ? When and how are they appointed ? What is the period of their agreement with the High Commissioner for India or/and Director General India Stores ?

The Honourable Sir Bhupendra Nath Mitra : Forty-four engineers of different grades and qualifications are employed in the London Stores Department. None of them is an Indian. Inspection in some cases is done by the Consulting Engineers' staff (mainly in the case of railway plant and equipment and exceptionally important structural work), in other cases by the London Stores Department's own staff.

I have already replied to the latter part of the question.

Mr. B. Das : Will Government transfer some of the Indian engineers employed in the Indian Stores Department in India to the High Commissioner's Office, and will they also try and get some Indian engineers educated in England for the High Commissioner's Office ?

The Honourable Sir Bhupendra Nath Mitra : That matter I dare say will be duly considered by Government in connection with a Resolution in another place.

CONSULTING ENGINEERS TO THE GOVERNMENT OF INDIA.

809. *Mr. K. C. Neogy : Do the agreements with Consulting Engineers bind the Government of India or the High Commissioner for India to consult those engineers exclusively for all engineering work and debar the retention of additional consulting engineers ? When do the present agreements expire ?

The Honourable Sir Bhupendra Nath Mitra : No. In exceptional cases, *e.g.*, in big railway electrification schemes, other consultants who specialise in such work are referred to.

CONSULTING ENGINEERS TO THE GOVERNMENT OF INDIA.

810. *Mr. K. C. Neogy : Have the Government of India considered the desirability of appointing a Consulting Engineer on the same lines as the Dominion of Canada or Australia ? If not, why not ?

The Honourable Sir Bhupendra Nath Mitra : Government have no information as to the lines on which Consulting Engineers are employed by the Dominions of Canada and Australia.

Mr. B. Das : Will Government get the necessary information ?

The Honourable Sir Bhupendra Nath Mitra : I shall try to get the necessary information, but I cannot in any way commit Government to adopting the same arrangement in regard to India.

VISIT OF THE CONSULTING ENGINEERS TO THE GOVERNMENT OF INDIA TO INDIA.

811. *Mr. K. C. Neogy : Have the Government of India ever considered the desirability, on the grounds of efficiency and economy, of retaining a Consulting Engineer who would spend some time every year in India ?

The Honourable Sir Bhupendra Nath Mitra : The partners of the present firm of Consulting Engineers as well as some of their employees are specially experienced in Indian conditions and a member of the firm usually visits India every year.

UNSTARRED QUESTIONS AND ANSWERS.

ALLEGATIONS MADE BY NAND RAM, A RESIDENT OF THE HAZARA DISTRICT AGAINST MUFTI MOHAMMAD YAQUB KHAN, BARRISTER-AT-LAW AND EXTRA ASSISTANT COMMISSIONER, MALAKAND, AND 11 OTHERS.

147. **Lala Duni Chand** : 1. (*a*) Is it true that the house of one Nand Ram, a resident of Mundhar, Tehsil Mansehra, Hazara District, was robbed in broad daylight on or about 18th February 1924, and about a week after the stolen property worth about Rs. 1,500 was recovered at the instance of one Sant Singh, servant of Mufti Mohammad Yaqub Khan, Bar-at-Law, Extra Assistant Commissioner, Malakand ?

(*b*) Is it also true that the relations of the said Mufti Mohammad Yaqub Khan were suspected along with others of having committed the robbery and in spite of the recovery of the stolen property no case was started against anybody ?

2. (*a*) Is it a fact that the said Nand Ram some months after his house was robbed as stated above, was arrested under section 109, Criminal Procedure

Code, on the ground that he had no ostensible means of livelihood but was discharged on 5th August 1924 ?

(*b*) Is it true that before his arrest under section 109, Criminal Procedure Code, certain Hindus of Abbottabad and Nawanshehar had been suspected by the said Mufti Mohammad Yaqub Khan, then District Judge of Abbottabad and others of having set fire to the court house of the Munsiff at Abbottabad, and the said Nand Ram had petitioned Mr. Fraser, Judicial Commissioner, stating that he had been asked to give false evidence with regard to the setting of fire to the court house against certain Hindus but had declined to do so ?

(*c*) Is it also a fact that after the said Nand Ram was discharged on 5th August 1924 as stated above, he was prosecuted under section 436, Indian Penal Code, for having set fire to the court-house of the Munsiff at Abbottabad but was acquitted on 22nd December 1924 ?

(*d*) Is it true that in the said case under section 436, I. P. C., Nand Ram and his wife Mst. Ram Peyari had stated that they were asked by certain officials to say that certain Hindus had set fire to the court house but had declined to do so and on this Nand Ram was prosecuted for setting fire to the court house ?

3. (*a*) Is it a fact that Mst. Ram Peyari was brought by the police on 20th September 1924 or thereabout from Jhelum where she had been left by her husband with Lala Giyan Chand, son of Lala Diwan Chand, Vakil, and was kept under detention at Abbottabad till 25th October 1924 when she was produced in court and made the statement referred to above ?

(*b*) Is it true that Nand Ram from Abbottabad Jail in which he was shut up as an under-trial prisoner sent three petitions to the Deputy Commissioner, Abbottabad, that his wife Ram Peyari was being kept at the bungalow of Mufti Mohammad Yaqub Khan and that she be made over to some Hindu ?

(*c*) Is it also true that the said Nand Ram after his release on bail on 22nd November 1924, sent four petitions to the Deputy Commissioner, Abbottabad, that his wife had been missing and the matter might be investigated but nothing came out of them ?

(*d*) Is it true that the said Nand Ram after he was acquitted on 22nd December 1924, filed a complaint on 17th January 1925 in the Court of Mr. Fraser, Judicial Commissioner, under sections 302, 344, 346 and 120-B., Indian Penal Code, against Mufti Mohammad Yaqub Khan and 11 others ?

(*e*) Is it a fact that the said Nand Ram not only approached His Excellency Lord Lytton, Sir Denys Bray, Foreign Secretary and the Chief Commissioner of the North-West Frontier Province with petitions and letters but also forced interviews upon them praying for the transfer of his case to some court in the Punjab and the redress of his grievances ?

4. Do the Government propose in view of the above, to order a sifting inquiry by some independent man into the whole affair ?

Sir Denys Bray : Inquiry is being made from the local Administration and a reply will be furnished to the Honourable Member in due course.

ALLEGATIONS AGAINST MAJOR T. TEMPLE, R.A., OFFICIATING CHIEF ORDNANCE OFFICER, RAWALPINDI.

*148. **Lala Duni Chand :** (*a*) Is it a fact that recently an order has been passed by Major T. Temple, R.A., Officiating Chief Ordnance Officer, Rawalpindi, that assistant store holders, temporary clerks and extra temporary clerks will have to parade and will not be allowed to leave the Arsenal until a report was made to the Orderly Warrant Officer that all were present and he permitted them to leave, while no such restrictions are placed on European subordinates ?

(*b*) Is it true that the process of parade, etc., detains them for about an hour ?

(*c*) If the above facts are true, are the Government prepared to issue instructions immediately stopping such treatment ?

Mr. E. Burdon : (*a*)—(*c*). The Government of India have no information on the subject, but are inquiring. I will let the Honourable Member know the results in due course.

INDIAN ASSISTANT STOREKEEPERS IN ARSENALS AND THEIR TIFFIN ORDERLIES.

149. **Lala Duni Chand :** (*a*) Is it true that the Indian civilian assistant store holders were allowed on their appointment one tiffin orderly each just as the European members of the I. A. O. C. were allowed and this privilege has been recently taken away ?

(*b*) Are the Government prepared to order the continuation of this privilege ?

Mr. E. Burdon : (*a*)—(*b*). There are seven arsenals employing Indian assistant storekeepers and if the Honourable Member will be so good as to let me know to which arsenal his question refers, I shall institute inquiries into the matter and let him know the result as soon as possible.

EXTENSION OF THE PROBATIONARY PERIOD OF INDIAN ASSISTANT STOREKEEPERS IN ARSENALS.

150. **Lala Duni Chand :** Is it true that the Indian Assistant storeholders were on their appointments told that they would have to undergo probation for a period of one year only, but recently the D. E. O. S., Simla, has extended the probation period to two years ?

(*b*) Is it true that the extension of the probationary period from one year to two years is contrary to the conditions as laid down in D. E. O. C. No. 55662-Q.-9, dated the 24th March 1924 ?

(*c*) If the reply to (*a*) and (*b*) be in the affirmative are the Government prepared to issue orders that the candidates be allowed to sit for the examination as mentioned in the said letter ?

Mr. E. Burdon : (*a*)—(*c*). The initial year's probation does not expire till the end of October next. Interim reports called for on the scheme are not satisfactory, in fact, the reports are generally against the scheme. As it was desired that these Indians should be given every

chance of making good, the question of extending the period of probation by another year is under consideration.

No orders to the effect mentioned have been issued by the Director of Equipment and Ordnance Stores. The question is one for decision by the Government of India.

ELECTIONS TO THE STANDING FINANCE COMMITTEE FOR RAILWAYS.

Mr. President : I have to announce that up to 12 Noon on Tuesday, the 8th September, four nomination papers were received for filling the vacancies on the Standing Finance Committee for Railways. These were in favour of Sardar Gulab Singh, Captain Ajab Khan, Mr. N. C. Kelkar and Mr. H. G. Cocke. Of these the first two gentlemen have withdrawn their candidature. I therefore declare Mr. N. C. Kelkar and Mr. H. G. Cocke duly elected to the Standing Finance Committee for Railways in place of the Honourable Mr. V. J. Patel and Mr. W. S. J. Willson.

PROCEDURE RELATING TO THE DISPOSAL OF AMENDMENTS.

Sardar V. N. Mutalik (Gujarat and Deccan Sardars and Inamdars : Landholders) : Sir, I want the ruling of the Chair about the procedure which the Chair wishes to adopt so far as the amendments on the paper are concerned. There should be a clear enunciation of procedure about the disposal of amendments on the paper. A certain amount of confusion has been caused in the minds of some Members on this side on account of the procedure followed in the past and in the present. The first thing, Sir, I observe in this connection is that when notice of an amendment has been made to any Resolution or any Bill, the Chair should declare when an amendment has been put on the agenda, whether it is out of order or in order. If it is out of order, the question stops there, but if it is in order the question comes up when that amendment is to be moved. Sometimes it so happens that the Chair calls upon the person who gives notice to move the amendment, sometimes it so happens that the Chair does not call the Member giving the notice, in whose name the amendment stands. In such cases the Members giving notice of the amendments are put to great inconvenience and sometimes confusion arises and they do not have any opportunity of ventilating their views. I will quote some instances. The other day, Sir, on the Corrupt Practices Bill Mr. Belvi and Mr. Kelkar had amendments for circulation. The amendments were put on the agenda, but they were not taken at all, nor were the Members called upon to move. Dr. Gour called attention to an amendment which was being moved and the objection prevailed on the ground that sufficient notice was not given to the Members or that the amendment was not circulated.

Yesterday, Sir, although I had given notice of an amendment to the Resolution of the Honourable Pandit Motilal Nehru I was given to understand that I would not be able to move it as I would not be able to catch the eye of the President. I want a clear ruling on all these points.

The Honourable Sir Alexander Muddiman (Home Member): Sir, as a point of order has been raised the House may perhaps wish to hear the brief observations that I have to make on the matter as Leader of the House.

If I understood my Honourable friend Sardar Mutalik aright, his main contention is that a Member who has got an amendment on the notice paper has a right to be called. That, Sir, I venture to suggest is due to an entire misapprehension. Putting down an amendment on the notice paper gives a Member *no right* to be called. That is a matter within your discretion, Sir ; and if the debate terminates for any reason and the Member has not been called, his amendment drops. That, Sir, as I understand it, is the procedure in this House; it is also the procedure in another House with which I had some connection, it is the procedure of the British Parliament and it is the rule which I hope will commend itself to the Chair.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : Sir, I join issue with my Honourable friend, Sardar Mutalik, with the object of getting a definite ruling on some other point which is not far away from the subject. It is with regard to certain amendments of which notice was given on a certain Resolution with the object of ascertaining whether they would be disallowed or whether they came within the scope of the Resolution. Sir, it happened only about a week ago, when the Resolution regarding the prohibition of liquor came up for discussion in this Assembly that my Honourable friend Dr. S. K. Datta moved an amendment to which he wanted to add the word " opium ". Your ruling on that point, Sir,.....

Mr. President : You cannot discuss the rulings of the Chair.

Mr. K. Ahmed : I am not discussing your rulings.....

Mr. President : The question raised by Sardar Mutalik is entirely different from what the Honourable Member is discussing. Order, order ! If the Honourable Member wants to raise a separate question he may do so by proper notice.

The Honourable Member had an amendment on the paper yesterday on the Resolution of Sir Alexander Muddiman. He saw me in that connection and asked me whether he would get an opportunity to speak. I told him that there were a large number of Members desiring to speak and it was difficult for him to get a place. The Honourable Member agreed that in those circumstances he would not rise. He did not then mention that he wanted to press his amendment. The Honourable Member did not rise and was not called upon to speak and therefore on a closure being applied his amendment dropped. This seems to be the grievance of the Honourable Member.

With regard to the general question raised by the Honourable Member, the position is as has been just stated to the House by the Home Member. The Chair has nothing to add to that statement. No Honourable Member can claim to speak as a matter of right on the ground that he has an amendment on the paper. If the Chair takes up one amendment out of several on the paper and restricts discussion to it, the decision of the House on that amendment might render all or any of the other amendments unnecessary or useless. It is in the discretion of

the Chair in what order and how many amendments should be taken up for discussion at a time. The Chair is under no obligation to call upon any Member who has an amendment on the paper. It is the duty of the Member to rise and get such explanation as he wants in regard to his amendment. I propose to adhere strictly to the practice followed by my predecessor in this respect.

Sardar V. N. Mutalik : May I give a personal explanation, Sir, of my position yesterday ?

Honourable Members : Order, order !

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Diwan Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I beg to move that the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall.....

Sir Hari Singh Gour (Central Provinces Hindi Divisions : Non-Muhammadan) : Sir, may I point out that there is a small formal business to be transacted before Diwan Bahadur Rangachariar's Bill comes on ?

Mr. President : What formal business ?

Sir Hari Singh Gour : I have to move formally that Diwan Bahadur Rangachariar, Mr. Neogy and Sir Darcy Lindsay be nominated to the Select Committee on the Bill to define the liabilities of a Hindu coparcener. That Committee cannot function without the addition of a panel Chairman and the Deputy President and I therefore wish to complete it.

Mr. President : Order, order ! It will be taken up in due course.

Diwan Bahadur T. Rangachariar : Sir, I beg to move that the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, as reported by the Select Committee, be taken into consideration.

Sir, the Bill which has been reported on by the Select Committee is a very short one, but it is a very important measure which I seek to put on the Statute-book of our country. Sir, I have not been a rioter myself nor am I likely to be one, notwithstanding the warnings received by way of rhetoric yesterday from various quarters. I am a mild Madras Brahmin, as mild as the Madras cigars, and not likely even to utter words of threat, let alone indulging in violent actions. But, Sir, I am very much of a human being, and being a human being I take a human view of things. It is human to forget wrong actions but it is unstatesmanlike not to take to heart the lessons which you can learn from them. Sir, the genesis of this Bill, as is well known, is due to the action taken by the Right Honourable Srinivasa Sastri in the other Chamber in 1921. As we are all familiar with the sequence of events, that discussion arose out of the Punjab tragedy which we should all forget as soon as possible, but which at the same time must be taken into account in devising measures to see that there is no recurrence of it hereafter. So my Right Honourable friend recommended to the Government in a Resolution to

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be accepted by the Government that the law should be made somewhat tighter than it was and he made his proposals accordingly. The Government were then disposed and inclined to take a favourable view. Sir William Vincent welcomed it in speaking on the motion in the other House. My Honourable friend the Home Member was then occupying the composed atmosphere of the Chair in the other Chamber. What the Government said was : " We are willing to accept these suggestions in a very sympathetic spirit." They said : " We are willing to co-operate with non-officials in these matters ". Sir William Vincent accepted on behalf of the Government some of the clauses ; he accepted half-heartedly some other clauses and he opposed other clauses. Finally, Sir, in pursuance of the undertaking given in the Council of State Mr. Craik introduced in the other Chamber a Bill in order to amend the Chapter in the Criminal Procedure Code relating to the dispersal of an assembly by force. He brought up a measure to introduce a new section, 131A. In order to enable persons to disperse unlawful assemblies by the use of fire-arms, such person had, before directing that the assembly be fired on, to warn the assembly by such means as may be available at the moment that unless it disperses forthwith it will be fired on. The other Chamber passed this measure in August 1921, and in due course it came to this Chamber. When it came to this Chamber in September 1921 I found that the provision enacted in the other Chamber was not sufficient, that there were other provisions which had been recommended to the Government which also required to be enacted as part of the law, and I gave notice of amendments to that effect. The Government for some reason which we may guess but which has not been openly stated, which I think we can accurately guess, thought there was no use pursuing that measure in the face of the amendments of which I had given notice, which they know perfectly well this House would have carried. They withdrew the Bill—at any rate they did not proceed with it. Sir, I was not to be daunted in my course of action. The Criminal Procedure Code was on the anvil for amendments, and I sought that opportunity to introduce the amendments when the Criminal Procedure Code was under discussion. But the Honourable the Home Member then took the objection that that Chapter was not under amendment and sought the ruling of the Chair that the amendments were out of order ; and when that ruling was given I had to seek the more dilatory course which is open to us non-official Members of introducing this Bill, ballotting for it and getting such time as we can, which His Excellency the Governor General is pleased to allot for non-official business.

Sir, I introduced this Bill in January 1924 and got it referred to a Select Committee in September 1924. The Select Committee has now carefully investigated the provisions and I am thankful to the Honourable the Home Member, my friend, Colonel Crawford and my friend, Mr. Tonkinson, who though they were opposed to the principle of the Bill at the time of reference to Select Committee gave the Select Committee valuable assistance in the shape of suggestions in order to improve the drafting, wording and substance of the Bill. Sir, the Bill as amended by the Select Committee is now before the House. I ask that the House should adopt the Bill as it has been reported on by the Select Committee.

I may say at once there are four matters which I seek to introduce in by this Bill. In the first place I propose that an unlawful assembly

should not be dispersed by the use of fire-arms except in the last resort, that is to say, only if other means of dispersing the unlawful assembly fail or are likely to fail should resort be had to the use of fire-arms.

The second principle which I seek to enact in this Bill is that before fire-arms are used to disperse an unlawful assembly warning should be given to the assembly.

The third thing which I seek to bring in is that as soon as the disturbance is over and as soon as the assembly has been dispersed successfully then a full report of the circumstances leading to the use of fire-arms should be made by the person responsible for directing the use of fire-arms.

The fourth and most important thing in my view in this Bill is the freedom to any individual injured or to any relations of persons who have been killed if they think fit, to complain and take action against the unlawful exercise of the power.

This Bill is confined to the case of the use of fire-arms—it does not extend to the case of use of force or military force, for which provision already exists in the Code. The use of fire-arms is a very dangerous thing. That is admitted in all civilised countries. As is pointed out in that famous report made by three learned legal luminaries, Lord Bowen, Sir Albert Rolit and Lord Haldane (then Mr. Haldane) in the Acton Hall Colliery Dispute :

> "A soldier can only act by using his arms. The weapons he carries are death : they cannot be employed at all without danger to life and limb, and in these days of improved rifles and perfected ammunition without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose and under such grave conditions ought of course to be the last expedient of the civil authorities."

Sir, great care has always been taken in western countries and we cannot have a better example than England, whom Providence has brought into contact with our country, in dealing with this subject. There are some people who believe west is west and east is east, and probably in the matter of the dispersal of unlawful assemblies in the east there are some people who take the view that you must create terror, that you must create a moral effect in the atmosphere of the country, that you should strike terror into the hearts of the people by using unnecessary force. When I say unnecessary force, I mean force that is not necessary for the immediate surroundings of the case. Whenever force is used which is not required for the immediate surroundings of the case I say, Sir, it is unnecessary force, it is inhuman to use force in order to create a moral effect in the country or in order to deal with situations in other places and in order to strike terror into the hearts of the people by using force and killing them and maiming them. I say, Sir, that it is inhuman, and if such action can be justified on the floor of this House or anywhere else the persons who seek to justify such action stand self-condemned before the bar of humanity and before that Higher Power who controls all of us.

Sir, the actions at Jallianwalla Bagh, I was surprised to read in the judgment of a Judge presiding over an English Court, had the approval of the military officers. I was shocked to read in that judgment that there were military officers belonging to our Army who approved of that action. Sir, I hope it was not true, though I know there have been people

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who have made a hero of the author of that famous tragedy. It is unnecessary for me to dwell very much on that. The Government of India luckily for us had risen to the occasion. They would not yield to the temptations which were laid in their way and they issued a Resolution which was quite worthy of the Government of India, and we are thankful to them for taking such a statesmanlike action in that matter. But, Sir, we must avoid opportunities for the repetition of such occurrences. Now, the provisions which I have sought to introduce are the provisions which are already contained in the circulars issued by my Honourable friend's Department from the year 1893, if not earlier. I hold in my hand by the courtesy of the Home Department the circulars issued by them. There is one circular issued by them No. 54583-Police, Calcutta, dated the 28th November 1893 ; there is another circular which was issued by them, dated 4, Police, 426-434, dated 30th July 1894, another circular is No. 951, dated 18th November 1902, which was issued to Local Governments. What is it, Sir, that the Local Governments are enjoined by these circulars to do ? They are told that within the territories under their respective control, they must take care :

> " To ensure that the fullest warning is given before any order is given to fire on a mob, and that neither troops nor police should fire in such cases except in the last resort."

So that the two principles for which I am contending have been accepted by the Government for a long time, namely, you should not resort to firing except in the last resort, and you should not proceed to fire without the fullest warning being given. Sir, that is repeated over and over again. And, Sir, there are Queen's Regulations in England and have the force of law. I see the same provisions are enacted in section 8, paragraphs 62 to 68 of the Queen's Regulations of 1892. Sir, they have to very carefully inquire before stringent orders are given to fire. According to these orders, " the Commanding Officer is not to give the word of command to fire unless distinctly required to do so by the Magistrate." That is the third of the propositions which I am trying to enact in this provision ; unless distinctly required to do so by the Magistrate, nor until in conjunction with the Magistrate he has explained to the people that if the troops are ordered to fire, their fire will be effective. That is the warning which is given there. So that I have the high authority of the Queen's Regulations which have the force of law for two of the provisions which I seek to enact. I have the high authority of the Government of India circulars for the other provisions in the Bill which I seek to enact.

Sir, for the last of them, namely, freedom and liberty to complain by persons injured. It is only, Sir, in this country that liberty is needed to complain of a wrongful action. That is, section 132 of the Criminal Procedure Code, as it stands, requires that before action can be taken against any officer employed or against any person who had used unnecessary force or who had acted unlawfully in dispersing an unlawful assembly, before any such person can invoke the aid of the criminal court against any person who had used unnecessary force, a bar is imposed against such person. He must get the sanction either of the Local Government, or in certain cases, of the Governor General. Sir, I can quite understand the great value which people who are employed in this unpleasant task attach to human life. I do not think that there

is any human being who really indulges in taking the life of a fellow human being. No doubt, the officers are actuated by the highest sense of duty, but like other people who act from a high sense of duty and who take certain risks, these officers ought also to take certain risks. When a soldier goes to the field, he takes a certain amount of risk which is attendant upon his duty. Now, this has been an effective protection, a real protection, because the Local Governments or even the Governor General will be naturally loath to give sanction to prosecute their own officers who perform duties which pertain to the Local Governments. It is not human to expect, however high placed a statesman he may be, that the Governor of a Province or the Governor General of India would give sanction for prosecuting officers who have dispersed unlawful assemblies. Now, on the other hand, Sir, people deserve protection from acts of that kind in the name of law and order. That there have been such cases, nobody can deny. Can there have been a worse instance than the Jallianwalla Bagh incident ? Did the Governor General give sanction to prosecute any or all the persons who were concerned in that tragedy ? Was there a more deserving case than that, Sir ? The fact is, that there is an effective bar against prosecuting such persons who have used unnecessary force in the name of law and order. That is why, I say, Sir, that you should give freedom to persons who feel that they have been unlawfully treated in the name of law and order ; they should have complete liberty tc go to the courts and say that they have been unlawfully treated and that they should be given redress. Why should any person stand between justice and individuals ? That is the object. Therefore, Sir, I attach the greatest importance to that clause. It will be an effective protection to individuals, it will be an effective protection to the public, and that is why I say that only in cases where death has occurred or where a person has been injured seriously, the parties must be given the liberty to invoke the aid of the criminal courts without the previous sanction of the Local Government concerned. If the Government had accepted my suggestion to have a Director of Public Prosecutions in this country, if we had an independent Director of Public Prosecutions in this country, I should have been quite satisfied to leave the matter in his hands. But we have not got any such official here, an official who is independent of the Executive, who can see whether certain prosecutions should be instituted or not. So long as we have not got any such institution, I think it is but right that individuals should have the liberty to go to the courts established by the Government of this country to seek redress for wrongs done to them. I therefore ask, Sir, that in the last clause of my Bill that this bar should be removed so that any person who has been unlawfully injured may have the right to invoke the aid of the criminal courts. These are the principles of my Bill. I rest for the principles of my Bill on the Queen's Regulations, and on the Government of India circulars.

Now, it is said and in fact Colonel Crawford did say, it is all right, we may issue Executive instructions, but why make these a provision in the law ? May I ask him why is it a provision of law in the Queen's Regulations in England ? (Hear, hear.) Sir, the executive orders can be disobeyed, and will be looked at indulgently by persons who have to work in an executive capacity, but legal provisions cannot be ignored. There are courts to guard the public against infringement of the regulations. The existence of these executive orders did not prevent tragedies like those in Amritsar being committed ; whereas, if we had provisions

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like the one I seek to place on the Statute-book, I am sure officers would act with greater care and caution in using the extreme power which is vested in them. Sir, it may be said that I am trying by this measure to weaken the hands of the Executive. That is very far from my intention. It is a question of choice. Which is the greater evil, is the question. Is it right to leave such unfettered powers in the hands of officers who have to take the lives and limbs of His Majesty's subjects ? Should you give them unrestricted powers or restricted merely by executive orders which have really no force ? The principle is admitted, that there should be executive orders to this effect ; that is the weakness of the opponents of this measure. They admit it. "Oh yes, I quite agree with your principles ; your intentions are good ; we will issue these instructions." Do you issue them with the intention that they should be obeyed or disobeyed ? If the intention in issuing them is that they should be obeyed, then why not make it a legal obligation and let an officer take the legal consequences of his exceeding those instructions or violating those instructions ? So that, the principle being admitted, what is wrong, I ask, in making it a legal obligation ? If you make it an administrative obligation, why not make it a legal obligation ? My Honourable friend, the Home Member, in his Minute on the Report of the Select Committee, says this which I must read. He says :

> "Moreover, a statutory inhibition of this kind will always render the question in issue—could the assembly have been otherwise dispersed ?—I think a matter very difficult for the courts to deal with."

May I ask him, what is the answer to the wording of section 129, even as it is. Does not that issue arise under that section 129 as it is ? May I read it for his benefit ? This is the law as it already stands. It runs :

> "If any such assembly cannot be otherwise dispersed and if it is necessary for the public security that it should be dispersed, the magistrate of the rank who is present may cause it to be dispersed by military force."

I adopt that very thing. When I say that, if the assembly cannot be otherwise dispersed, has not the court got to decide that issue ? Does not that issue arise ?

The Honourable Sir Alexander Muddiman (Home Member): Certainly it does arise. It arises with reference to the question of the use of force, not of the particular kind of force.

Diwan Bahadur T. Rangachariar : If it arises with reference to the question of military force, that includes fire-arms. If already under the law the question arises under section 129 with regard to the use of military force, which includes fire-arms, I am only re-enacting that portion with reference to the use of fire-arms. He stated it as a very grave objection to my proposal because "a statutory inhibition of this kind is a matter very difficult for the courts to deal with." It may be that the courts are constituted to deal with much more difficult questions than this; the courts have to grapple with them. Therefore, Sir, I have great faith in the courts of this country; I have great faith, even in the Magistrates of this country, because they dispense justice in the presence of parties after hearing the parties. Although there may be exceptional cases, I, as a lawyer who has practised both in the Magistrates' courts and the civil courts, can bear testimony to their honest discharge of their duties. People have great faith in your Magistrates. And therefore I am not much alarmed by the issue raised by the Honourable the Home Member in that connection.

Sir, another objection which he has taken is this. He says—I am not as merciful as I pretend to be—he says :

"As regards the actual provisions, I still do not understand why it should be thought necessary to lay down that fire-arms are not to be used unless the assembly cannot otherwise be dispersed."

He repeats what he said on the floor of this House :

"The authorities in charge may be of opinion that it might be possible to disperse the crowd by a bayonet charge. Are they to be forced to try a bayonet charge with all its attendant risks and dangers before fire-arms are used ?"

Sir, not having seen a bayonet charge, I can only imagine what it is likely to be. I am sure my Honourable friend, the Commander-in-Chief, has taken part in many a bayonet charge. But I don't know, Sir, that in dealing with an Indian crowd, armed with brickbats and *lathis* you will require.....

The Honourable Sir Alexander Muddiman : What were they armed with in Kohat ?

Diwan Bahadur T. Rangachariar : Well, we all know Kohat; and Kohat is so close to the manufacturing centre of fire-arms. And Kohat is peopled by people who are quite different from the rest of India.

The Honourable Sir Alexander Muddiman : The Indian Law applies to Kohat.

Diwan Bahadur T. Rangachariar : Sir, of all the riots that have taken place in this country, my Honourable friend is able to quote Kohat. I am sure my Honourable friend will recognise that the ordinary weapons which these crowds have are either brickbats which they have picked up on the roadside or *lathis* which they carry about with them. Sir, in dealing with an Indian crowd of that sort are you going to have a bayonet charge ? Are they a disciplined body that you are going to march on them with fixed bayonets ? But, Sir, I would prefer that for if once you show your determination, if once the opposing force shows its determination to march into the crowd, I am sure the crowd will disperse in no time. If they do not, what happens ? It is the rioters alone that will be injured. Whereas here, by the use of fire-arms, you will be able to fire from a safe distance, with your fifty Gurkhas on an eminence, you will be at a safe distance, so that you do not get intermixed with the crowd. What happens ? Innocent men, women and children, who are merely spectators get killed. That happened in Madras, Sir, when the Chulai riots took place. A woman was struck, a boy was struck. That happened in Madura by the use of fire-arms. They can be used from a safe distance, whereas if you have a bayonet charge, you march into the crowd.

Sir P. S. Sivaswamy Aiyer : They might be overpowered.

Diwan Bahadur T. Rangachariar : I am sure my Honourable friend will agree with me at least that in Madras they are likely to show their backs as soon as you show your determination to subdue them. I cannot speak with authority as to how a Punjab crowd would behave. However, I think even they would show their backs rather than undergo a bayonet charge. But I am now dealing with the ordinary cases that occur. So that by that means you will be really affecting the lives and limbs of the rioters themselves for the bayonet charge will go direct on them. Then, you cannot plead : Oh, the attitude of the crowd was ugly, therefore an order was given to fire. Or the policeman's turban was knocked off. Therefore an order was given to disperse. I am not imagining now. I have

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seen such reports. But from a safe distance to use these deadly precise weapons is a dangerous thing. Therefore, Sir, my justification for restricting my Bill to the use of fire-arms is this. Why do the King's Regulations provide all these regulations for the use of fire-arms ? I will read paragraph 63 and paragraph 64:

"*Paragraph 63.*—All commands to the troops are to be given by the officer. The troops are not, on any account, to fire excepting by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of fire, and is not to give the word of command to fire, unless distinctly required to do so by the Magistrate.

Paragraph 64.—In order to guard against all misunderstanding, Officers Commanding troops or detachments are, on every occasion when employed in the suppression of riots, or enforcement of the law, to take the most effectual means, in conjunction with the Magistrates under whose orders they may be placed, for explaining beforehand to the people opposed to them that, in the event of the troops being ordered to fire, their fire will be effective."

and so on and so on.

The King's Regulations are confined to the use of fire-arms, which I have read. So also, Sir, I ask that there should be some regulation regarding the use of fire-arms.

As I have already said, I need not dilate upon it. I therefore say that the objection taken by my Honourable friend the Home Member in his minute that I am enacting something which might place the crowd in more danger than they already are in is not a correct argument. Nor is his other argument correct. My Honourable friend accepts that a warning should be given. In fact, Government themselves brought forward a measure, as I told you, Sir, in 1921, that there should be a legal provision for giving warning. My Honourable friend says that the rule which I seek to impose is absolute. What I say is :

"The person who directs that the assembly shall be fired on shall, before so doing, warn the assembly by such means as may be available that unless it disperses, it will be fired on."

What is wrong in that ? On the other hand, it is less strong than the English provision. It has been brought in the form of the Government provision itself which they brought forward in 1921. I do not see the objection to clause 2 which my Honourable friend takes.

As regards clause 3, my Honourable friend says:

"I see no great objection to clause (3), which requires a statutory report, but I would here again prefer it not to be confined to the use of fire-arms."

I would gladly welcome a measure, if the Government bring it forward, to make it obligatory upon all persons who disperse an unlawful assembly, where death or grievous hurt is caused, to make a report. I would gladly welcome such a measure. But I could not accept the suggestion of the Honourable the Home Member because it would go beyond the provisions of my Bill. My Bill is confined, as the Preamble was confined, only to cases where an assembly is dispersed by the use of fire-arms. That is why I could not accept the suggestion of my Honourable friend. I am sure he realises the difficulty which I was in. On the other hand, I would gladly welcome a measure if the Government think it necessary that there should be not only report in these cases but in every case where force is used for

dispersing an unlawful assembly. There is nothing to prevent the Honourable the Home Member doing so. He can quickly amend the Criminal Procedure Code by bringing in a short clause which we will accept.

As regards clause (4), my Honourable friend says :

"Finally, clause (4) is far too wide in granting a right to make complaints without the sanction of any public authority."

As I have already stated, I attach the greatest importance to this clause. We must have freedom of complaint. I have restricted it as carefully as I can. I have restricted it only to persons who are aggrieved by the act, not to every individual in the street. I think they should have the right to complain. That is an issue which I propose to stand by. I cannot withdraw it or yield on the matter. Unless an officer can be appointed called the Director of Public Prosecutions to whom we can entrust this, till that stage comes, I think it necessary to have this provision.

I do not think there is anything new in my Honourable friend Colonel Crawford's minute which I need deal with. He thinks, of course, that the whole law should be left as it is and that there should be no revision. Sir, the House by sending the Bill to the Select Committee on the last occasion by a vast majority have affirmed the principle that the law should not be left as it is and needs revision. Sir, I stand by that position. I hope the House will stand by that position. The House has already affirmed that principle and I ask the House to affirm that principle once again that the law should not be left as it is but must be remedied and improved in the way the Select Committee have asked us to do.

The Honourable Sir Alexander Muddiman : Sir, I intervene at this early stage in the debate in order to explain one or two matters. I am opposing the consideration of this Bill, but I am not at this stage going to make a speech. I dealt with the Bill very fully on the motion that the Bill be referred to a Select Committee. On that occasion, owing to a misapprehension, many Members who desired to speak on the Government side were unable to do so as the question was put the moment I sat down. I desire, therefore, to raise a debate on this motion for consideration in order that other Members who were not given an opportunity to speak on that occasion may have an opportunity of speaking on this occasion. I must, however, say a few words on the points brought forward by my Honourable friend. As I said on the previous occasion, the object of my friend's Bill so far as it aims at securing moderation in the use of force commands the sympathy of all reasonable men. It is of the greatest importance to the citizen that fire-arms should be used, or any form of force should be used, with great discrimination. On the other hand, it is equally important to the citizen that when an occasion arises for the use of force, that force should be used in a prompt and effective manner. Those are propositions that I do not think any one is likely seriously to dispute. The issue between my Honourable friend and myself except in one particular is not a very large one. He lays down in his Bill certain rules which are rules of law. That is to say, they will be applied as other rules of law are. Now, the use of force is a matter which in my judgment is independent of the actual form of the force. It seems to me impossible to draw different rules for the use of different forms of force. There is no use saying, "You may use gas, you may use explosive bombs, but you must not use fire-arms." I understand my Honourable friend's

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point. It is that the maximum use of force should be controlled by special rules. But when he confines this matter to fire-arms, he is merely evading the main point. The true criterion in the use of force for dispersing crowds is independent of the actual form of the force. That I state as a very general principle. If you are to amend your law you should amend it with regard to the use of all force and not with regard to the use of fire-arms only. There is no special rule of law in England that I am aware of to regulate the use of fire-arms. My Honourable friend says, "Why do you object to my embodying in the law rules which you yourself as an executive authority lay down?" The answer is a very simple one. My Honourable friend's Bill lays down certain provisions. He says:

"Fire-arms shall not be used unless such assembly cannot otherwise be dispersed and unless a Magistrate of the highest class present specifically authorises such use."

I need not read the provisions in full. He has read them sufficiently to the House. He says that in each and every case where you may use fire-arms, you have to prove that you complied with all those conditions. Some of those conditions, I suggest, are not possible of compliance. My Honourable friend has said that crowds in India are not usually armed with anything but *lathis* and brickbats and such other material objects which they may pick up at the place of occurrence. Speaking generally—very generally, indeed,—that is correct. On the other hand, it has to be remembered that the forces of law and order in many parts of India are very limited in numbers and if my Honourable friend imagines that ten policemen can, say on the occasion of a Hindu-Muhammadan riot, such as I have myself witnessed, or when confronted with a direct attack, preserve order by means of their ordinary *lathis*, he is entirely under a misapprehension. These policemen would be torn to pieces. They have been torn to pieces. Does my Honourable friend wish the use of fire-arms to be restricted in a case like that where you have ten policemen facing mobs excited by religious or other susceptibilities and in a state where nothing can possibly save the situation but a sudden and a striking exhibition of force?

Diwan Bahadur T. Rangachariar: Then you can use fire-arms.

The Honourable Sir Alexander Muddiman: Subject to your restrictions.

I have argued this point at great length before and I do not propose to go into it again. I will just reply to one or two of the points made by my Honourable friend. He said on the question of sanction which is a point he has pressed so strongly, he is not prepared to allow any public servant who performs this distressing duty—it must be a distressing duty to every humane man—he is not prepared to allow the protection which the law now gives, that is, that a prosecution shall not be possible without the order of the Local Government or the Governor General. He would, however, be good enough to permit that to be done if we had the sanction of the Director of Public Prosecutions. Now, I may tell my Honourable friend this. I have some experience of and I have spent some time in the office of the Director of Public Prosecutions in London and if my Honourable friend imagines that the Director of Public Prosecutions is not in intimate touch with the executive Government in England he is under an entire misapprehension.

12 NOON.

Mr. A. Rangaswami Iyengar : Why do you object then ?

The Honourable Sir Alexander Muddiman : I do not object. My Honourable friend is objecting. In other words, the sanction of the Director of Public Prosecutions in England is the sanction in the last resort of the executive Government in England which we have here directly. My Honourable friend is presumably satisfied that he must give up this clause. But I do not suppose he will.

Now, as I have said, I shall have an opportunity of speaking again in this debate and I will not further take up the time of the House. I oppose this motion for the reasons I have given in my minute of dissent.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural) : Blessed are they who have no expectations, because they shall not be disappointed. I have not much expectation of the Honourable the Leader of the House and therefore I confess that I am not thoroughly disappointed. I say " *thoroughly* " for one reason. The Honourable the Home Member used an expression which rather surprised me. He said " a sudden and striking exhibition of force " is necessary. I did not expect an amiable gentleman like the Honourable the Home Member to use an expression of that kind. I could understand a military man using an expression of that kind. Sir, I thought that the military mentality was a little different from the civilian mentality, but perhaps in this country there is only a very thin line of demarcation.

Sir, that particular expression, the Honourable the Home Member will forgive me, can be compared to an expression from the evidence that was given by General Dyer before the Hunter Commission. Before quoting that particular evidence you all remember, every one in this House remembers, Sir, the basis of General Dyer's action—to produce a sudden and striking impression. General Dyer said something which could be paraphrased in the words of the Honourable the Home Member as " a sudden and striking exhibition of force." In this country, after the experiences we have undergone we can no longer permit the sudden and dangerous exhibition of force which has been going on for some time. Sir, it is bad enough in all conscience that we have had one Jallianwalla Bagh, and Honourable Members will bear in mind that Jallianwalla Bagh was not a by-product of Martial Law. It was the precursor of Martial Law, it was the real motive for Martial Law, it announced the coming on of Martial Law. I could understand the exhibition of brute force under Martial Law,—I could understand it, if I would not appreciate it, if I might not approve of it. (*An Honourable Member* : " Why ?") Mr. Rangaswami Iyengar rightly says, " Why." Martial Law can be justified only by conditions which have to be dealt with in a military style. There was no necessity for martial law in the Punjab, but before martial law was introduced, General Dyer, without consulting the civilian authority plunged the Punjab into bloodshed unprecedented in any other part of the civilised world, into bloodshed which made the late Lord Curzon speak with horror of the " reeking shambles of Amritsar." We do not want a repetition of the Jallianwalla Bagh. It is all very well for you to say that " a sudden and striking exhibition of force " is necessary. But as a sudden and striking exhibition of force has become once and may again become a Jallianwalla Bagh, we cannot give you this unfettered power. I think it is very pertinent to read here what General Dyer

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himself said about " a sudden and striking exhibition of force." Asked by Lord Hunter :

" *Q.*—When you got into the Bagh, what did you do ?

A.—I opened fire.

Q.—At once ?

A.—Immediately. I had thought about the matter and don't imagine it took me more than 30 seconds to make up my mind as to what my duty was.

Q.—As regards the crowd, what was it doing ?

A.—Well, they were holding a meeting. There was a man in the centre of the place on something raised. His arms were moving about. He was evidently addressing. He was absolutely in the centre of the square, as far as I could judge. I should say some 50 or 60 yards from where my troops were drawn up."

The General had admitted that there might have been a good many who had not heard of the proclamation. So Lord Hunter asked :

" *Q.*—On the assumption that there was that risk of people being in the crowd who were not aware of the proclamation, did it not occur to you that it was a proper measure to ask the crowd to disperse before you took that step of actually firing ?

A.—No, at the time I did not. I merely felt that my orders had not been obeyed, that Martial Law was flouted (*though there was no martial law at the time*), and that it was my duty to fire immediately by rifle.

Q.—Before you dispersed the crowd, had the crowd taken any action at all ?

A.—No, Sir. They had run away, a few of them.

Q.—Did they start to run away ?

A.—Yes. When I began to fire, the big mob in the centre began to run almost towards the right.

Q.—Martial Law had not been proclaimed. Before you took that step, which was a serious step, did you not consider as to the propriety of consulting the Deputy Commissioner who was the civil authority responsible for the order of the city ?

A.—There was no Deputy Commissioner to consult at the time. I did not think it wise to ask anybody further. I had to make up my mind immediately as to what my action should be. I considered from the military point of view that I ought to fire immediately, that if I did not do so, I should fail in my duty.....

Q.—In firing was it your object to disperse ?

A.—No, Sir. I was going to fire until they dispersed.

Q.—Did the crowd at once start to disperse as soon as you fired ?

A.—Immediately.

Q.—Did you continue firing ?

A.—Yes.

Q.—After the crowd indicated that it was going to disperse, why did you not stop ?

A.—I thought it was my duty to go on until it dispersed. If I fired a little, I should be wrong in firing at all."

Then in reply to a variety of questions, General Dyer said he continued for about 10 minutes, and that he had no ' military experience to use similar methods of dispersing crowds ' ; ' he could have dispersed them, perhaps even without firing '. But he fired, because ' they would all have come back and laughed at him and he would have made a fool of himself '."

That was why a sudden and striking exhibition of force was necessary !

The Honourable Sir Alexander Muddiman : The Honourable Member is misrepresenting what I said. What I said was this, that on an occasion of the kind which I was then discussing where two mobs were

in that condition it was necessary. I did not say that it was necessary to go on firing till the mob ran away.

Mr. C. S. Ranga Iyer : I must admit that the Honourable the Home Member has tried to explain his rather complicated position, but the explanation has got to be explained ! General Dyer was perhaps wrong, in the estimation of the Honourable the Home Member, in having gone on firing until the mob dispersed, but my position is this. General Dyer had no business to open fire at all without giving them warning or before trying other methods of dispersing an innocent crowd. Honourable Members know what happened at Jallianwala Bagh ! Whenever the bureaucracy think it necessary that such a thing should happen, such things do happen, for it is a matter of deep regret that there are several men, both among the soldiers and the civilians, who hold Indian lives cheap. I do not wish to refer to a case which is *sub judice* of a coolie who was kicked to death the other day, and whose ribs were broken.

Mr. H. Tonkinson (Home Department : Nominated Official) : Sir, this question is *sub judice* and I suggest it is most improper of the Honourable Member to make mention of it here.

Mr. President : Order, order. The Honourable Member will not refer to any matters that are *sub judice.*

Mr. C. S. Ranga Iyer : I am sorry, Sir, I will not refer to matters that are *sub judice,* but incidents have happened in this country, incidents which prove that Europeans hold Indian lives rather cheap. Though not the first, yet the most striking incident of that kind was the firing on a peaceful crowd at Amritsar. The Government gave great provocation to the people of the Punjab and India by introducing the Rowlatt Act, better known as the Black Act, this immoral piece of legislation was defied constitutionally by peaceful agitation in the Punjab and India by both Moderates and Nationalists. In the Punjab, the Government resisted constitutional agitation with unconstitutional violence which they inflicted upon a peaceful crowd of patriots in Amritsar who formed themselves into a procession to proclaim their feelings of protest when their leaders were arrested. That crowd was fired on without any warning. I shall read to you,—if the Honourable the Home Member has any doubt about the fact that the crowd was fired on without any warning,—what Mr. Maqbool Mahmood, a High Court Vakil, who, together with Mr. Salaria, was trying to reason with the crowd, says :

> " Salaria and I shouted out to the Deputy Commissioner and the officers to get back and not to fire, as we still hoped to take the crowd back. A few of the crowd threw wood and stones at the soldiers. The soldiers at once opened a volley of fire without any warning or intimation. Bullets whistled to my right and left. The crowd dispersed, leaving 20 or 25 killed and wounded."

The result was that the crowd went mad. It killed a few Englishmen, a tragedy which all of us deplore, but if peace is to be respected, if people are not to be provoked, if lives are to be preserved, it is necessary to prevent driving people mad by careless firing without any kind of warning. When my friend, Diwan Bahadur Rangachariar, whom not even the Honourable the Home Member can characterise, even by the greatest stretch of imagination, as an Extremist, when a sober moderate like him in this House insists that reckless firing without warning should be regulated, you will not listen to him.

Sir, we are in a transitional period. We have got to struggle, to fight, to conduct an agitation in this country, to organize a peaceful mass

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movement. I know that European officials, policemen and others, when we conduct an agitation of that kind, dislike it. If we were ruling England and Englishmen were conducting a mass movement, we too would have disliked the movement. If Germany had succeeded in the war and England were under German rule, and Englishmen were carrying on an agitation of that kind, the Germans would not have liked it. I am anxious, Sir, that no peaceful mass movement should be plunged into violence. If you provoke the masses, the masses will answer violence with violence. That will suit the Englishman's purpose, because superior violence can put down popular violence. I say that we want a non-violent peaceful agitation which you cannot resist by superior violence. If you oppose this Bill it is because you want popular violence so that it may be put down by bureaucratic violence. I therefore attribute motives to the Government when the Honourable the Home Member opposes a measure of this kind, because he wants much violence to crush a peaceful movement and a pretext for making an exhibition of police force.

We are further told by the Honourable the Home Member, why talk of fire-arms only, why fire-arms particularly. We may at some time have to talk of machine guns, we may have to talk of bombing from aeroplanes, we may have to talk of poison gas and the use of poison gas, when you make these things as common as you are making the abuse of fire-arms. To-day we are concerned with fire-arms, the method by which you have been resisting us ; but when you resort to using other methods we shall come to you and give you fair warning. We shall try to stay your hands. Therefore it is wrong to say that Diwan Bahadur Rangachariar has " evaded the main point ". It is the Honourable the Home Member who has evaded the point.

His Excellency the Commander-in-Chief : Sir, I am afraid I cannot claim, like my learned friend, the Mover of this Bill, that I am, like him, a mild Madrasi Brahmin. I can, however, entirely associate myself with him by saying that I am a man of peace, and it is certainly my wish that rules and regulations should be drafted with the sole idea of humanity and the avoiding of any inhumanity.

I have listened to the speeches with the greatest interest, and on behalf of the soldiers whom I have the honour to represent here I will attempt to express their views regarding this proposed legislation which may so deeply concern them. I will begin by saying that we soldiers, certainly all thinking soldiers, never for a moment forget the fact, which is so often not realised by others, that we are first and foremost citizens of the British Empire. There is no title of which any soldier is more proud than that of " *Civis Britanicus Sum* ", a title of which we can never be deprived. We are citizens first and for all our lives, and as soldiers we are the servants of our King and Empire.

I rather gathered from the speech by the last Honourable Member that he is not prepared to extend to soldiers the epithet which he was kind enough to confer on the Honourable the Home Member of being " amiable " ; and I presume I am included in the category of " soldiers ". In fact I think the last speaker possibly regards soldiers as " the brutal and licentious soldiery ", as in days gone by they were at times described.

Mr. C. S. Ranga Iyer : I do not want to interrupt His Excellency, but I wish to say that I quite agree that he is an amiable man and so are they all, all amiable men.

His Excellency the Commander-in-Chief : I hope the days have gone by when anybody could regard soldiers,—and in this I speak in the broadest sense of soldiers of both British and Indian services—as brutal and licentious. We, unlike the Germans, have no military caste in our service. We are, as I have said, citizens, some of whom have devoted the whole of our lives, and others only a certain number of years, to the profession of arms. But I think possibly that even those who have not devoted very many years to soldiering, may, on account of hardships they have undergone, be classed among those married men, regarding whom you probably all know the riddle. "Do married men live longer than single ones?" The answer is, "It seems longer." Should that apply to some of us who are blessed with a single wife, I often wonder what the feeling of those others must be, who are more liberally endowed in that respect. But whether we have devoted the whole of our lives or only a certain portion to soldiering, we realize that it is our duty to ensure the safety of our fellow-subjects, and to see that as far as in us lies every man shall reap where he has sown, to carry out his avocations, whatever they may be, and that the subjects of the British Empire shall be able to go wherever they like and do what they wish upon their lawful occasions. In carrying out these duties, it will probably be realised that soldiers are often faced with very difficult and very disagreeable duties. I remember well, it is many years ago now when I was Adjutant of my regiment and Commandant, a Pathan sowar coming up to me and saying "*Sahib, zama hiss shaukh mishta che par yekhna shpa mane, de sentri de kar de para,*" which, our friend Nawab Sir Abdul Qaiyum, if he were here, or Captain Ajab Khan would tell you means, "I can work up no enthusiasm for doing sentry duty on cold winter nights." My friend went on to explain how doubtless there were others who had a *shaukh* for such duties and he hoped I would arrange accordingly. But sincerely as you will all sympathise with that young man regarding sentry duty on the frontier on cold and dirty nights, and realise that that is a disagreeable duty, yet I can assure you that it is nothing compared with the disagreeable and distasteful duty to which soldiers may be called on to perform in aid of the civil power. We realise that when we are called out for such duties, it is possibly as a last resort. It is most probably only done, when the civil authorities feel that the situation is getting out of their control, or has already done so. Consequently we realise that the action which may have to be taken will be of a drastic nature, and also it may possibly be against our own friends and relations. But what is the most difficult part of it all, is that notwithstanding this, the officers and non-commissioned officers have the whole time the feeling at the back of their minds that, whatever they do, it is very unlikely that they will be credited with doing right. In fact it is almost certain that they will be credited with doing the wrong thing. If the officer, on arrival, finds the situation very serious and at once orders drastic action, he will be held up to execration by arm-chair critics who can so easily come to the right conclusion after the action is over. If, on the other hand, he takes an optimistic view of the situation and thinks drastic action is not neces-

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sary, and he perhaps gives the order for a few shots to be fired over the heads of the crowd—which I may say in passing is really the very worst and most cruel action that can be taken because the ring-leaders in front escape and innocent people behind may be injured—if he takes that action, he is likely to be called a poltroon and a fool, and may possibly be turned out of the service. You will realise I know that it is very unlikely that any two situations with which officers will be faced will be exactly similar so that it is very difficult to formulate any regulations which will govern all contingencies. I will, however, with your permission, read an extract from the instructions which have been issued relating to martial law which have been drawn up for the guidance of officers :

"When an officer is required by a magistrate, or himself determines that a serious situation arises when there is no magistrate within reach, to disperse an assembly by force, he will, before taking action, adopt the most effective measures possible to explain to the people that, if necessary, fire will be opened, and that if fire become necessary, the fire of the troops will be effective. If he is of opinion that it is necessary to fire, but that the fire of a few men will attain the object of dispersing the assembly, he will personally give the command to a few specified men to fire. If a greater effort is required, he will personally give the command to one of the sections to fire."

Further rules, Sir, are contained in these instructions, which are based upon long experience and upon the highest conception of the sanctity of human life. These rules I have summarised generally as follows :

(1) When a Magistrate determines that force is necessary to disperse a crowd, he calls upon the Officer Commanding to do so ;

(2) The Officer Commanding the troops thereafter is empowered to take such action as he deems necessary for this purpose. He is the sole judge of what action to take and what weapons to use ;

(3) He is bound to use the minimum possible force for the purpose ;

(4) No *statutory* warning is laid down previous to the opening of fire ;

(5) He is responsible for the safety of his command ; and

(6) The officer cannot be prosecuted for his action, except with the sanction of Government.

The Honourable Mover of this Bill referred to the King's Regulations, stating that under them it was essential that permission should be obtained from the magistrate present before fire was used. I am afraid that the Honourable Mover was not quite accurate in that. What the King's Regulations say is :

"The reading of the Proclamation under the Riot Act is important, both as conveying a distinct warning to the crowd, and as involving the legal consequence that those who do not disperse within one hour are guilty of felony ; but it must be understood that to justify the exercise of military force in the prevention of serious outrage and damage to persons or property, it is not necessary to wait for the Proclamation to be read."

Further it goes on :

"When thus requested it will be the duty of the officer to take such military steps as in his opinion the situation demands. In doing so he will have absolute discretion as to the action to be taken, and as to the arms, including fire-arms, which the troops shall use, and as to the orders he shall give, including the order to fire."

From the instructions which I have mentioned, Sir, which have been issued in this country, I think it will be realised that there are three main principles which emerge :

(1) The first is that the Officer Commanding the troops, on being called out in aid of the civil authorities, will have upon him the sole responsibility for the action he takes, and will be responsible for the results ;

(2) He is definitely responsible that he uses the minimum force necessary ;

(3) He is held definitely responsible for the safety of his own command.

I am sure that Honourable Members will at once realise that it must often require great discretion, sound judgment and often much self-control on the part of the Officer Commanding on the spot, in possibly very difficult circumstances, to reconcile what may seem the conflicting parts of those three instructions, but underlying them all is the one main principle, which is that the officer who has been called upon to bring his troops out to assist the civil power is personally responsible for the action he takes, and he knows that the responsibility is his alone. It seems to me, Sir, that the imposition of that sense of personal responsibility upon the executive officer is probably the best possible safeguard that can be devised for ensuring that troops called out to aid the civil powers shall perform their duties to the best interests of the public. It ensures that the action taken shall be effective, and on the other hand that no greater force shall be used than is necessary, and avoids the risk of unnecessary casualties.

I will turn now, Sir, to the proposals under the present Bill. Under this Bill three main clauses emerge :

The first is that the Magistrate will decide on the weapons to be used, that is, the responsibility for the particular kind of force is thrown on him.

The second clause which affects us, soldiers, is that a warning must *invariably* be given before fire is opened.

And the third is that an officer may be prosecuted for any offence committed by him in this connection without Government sanction.

I will take these three points in turn :

(1) It will be seen that this, the handing over to the civil authorities of the discretion as to what force is to be used, whether fire-arms are to be used or not, at once divorces from the executive officer on the spot the definite responsibility which is at present imposed upon him. In other words, it reduces him to the position of a machine, and from a machine you can expect nothing but mechanical results. Further, what I think is vitally important is that, if you take away from him the responsibility for the methods employed, you certainly cannot hold him responsible for the results. In fact, it seems to me these proposals have in them

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two main objections. The first is that it lays upon the civil official, who can hardly be expected to have the same experience as to what the results of the use of different weapons will be, a responsibility which is now imposed upon the soldier, who from his training must be supposed to be the best judge of what the *results* of any particular action will be, whether fire-arms, bayonets or whatever it may be. Further, I would like to say this, which I do with the greatest diffidence, because I know how extremely hard it is to prove ; but our experience, the experience of many senior officers in the Army and in many lands has been that as a rule it is the experienced soldier who has been the restraining influence and not the inexperienced, very often puzzled and harassed civil official. I would refer to one case that certainly came to my notice in Upper Egypt when the present Adjutant General in India, Sir John Shea, was in command there and was called out to aid the civil powers. He with great self-restraint was able to use very much less force than the civil authorities on the spot urged him to use. Then again during the last year alone, we at Army Headquarters have received grateful thanks from Allahabad, Delhi and Kohat for the restraint which our soldiers had shown during the riots in those places when they were called upon to help.

I will turn now, Sir, to the second point, *i.e.*, laying down that a definite warning must *invariably* be given before fire is opened. That order apparently would not apply to a bayonet charge. We realise from what I have said and from what the Honourable Mover has also said, that the present regulations do compel an officer to give warning *whenever it is possible to do so.* I am doubtful if the framer of this Bill can have really thought the matter out to its logical conclusion when he recommended that on every occasion without any exception whatsoever, firing must not take place without due warning. To insist upon such a proviso is one of the most inhuman actions that I can possibly imagine. Let us take the case of a small military detachment suddenly faced with a maddened and furious mob at close quarters. The mob suddenly takes charge, rushes down upon what may be a large number of civilians and on the troops themselves. The officer in command has two alternatives. If he fires he breaks the law. On the other hand, he may order a bayonet charge. If his force is fairly large, a bayonet charge will certainly inflict a most terrible amount of damage and injury on the crowd. If on the other hand he has a very small force, it is likely after inflicting serious injuries on the rioters to be overwhelmed, even if the mob were armed with *lathis* and other such weapons as they can get hold of. Then again, can anyone here see a crowd advancing on their homes, in which their wives and children are with torches and fire-brands, or on their mills or factories ? The troops might be two or three hundred yards off, ready to disperse the crowd by firing but unable to do so because it is impossible to give any warning. To give a warning at such a distance would be an absolute farce. I cannot imagine my Punjab friends saying on such an occasion :

" Ghar phuk tamasha vekh Bhulai din awengai."

They know there would be no " *bhulai din* " at such a time, and they would be the first to urge that fire should at once be opened. That would be the only humane way of dispersing a mob, possibly with one or two shots.

I come to the third point, Sir, to permit an officer to be prosecuted without Government sanction. I feel sure that every one of my colleagues in the Assembly will have the greatest sympathy with us, soldiers, when we are called out to perform the most difficult and disagreeable duty which can be placed on us. I am sure you realise that we do utterly abhor being called out in aid of the civil authorities. And in extending to us your sympathy I will also ask you to give us your help ; I feel confident that the best way you can give us your help is not to tie our hands. It is the man on the spot on whom the final responsibility must lie. Do not tie his hands. Help him where you possibly can, guide him with instructions, but do not lay down definite hard-and-fast regulations by law under which he would be liable to suffer penalties if he gave the order to fire when it was impossible for him to do otherwise. Remember, he is not acting as a private individual. He is acting as a servant of the Government and it is up to Government to give him full measure of support. If he has at the back of his mind the thought " Whatever I do I am liable to be prosecuted ; my future is at the caprice of any individual who may wish to bring an action against me ; " if he cannot devote his whole attention and energies to the matter in hand, he is not likely to do his work with that complete detachment of mind which is essential.

Diwan Bahadur T. Rangachariar : Sir, with reference to His Excellency the Commander-in-Chief's remarks, may I ask him whether paragraphs 63 and 64 of the King's Regulation, section 8, are in force ?

His Excellency the Commander-in-Chief : That has been entirely revised.

Diwan Bahadur T. Rangachariar : Are they different from what they are now ?

His Excellency the Commander-in-Chief : Yes, Sir.

Diwan Bahadur T. Rangachariar : May I have a copy ?

His Excellency the Commander-in-Chief : Certainly.

Colonel J. D. Crawford (Bengal : European) : Sir, in rising to oppose the consideration of this Bill I do so because I believe it is a Bill which is thoroughly bad in practice and in law. I am not myself a legal expert and I leave that point to be developed later by those who are, but it seems to me very difficult to understand who is responsible, for instance, in the case of stating that fire-arms shall not be used unless such assembly cannot otherwise be dispersed. It appears to me that is a responsibility placed on the officer and you cannot very well do anything if he says, " In my opinion it could not otherwise be dispersed " ; I do not quite see what action is open to you except to say, " Well, you are the only person who was there to give an opinion ". The same applies of course on the question of a warning.

" The person who directs that the assembly shall be fired on shall before doing so warn the assembly by such means as may be available."

He, the individual in charge, is left to be the judge of what means were available. I quite appreciate, Sir, the humane motive prompting Diwan Bahadur Rangachariar when he brought in this Bill, and I presume that the motive which he really had at heart is the saving of human life on such occasions. Well now, Sir, in my opinion the effect the clauses which he proposes to add to the Criminal Procedure Code are likely to have

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is the very reverse effect. Personally I consider that the Criminal Procedure Code as it stands, and I would like to draw the attention of the House to it, is sufficient and adequate for our purpose. Section 130 says :

"When a Magistrate determines to disperse any such assembly by military force he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force and to arrest and confine such persons, etc., etc."

I will not read the rest of that section. There the responsibility is with the Magistrate in ordering the officer to undertake this unpleasant duty. And then we go on to paragraph (2) of that section :

"Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force and do as little injury to person and property as may be consistent with dispersing the assembly and arresting and detaining such persons."

In the law as it stands to-day, we have therefore a provision that an officer shall act on the orders of the magistrate and that he shall only use such force and the minimum of force as may be necessary to carry out his duties. That is exactly what my Honourable friend Diwan Bahadur Rangachariar tries to make a little bit clearer in his Bill. The next section enjoins on an officer in the case of no magistrate being present the important duty of undertaking the use of those powers if he considers it necessary ; it also enjoins on him that, while he is acting under this section, if it becomes practicable for him to communicate with the magistrate he shall do so and shall then obey the instructions of the magistrate as to whether he shall or shall not continue such action. The point that I wish to emphasise is that the feeling of the ordinary officer in the ranks at the moment in dealing with this unpleasent task of the dispersal of unlawful assemblies and in protecting innocent citizens is one of "tails you win, heads I lose," and when officers have that feeling it is not possible to expect them to act with that due sense of responsibility which they should exercise on a very important occasion of this nature. May I say that my Honourable friend Diwan Bahadur Rangachariar appears to be lacking for once in that imagination which is so strongly evident on the Benches on this side of the House.....

Mr. C. S. Ranga Iyer : He has transferred it to you. (Laughter.)

Col. J. D. Crawford : May I draw a little picture for his personal enlightenment as to what I would feel if called upon in similar circumstances ? We will say that troops had been called out to disperse a riot in the town or village where my Honourable friend lives and under the orders of the magistrate the main streets have been cleared and I am in charge of a patrol patrolling some of those main streets that have been cleared. As I pass a side street in which the house of my Honourable friend is situated, I notice a crowd of people with *lathis* attacking my Honourable friend and endeavouring to burn his house. I wonder to myself what I am to do under this new law which he has just brought in. If I go at once to his rescue—of course personally I would go at once to his rescue as he is a friend of mine and I would risk my skin and everything for him, but every one may not do so—I might think I have not the order of a magistrate to fire ; am I to push off and try and find the magistrate ? Also I have no time to give warning—the conditions are now serious and

if I wait any longer he would be killed and his house burnt. Must I warn the crowd ? I see no chance of that, and the officer finds himself in a very difficult position. He might say, " My job is dependent upon it ; poor Diwan Bahadur has got to go, I am afraid." Well, Sir, we do not want that sort of position in dealing with these unlawful assemblies. It is an unpleasant task and there is only one way of doing it. By all means if a magistrate is present—and we hope he will be present on most occasions, —he is there to give the necessary orders to the officer to use such force as he may think fit ; but if he is not there, the officer must undertake the responsibility himself and it is up to us in this House to make certain that he has a proper sense of responsibility and that he can perform that duty with our confidence behind him. That is what we want ; that is the only way in which we can ensure that this duty will be performed efficiently and in a correct and humane manner. I do not wish to refer to the controversies and regrettable incidents of the past, but there are, I think, lessons to be learned from the Punjab rising and from the Moplah rising. On the occasion of the Punjab rising I believe that, regrettable as it is, the total number of deaths was between 300 and 350, and on that occasion I think the House knows that you had a very severe measure of martial law. (*An Honourable Member* : " Jallianwala Bagh was before martial law.") Well, you had a very severe measure of military force which is not denied. As a result of the incidents on that occasion and in consequence of the depth of public feeling about them, Sir, you found officials very chary of using military force when we got the Moplah rising.....

Mr. Devaki Prasad Sinha : May I know whether the Honourable Member uses the " cheery " or " chary " ?

Colonel J. D. Crawford : " Very careful " if you prefer that. Then we got the Moplah rising ; the local authorities were nervous to move on account of public opinion against them—martial law was brought in slowly and forces were not used. Even my Honourable friend, Diwan Bahadur Rangachariar, on the 5th September 1921 in this House blamed the authorities for not using more force.....

Diwan Bahadur T. Rangachariar : No, no ; I did not say that. All that I did say was that Government did not deal with it at once, not that enough force was not used.

Colonel J. D. Crawford : May I quote the Honourable Member's words :

" The District Magistrate, I am sorry to say, had not taken adequate precautions to protect the population when he took such a serious step as this. He should have armed himself with more force....."

Diwan Bahadur T. Rangachariar : ' Armed himself with more force ' does not mean the use of that force.

Colonel J. D. Crawford : But, Sir, what was the result of all our care and all our consideration ? The total number of deaths was 1,100, and of those, Sir, 100 were entirely innocent Hindu citizens whom it was the duty of the Government to protect.

Mr. C. S. Ranga Iyer : Do you consider the other 1,000 guilty ?

Colonel J. D. Crawford : That is the position, Sir. If you have to call upon military forces to use force in the dispersal of unlawful assemblies, then our only trust is in the fact that they will use their powers with

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a suitable sense of responsibility ; and I believe and I am convinced that the measures which my Honourable friend Diwan Bahadur Rangachariar desires to see on the Statute-book will have the very reverse effect.

Finally, Sir, as regards clause (4), that too is liable to make officers think, " Well, whatever action I take I am sure to be in the wrong and afterwards I am open to charges of all kinds....."

Diwan Bahadur T. Rangachariar : May I ask the Honourable Member what they do in England ? Do they hesitate because there is a liability to prosecution ?

Colonel J. D. Crawford : May I remind the Honourable Member that England is somewhat more disciplined than this country ? We do not have to use troops as often in England as we do in this country. The police in England are the friends of the citizens and the opposition shown to them in India does not obtain in England. But there are provisions already in the existing Criminal Procedure Code for the protection of the ordinary citizen. We can undertake prosecutions with the sanction of the Local Government or in the case of military force with the sanction of the Governor General. So he is not without some means of redress if he thinks he has got a good enough case. This measure will sap the sense of responsibility of those officers who are called upon to perform these unpleasant duties on behalf of the citizens, and it is up to us to give them every possible support in the performance of an unpleasant duty of this nature.

Mr. T. C. Goswami (Calcutta Suburbs : Non-Muhammadan Urban) : May we, Mr. President, return once more to the civilian point of view ? I think I am expressing everybody's feelings in this House when I say that we heard the weighty words of the soldier-statesman, whom the King has recently honoured in such a unique manner, with great interest and with the deepest respect. I am sure His Excellency Sir William Birdwood will never use the Field Marshal's baton except to uphold the great principles of law that obtain in the land of his birth, if not in the land of his adoption.

Sir, we recognise—I am sure all of us in this House recognise—that the situation in which a magistrate or an officer may be called upon to fire on a mob is, necessarily, not only extremely unpleasant, but very difficult. I will remind this House of a very great judgment delivered in England in the case of the Bristol Riots. That is known as the case of *King vs. Pinney,* and I shall quote *in extenso* one paragraph out of that judgment, which shows that the judiciary in England took into consideration the very unenviable position of the Magistrate or officer, and at the same time imposed on him duties extremely difficult to discharge.

" Now "—*said Mr. Justice Littledate,*—" a person, whether a magistrate or an officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter ; and if he does not act, he is liable to an indictment or an information for neglect. He is therefore bound to hit the precise line of duty, and how difficult it is to hit that precise line will be a matter for your consideration."

—that is to say for the Jury's consideration—

" But that "—*continues the Judge*—" difficult as it may be, he is bound to do."

Now, I will pass on to another judicial pronouncement in the famous case of *King vs. Eyre*. There the learned Judge said :

"Where the inquiry is whether an officer is guilty of misdemeanour from an excess beyond his duty, the principle is very much the same, or rather it is the complement of that laid down in the case of *Rex v. Pinney*. If the officer does some act altogether beyond the power conferred on him by law"——

—that is the Common Law—

"so that it could never under any set of circumstances have been his duty to do it, he is responsible according to the quality of that act, and, even if the doing of that illegal act was the salvation of the country, that though it might be a good ground for the Legislature afterwards passing an Act of Indemnity, would be no bar in law to a criminal prosecution ; that is, if he does something clearly beyond his power. But if the act which he has done is one which in a proper state of circumstances the officer was authorised to do, so that in an extreme case on the principle laid down in *Rex v. Pinney*, he might be criminally punished for failure of duty for not doing it, then the case becomes very different."

Thus we see that the learned Judges in England did recognise the very difficult task that a magistrate or an officer had to perform in the various situations that might arise when he was threatened with a riot or faced by an angry mob. I will also take the liberty of reading the commentary by an authority on Constitutional Law, so great as the late Professor Dicey, on the passage I have just quoted. He explains :

"A General, an officer, a magistrate or a constable, who, whether in time of war or in time of peace, does without legal justification any act which injures property or interferes with the liberty of an Englishman, incurs the penalty to which every man is liable. It is a breach of the law."

Under those circumstances, the general or the officer or the magistrate is treated in law as a common law-breaker. Of course, the protection that such men have is the prospect, the hope, that the Legislature would pass an Act of Indemnity. And I am sure this Legislature would not, when the circumstances warranted, refuse to pass an Act of Indemnity to indemnify those officers who in a difficult situation and in really good faith slightly exceeded their duty. This is an important consideration.

There are other authorities in English law who may be quoted. We hold that these principles of English law are safely applicable—and ought to be applied—to this country, in spite of what my Honourable and gallant friend Col. Crawford has said—arguments savouring more of fear than of reason.

I listened with great interest to the statement of His Excellency, that "a soldier is first of all a citizen." That, Sir, is not only a very fine sentiment but, from the point of view of English law on the subject of riots, is legally true. I believe I am quoting the words of a great Judge in connexion with one of the riots in England ; he pronounced that "a soldier is only a citizen armed", and that he has got the same duties and the same liabilities as a civilian, who has also the *duty* enjoined by Common Law of intervening and suppressing a riot.

I shall not go into the unfortunate incidents of the past, like that of the Jallianwalla Bagh, except to say this,—that the Bill of Diwan Bahadur Rangachariar does not provide adequate safeguards for circumstances such as those which resulted in the Jallianwalla Bagh. Those are political incidents, and I feel that there may yet be many more Jallianwalla Baghs before we have seen the end of the present system of government. And in those circumstances, I am afraid this Bill will be of very little

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use for the preservation of the liberties of the citizen. This is a Bill which provides certain elementary safeguards in cases of ordinary riots. And that is its justification.

These are the considerations, Sir, I desire to commend to all sides of the House. I say no more.

Diwan Bahadur T. Vijayaraghavacharya (Madras : Nominated Official) : Sir, I feel that it is necessary to bring back this Bill to its proper issue. It seems to me that we have all travelled over a wide ground. After all, we are not concerned with the question as to what is the moral effect of putting down a disturbance. The object of this Bill is extremely simple. It is to put into law certain executive instructions which already exist, and it is asked what can be the possible objection to putting these executive instructions into the form of laws. Well, it seems to me that for one thing it is all right to issue executive instructions, and for the magistrate to have to bear them in mind when he is faced with the duty of putting down a disturbance, but it is another thing to give them statutory force. It is not to be assumed in the case of a magistrate that in the absence of legal rules he is free from responsibility. On the other hand, I believe the experience of many magistrates has been that the long explanations which they have to render to superior executive authorities on such occasions, are quite as terrifying as any experience in a court of law. The magistrate has got to render an account, a very strict account, of his doings, and then it is not to be supposed, as has been alleged, that the ordinary administrative authority begins with a prejudice in favour of the magistrate. My experience, and I believe it is the experience of other magistrates in this House, is, that the Secretariat at the provincial or Imperial headquarters is, generally speaking, more apt to suppose that the man in the district is likely to have been wrong, and the Secretariat holds him to a very strict account of his doings. And, remember the circumstances under which the Secretariat asks for these long explanations. The man in the Secretariat sits in a cool chamber of his own, is surrounded by *chaprasis*, surrounded by the police, he has got no trouble to face and he thinks that a magistrate facing a mob is in the same position as the Under Secretary sitting in his office room ; and he is apt to apply a standard which it is not possible for a district officer to apply who is faced with a mob and who has got to think on the spot and decide at once for himself. It is responsibility enough to have to account to the administrative authorities, and the fact of this accountability on occasions prevents a zealous and humane district official from doing his duty in the way in which he would do it if he felt that presumptions would not be drawn against him. (*Mr. M. A. Jinnah* : "That would not happen in a judicial court.") That may be so. But to this extent the judicial officer is in the same position as the administrative officer, in that he too sits in a cool chamber of his own, surrounded by the forces of law and order and he applies to the executive officer's action the same rigid standard which the Secretariat official applies. And if you enact this law there is this further trouble. The magistrate may have honestly carried out all the executive instructions already in force. He may not have ordered the use of fire-arms till he had satisfied himself that it was unavoidable. He may have given a warning. But all the

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same, it is one thing to satisfy yourself on the spot as a magistrate that you have exhausted all the possible precautions before you proceed to extreme measures, and it is another thing to satisfy the court. I may relate in this connection a case which happened some years ago in my own province. A man was dying, a very wealthy man, and he called in two of the most eminent lawyers in the province to attest his will. He died and later on a case about the validity of the will came up before the courts. The two eminent lawyers, accustomed to cross-examinations all their lives, appeared before the court and gave evidence. Each contradicted the other very materially under cross-examination as to who were present, what was the exact thing the man said, and the surrounding circumstances. The result was that at the end of a long trial, these two gentlemen, eminent lawyers, very honourable men in private life, were disbelieved by the court and the will was held to be not proved. In talking to one of these gentlemen afterwards he considered that it was extremely lucky in the circumstances that he was let off without a sanction for perjury. It is one thing to be able to do a thing rightly but it is another thing to be able to prove it to the satisfaction of a court ; particularly in the case of a disturbance where the magistrate has naturally and necessarily to deal very roughly and on the spot with circumstances which perhaps, if he were in a quiet chamber, surrounded by the forces of law and order, he may have handled differently. After all, by no amount of statutory rules can you prevent the personality of a magistrate from coming into play. You have to trust your magistrates. But you ask : Are we to trust them and give them full powers ? As I said, the administrative authorities are quite strict in holding a magistrate to account in these matters. (*Mr. M. A. Jinnah* : " Are they ?") The public may not know it, but it is so. (*Mr. M. A. Jinnah* : " Tell us, what do they do ?") Some of these experiences I shall tell you by and by when I am on your Benches. (*Mr. M. A. Jinnah*: " I have never been in your shoes : tell us.") Well, I can tell you an experience, if you like. (*Mr. M. A. Jinnah* : " Go on.") It was the last time I had to do my duties as magistrate a few years ago and there it was, we were faced with a mob. The policeman who was on the spot advised that firing should be resorted to, but I used my own judgment in the matter and declined to permit the use of fire-arms, and as it turned out I did the right thing. But conceivably I might have come to a different judgment. You had to trust me all the time. I could have acted the other way, if I was satisfied that the occasion demanded the use of fire-arms. As a matter of fact, I may tell you, Sir, that on this occasion there was a great deal of difference of opinion as to whether I should have used fire-arms or not. It did turn out that there was no need to use them and I proved to be right ; but it might have turned out the other way. Magistrates are often as wrong as policemen are. But it comes to this that, supposing I had authorised the use of fire-arms on this occasion and supposing I had afterwards been asked to render an account to a court of justice, well even if I had acted from the very best of motives, it would have been difficult for me to prove it to the satisfaction of a court. The court probably may never have been in a similar position, and like my friend Mr. Rangachariar may have never been faced with a riot, the court may apply very unpractical standards and very different from what an experienced magistrate would apply. The position is very different. (*An Honourable Member* : " The magistrate is a court.") The magistrate is a court. But very often his trial will come up before a court which is very different. And as a matter of fact, when there was that very serious

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Moplah disturbance in Malabar, and it tended to spread to my part of the country, I had to do a certain number of things which in the judgment of the people resident there were absolutely correct and in the public interest. But when it came up before a court, it was found that the action was not strictly justifiable by law. (*An Honourable Member* : "What law ?") The fact is, very different standards are applied by the magistrate who is on the spot dealing with the situation and by the court which is far away and which in a cooler moment—it is easy to be wise after the event—judges the facts. I am perfectly certain that I am speaking for the majority of magistrates when I say this, magistrates do not desire to clutch power, they do not desire to break the law, and the more our public men trust us, the more we shall respond to the trust. And I do not see any particular reason why in framing this particular Bill you should proceed on the assumption that a magistrate is apt to break all the executive instructions which bind his actions. (*Diwan Bahadur T. Rangachariar* : "On the other hand, I want the magistrate to be present.") If you want the magistrate to be present you had better trust him to exercise his judgment, subject always to the control of public opinion and to the control of his executive and administrative authorities, who, as I told you, are certainly not inclined to stretch a point in favour of the magistrate. That is all, Sir, I wish to say on this question.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions : Muhammadan Rural) : Sir, I accord my hearty support to the Bill. Human life has always been considered so sacred and valuable that ever since the drawn of civilisation in all countries and under all Governments the strictest measures have been adopted and laws have been enacted in order to protect and safeguard human life. But lately it has been observed that sometimes on the occasions of ordinary disturbances, on the pretext of dispersing unlawful assemblies, fire-arms were unnecessarily used against innocent and unarmed masses without sufficient warning, under orders from inexperienced, over-zealous or nervous magistrates or police officers and adventurous military officers. Unfortunately, Sir, communal disturbances have lately been very frequent in this country and complaints have sometimes been made that some magistrate or police officer or military officer belonging to this community or that community ordered the use of fire-arms against a gathering or assembly consisting of persons of the other community, where in reality it was not so needed. It is therefore of the utmost importance that the strictest provisions should be undertaken to safeguard against such occurrences. I fully agree with the remarks of the Honourable Sir Alexander Muddiman in his minute of dissent appended to the Select Committee report when he says that :

> "The true criterion in the use of fire-arms for dispersing crowds is independent of the actual form of the force. The essential rule is that the minimum force necessary should be used to effect the object aimed at."

But, Sir, I am unable to see eye to eye with him when he says that :

> "Special rules as regards the use of fire-arms are therefore out of perspective in regard to the general law."

I submit, Sir, that the provisions contained in the Criminal Procedure Code at present are not at all sufficient safeguards and the authority and the discretion which is left in the hands of the officers under

section 310 of the Criminal Procedure Code are too wide and place very unlimited powers in the hands of those officers. The rules to which the Honourable Sir Alexander Muddiman has referred in his minute of dissent cannot and are not sufficient safeguards against the inroads of the troops. These rules could not prevent General Dyer from doing what he did at Amritsar and they did not prevent other troops committing atrocities in crushing the rebellion of the poor Moplahs at Malabar. But, Sir, we appreciate fully the humanitarian sentiments just expressed by His Excellency the Commander-in-Chief, but I am sorry to say that these noble sentiments are not often shared by an ordinary British private or even a number of other officers. Leaving aside the instance of the poor coolie of Simla whose case is *sub judice*.....

Mr. President : Order, order.

Maulvi Muhammad Yakub : I only said "Leaving aside", I did not mention it. Do we not oftentimes hear cases of so many poor punkawalas and cooks being killed in cold blood by British soldiers, and at the time of the *post mortem* examination unfortunately the spleens of these poor victims are often found to be enlarged or diseased.

Colonel Sir Henry Stanyon : What has that got to do with suppressing riots ?

Mr. K. Ahmed : That has nothing to do with the Bill under discussion.

Maulvi Muhammad Yakub : Sir, I very strongly protest against the unwarranted, unscrupulous and idiotic interjections of my Honourable friend Mr. Kabeerud-Din Ahmed. Sir, I appeal to you that you should safeguard the honour of the Members.

Mr. President : Order, order. The Chair fully sympathises with the Honourable Member and notes that the Honourable Member himself has safeguarded his honour.

Maulvi Muhammad Yakub : Sir, leaving aside the question of these incidents, I say that it is not only the troops who use fire-arms but it is also in the case of the police that these provisions are needed. The provision that fire-arms are not to be used unless the assembly cannot otherwise be dispersed, is the real and chief provision in the Bill which aims at stopping wanton loss or injury to human life. I am unable to understand how a sudden rush by a crowd of Indians, unarmed as they are, may make it impossible to give a warning of any kind before the use of fire-arms is resorted to. My opinion is that in the interest of peace and the safety of human life, the provisions of the Bill fully deserve our support and I think the House will be performing a pious duty in passing this Bill. With these words I heartily support the Bill.

Colonel Sir Henry Stanyon (United Provinces : European) : Sir, I beg to approach the matter before the House not from the point of sentiment or any romantic imagination of what may happen in the future but merely as a Member of a Legislature responsible to the country for the enactments that it puts on the Statute-book ; and from that point of view, my submission is that the Bill now before the House is a well-intentioned but—I say it with respect—a hopeless attempt to crystallise into workable statutory provisions the discretion of magistrates and officers commanding troops or armed police engaged in the

[Col. Sir Henry Stanyon.]

unpleasant duty of dispersing an assembly bent upon violent lawlessness. It is easy to demonstrate, from a consideration of a few of the clauses of this Bill, how impracticable and disastrous a measure it will be if enacted into law. The House will bear with me, I hope, while I draw attention to some of the provisions. Proposed section 131-A reads :

"Where under the provisions of this Chapter any person proceeds or determines to disperse * * * ."

Now, who is the person who proceeds, and who is the person who determines ? If a magistrate orders fire to be opened, it may be said that he determines. Who proceeds ? The officer who obeys his order, or the rank and file who carry it out ? The scope of these words is important with reference to the legal responsibility and the liability for prosecution which is proposed by a later sub-clause. Then we have sub-clause (1) of clause 2 :

"Fire-arms shall not be used unless such assembly cannot otherwise be dispersed and unless a Magistrate of the highest class present specifically authorises such use."

Now, Sir, who is to be the judge whether the assembly "cannot otherwise be dispressed" ? We have in this sub-clause the responsibility apparently put on a magistrate. And in the proviso where no magistrate is present it is placed upon the officer commanding. That, I take it, is what is meant by the senior police or military officer present of the force which is to use force. Are these the people to decide whether an assembly cannot otherwise be dispersed or not ? Is that decision to stand, or is it to be revised by some court or other authority sitting on the incident subsequently ? (*An Honourable Member* : "That is so in England".) I say that the wording of the section is absolutely ambiguous. If the officer or magistrate who ordered firing can come into court and say, "I was of opinion that the unlawful assembly could not be otherwise dispersed" there is an end of the matter. But what then is to happen to prosecutions which are to follow under sub-clause (4) ? If, on the other hand, a decision of this issue is to be in the hands of some court subsequently trying the case, then what magistrate or officer will ever be ready to undertake responsibility ?

Mr. T. C. Goswami : Any one with a sense of duty.

Colonel Sir Henry Stanyon : Then, Sir, what is the meaning of the word "otherwise" ? Does it mean advice, abuse, threat, stones, *lathis*, bayonets, or *kukris* before fire-arms ? The word "otherwise" is certainly general enough to include each and all of these methods for dispersing. I can assure my Honourable friend—my non-military but still much esteemed friend—the Mover that bayonets or *kukris* used on an unarmed mob would entail much greater loss of life and limb than mere controlled fire carried out from a distance ; while, instead of the moral effect which controlled fire has in bringing about dispersal we should have a hand-to-hand conflict which once set going might become beyond control and arouse instead of ending and preventing the spirit of conflict. We do not know where it would lead to. It is far more dangerous than with men several hundred yards away ordered to fire—disciplined men who can be controlled. But if you let them loose with bayonets or *kukris* on a crowd unarmed or armed with *lathis*, I think it wants no military imagination to judge what the result is likely to be.

Then, Sir, suppose there should be a difference of opinion between the magistrate and the officer on the spot with regard to the necessity to fire. The magistrate, of course, has only the single duty of maintaining or restoring law and order. But the military officer in charge has the second duty of protecting his own force ; and even with my little military knowledge I say if a military officer were convinced that the only course that would satisfy that second duty, namely, the security of his force, was to fire, and he was prevented from firing, his proper course would be to retreat. Then, coming to sub-clause (2), as far as its language goes, it applies to every unlawful assembly. Suppose the assembly has fire-arms. Suppose it consists of a section of rioters which has waylaid an armed police party on its way to the scene of a riot. Is the officer commanding the police unit to stop and warn such assailants of his intention to fire, while his men and possibly he himself are being shot down ? Yet, this clause would cover cases of that kind. Or again—I am trying to take things that commonly happen—if the rioters are concealed in buildings surrounding a square in which a dispersing force is assembled, is the magistrate to preach a sermon of warning while the force is assailed with revolvers, brickbats and stones by the concealed law-breakers ? This clause as it stands would require, the magistrate should do that—it would make it compulsory on him to do it.

Now, Sir, I come to clause 2 (4) which reads as follows :

"Notwithstanding anything contained in section 132, any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter."

It will be noted, if we go back for a moment to one description of the "otherwise" to which I have referred, that any person, however innocent, stabbed with a bayonet or killed by some other weapon by one of the dispersing force—a malignant and malicious act,—would not be covered by this clause and the offender would be protected by the general order that it was a dispersal of the mob "otherwise" than by fire-arms. Let us take other instances that would perhaps come under this clause. A magistrate orders fire, though in the subsequently formed opinion of some persons or a court the assembly could have been dispersed otherwise ; an officer commanding a force obeys the order of the magistrate in the above case ; a soldier or constable obeys the order to fire given by his officer and kills a child among the crowd of rioters. Would these be cases of offences ? If they are, the clause, I submit, is preposterous. If they are not, the clause I submit is useless. Sir, I wish to make it very clear that I am not in the least out of sympathy with the object which my esteemed friend has in bringing forward this Bill. It has never been my duty, thank God, to assist in dispersing an unlawful assembly, but nearly 20 years ago it was my duty to hold armed and in readiness a volunteer force under my command to assist, if required, in dispersing a serious riot in the city of Nagpur ; and I can assure the House that the predominant thought in my mind was that if I should be called on to use fire-arms I should employ the minimum required to do the double duty imposed on me, namely, of restoring order and of protecting my men.

Mr. Devaki Prasad Sinha : Because you are a judicial officer.

Colonel Sir Henry Stanyon : I was an officer commanding the Nagpur Rifles. The reason for that feeling was that fire would be directed not against an alien enemy, but against misguided and possibly insufficiently armed fellow-citizens ; and I am sure, Sir, that that is the feeling of every soldier called out in aid of the civil power. Sir, I earnestly beseech this House not to allow its sagacity and reputation as a Legislature to be warped or weakened by such speeches as that made by my friend, Mr. Ranga Iyer. Mistakes have been made, and action open to controversy has been taken, in the past, and it is inseperable from human institutions and the exercise of discretion by human beings that mistakes or questionable action should occur in the future ; but such fallibility will not justify this House in passing a measure so incomplete, impracticable and so short-sighted as that now before them. Let us maintain sobriety of judgment ; let us not fall into the common error of generalising from particular cases ; let us not above all, because one officer here and there may have failed, declare all officers to be unreliable ; because one or two Members may occasionally abuse or misuse the discretion and freedom of speech given by the Rules of this House, should we introduce a law to define that discretion and restrict that freedom ? Should we be justified in taking away discretion and control from the Chair and embody it in hard and fast rules ? Let us trust our officers, civil and military, on matters which cannot effectively be made the subject of rules but must be left to their discretion because of the varying circumstances of every single case that occurs. Sir, I oppose the motion.

***Mr. R. G. Gordon** (Bombay : Nominated Official) : Sir, I venture to speak in this debate as a district officer. I cannot say I represent district officers as a whole, because up to the present they have not been granted communal representation, though, Sir, I have no doubt that, if the sentiments which have been expressed by one speaker to-day become general, it will be necessary that they should demand representation. I speak, Sir, as a district officer of 21 years' experience and one who hopes to remain, by the help of Providence, a district officer for the rest of his service. Now, Sir, I think that that point of view needs ventilation, because after all the work done by the district officer is the other side of the work done in this House. Members sit in this House and introduce legislation of this kind, but it is the district officer who has to carry out the law which they pass, who has to put it into execution in circumstances which are often very far from comfortable indeed.

The first thing which I should like to say is that I express entire sympathy with the objects of this measure. District officers have been represented by one Member who spoke to-day as rather corresponding to the description given of the King of Cambay in Hudibras, whose daily food consisted of asps, basilisks and toads ; but I repudiate that description altogether. District officers are the mildest of men. I have gone through the whole of my service and have yet to meet the strong and silent man of fiction, and if I found him I should regard him as a fearful bore. I have full sympathy with this Resolution because no more terrible responsibility can be placed upon any man than that of having to decide questions of whether he is to put human lives in danger. Those who sit on these Benches suffer violent pain as a result of hearing afterwards of the result of these operations, but the district officer, who has any imagination

* Speech not corrected by the Honourable Member.

at all—and most of us are possessed of a certain modicum of that quality—the district officer who has to face a situation of that kind is put in the most terrible position in which he can be put. I would say most decidedly that if legislation of this kind could do anything in the smallest degree to help a district officer in his work and to impress upon him a larger sense of that responsibility, then I would support this legislation to the utmost of my power. The question therefore before this House is a practical one. I hope that we shall not indulge in high falutin' themes. Can we by this legislation instil a greater sense of responsibility into district officers (I am talking about district officers and not soldiers) and also into the police than they at present possess ? If I thought so, I would support this legislation. I do not think so and therefore I do not support it.

Coming to this legislation as it stands, I think that the epigram which describes an epigram may very well be applied to it. That epigram is this :

> " The qualities rare in a bee that we meet
>
> In an epigram never should fail ;
>
> Its body should always be little and sweet,
>
> And the sting should be left to its tail."

That is very descriptive of this legislation. It may be divided into two parts. The first part is sub-clauses (*1*), (*3*) and (*4*). (*1*) to (*3*) standing by themselves are merely executive instructions or a summary of executive instructions, which, if I may be permitted to say so, are very much better given elsewhere. As executive instructions I am afraid I do not think much of them. Let me refer to one or two of the points. The first is this question in sub-clause (*3*), that a report of the occurrence must be made within twenty-four hours of the occurrence. If I got a report of any occurrence whatsoever connected with a riot after so long a period as that laid down in the Bill, I would recommend that the officer in question should be reduced. Now the Bombay District Police Act lays down very stringent regulations about this question of report. All reports are to be made by telegram and at once. So I say that the provision which is laid down in this Act is from the point of view of district officers a very fair one indeed. Now, Sir, sub-clause (*3*) says that " such report shall be deemed to be, for the purposes of sections 74, 76 and 77 of the Indian Evidence Act, 1872, a public document which any person has a right to inspect." Now, Sir, what kind of report can we expect from an officer in charge of operations of this kind with that sub-clause in front of his eyes ? The first thing he would do would be to say, " It is impossible " and he will endeavour to twist every circumstance to his own advantage. One result would be that that report would not be a true one. If there is anything against him it will certainly be cut out. Well, Sir, what would have happened to General Dyer with this sub-clause in existence ? Would this report have been sent ? You are giving a bias in the wrong direction ; that is what is being done and what is going to be done. The result would be that the first report which is sent would not be worth the paper it is written on. But, Sir, what will follow ? The second report will follow giving all the details, but that will not come under this sub-clause. That report will be for the benefit of his officers who will not be liable to be called in question

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under this sub-clause. Therefore, I say that this sub-clause, which deals with reports, is entirely useless and will give an entirely wrong bias to the officers who have to deal with such things.

Now, Sir, let me take the question of warning and the question of the use of fire-arms. Let me read to you what are already the orders which are given in the Bombay Presidency about those two things, contained in paragraph 431 of the Bombay District Police Manual. They are as follows :

"When, in exercise of the powers given by section 128 of the Code of Criminal Procedure, 1898, a magistrate or an officer in charge of a police-station engaged in dispersing an unlawful assembly is compelled, in the last resort, to direct the police acting under him to use their fire-arms, he shall give the rioters the fullest warning of his intention, warning them beforehand that the fire will be effective, that ball or buckshot will be used at the first round, and that blank cartridge will not be used. Firing shall cease the instant it is no longer necessary. Care should be taken not to fire upon persons separated from the crowd, not to fire over the heads of the crowd, as thereby innocent persons may be injured. Blank cartridges should never be served out to police employed to suppress a riot."

Well, Sir, I say that those provisions of the Bombay District Police Manual are far more detailed, and likely to have far more effect upon the police officers than the very vague provisions which are contained in this Bill. These provisions are vague in the extreme. The object of the law is that it should be as precise as possible, but I doubt if anything was ever put down more vaguely in any law than these provisions. It is impossible to interpret them until you take into consideration the circumstances which existed at the time. Therefore the result would be this, that it would be impossible for the officer to know beforehand how to interpret these provisions. I do not suppose it is intended that an officer should go on the scene of action accompanied by a sepoy carrying an annotated edition of the Code of Criminal Procedure in which he will proceed to read the various judgments of the High Courts and then decide on the spot as to which of these particular judgments he may apply to this particular case.....

Mr. D. V. Belvi : He will have read them before.

Mr. R. G. Gordon : Police officers ? Sub-Inspectors ?

Mr. D. V. Belvi : Yes.

An Honourable Member : Otherwise they are unfit.

Mr. R. G. Gordon : This officer will be able to know beforehand what is the gist of the conflicting judgments given by High Courts at the exact moment when he has to decide in his mind when he is to fire at this particular crowd ! The fact of the matter is, Sir, this law is bad by reason of its vagueness. It is impossible to interpret it, and it will be impossible for the officer on the spot to interpret it at the time, and if he cannot interpret it at the time in his own mind, then it is absolutely useless. But, Sir, the sting comes in sub-clause (*4*). Apart from sub-clause (*4*) this Bill is entirely worthless and consists merely of executive instructions and nothing else. So, now let us come to sub-clause (*4*). Now, Sir, I want to know, as other Members have wanted to know, why is it that a complaint can be made only after a person in injured by a shot ? If a shot is fired and a man gets a slight graze across his finger, the officer is liable to prosecution, but if bayonets

or cavalry are used and if 20 or 30 people are injured then this sub-clause does not apply.

Diwan Bahadur T. Rangachariar : Bring in an amendment, I will accept it.

Mr. R. G. Gordon : I am dealing with the Bill as it stands ; I am dealing with facts and not with ideals Here is a Bill put forward under which when a man's finger is grazed by a shot, its provisions come into action, but if people are run down by cavalry or otherwise hurt, then it does not apply. The fact of the matter is that you cannot have separate provisions of law for different kinds of force, and that is the reason for the very wise reticence which was observed by the authors of the present Criminal Procedure Code. They understood that and they used two words only, civil force and criminal force, and they did that because they knew perfectly well that you cannot distinguish between different kinds of force, and that if you do try to distinguish between them, you get yourself into all sorts of holes and make all sorts of anomalies. Now let us suppose for one moment that this sub-clause (*4*) has been brought into operation. What is the result ? The result will be that if anybody is killed, the officer who directs that operation will be liable to a charge of murder, and, Sir, I am not aware that if a charge of murder is brought in, this action would come under any of the *Exceptions* of the Penal Code.

Diwan Bahadur T. Rangachariar : Why not ?

Mr. R. G. Gordon : If that is so, will the Honourable Member tell me. If it is not so, then only one punishment can be awarded to that officer and that is death or transportation for life.

Diwan Bahadur T. Rangachariar : Read section 132 of the Code.

Mr. R. G. Gordon : Section 132 does not apply.

Diwan Bahadur T. Rangachariar : Who says so ? It applies in full force.

Mr. R. G. Gordon : In that case this sub-clause (*4*) is entirely meaningless.

What does section 132 say ? It says :

"No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council."

Diwan Bahadur T. Rangachariar : Read on.

Mr. R. G. Gordon :

"No Magistrate or police officer acting under this Chapter in good faith,.... shall be deemed to have thereby committed an offence."

Does that apply ?

Diwan Bahadur T. Rangachariar : It does apply.

Mr. R. G. Gordon : Then in that case this sub-clause (*4*) has no application whatever.

Diwan Bahadur T. Rangachariar : Then why are you afraid of it ?

Mr. R. G. Gordon : Either this sub-clause (*4*) applies or.....

Diwan Bahadur T. Rangachariar : Read it again.

Diwan Bahadur M. Ramachandra Rao : It requires the permission of the Local Government or of the Governor General.

Mr. R. G. Gordon : Section 132 says that no officer acting under these conditions shall have committed any offence.

Diwan Bahadur T. Rangachariar : He is entitled to make a complaint, there may be no conviction.

Mr. R. G. Gordon : Then he is entitled to make a complaint which will have no effect. Either section 132 has no meaning, or this sub-clause (4) has no meaning.

Mr. M. A. Jinnah : It is quite clear.

Mr. R. G. Gordon : Well, Sir, I still stick to my opinion. (Laughter.) At the same time, supposing for a moment this sub-clause will operate as it is stated to operate, what will be the result ? The result will be that, when anybody is killed, the officer will be subject to a prosecution for murder.

Mr. M. A. Jinnah : If he pleads guilty, why not ?

Diwan Bahadur M. Ramachandra Rao : Unless he acts in good faith.

Mr. R. G. Gordon : In what circumstances will he be liable to be prosecuted ?

Mr. M. A. Jinnah : If he is guilty of murder.

Mr. R. G. Gordon : Suppose the warning given is not heard by the crowd, is he liable to prosecution for murder ? That is one point. And say, if he does not submit the report within 24 hours, is he liable to prosecution for murder ? (Laughter.) Supposing there is a doubt as to whether the fire-arms were shot off at exactly the right moment, is the officer liable to prosecution for murder ? Sir, if these three sub-clauses apply, then in any case in which those three sub-clauses have not been brought into operation, he is liable to prosecution for murder, and in that case only one punishment can be given to him and that is death or imprisonment for life.

There is only one thing more I wish to say. I do hope in the course of this debate and in voting on this question, no feelings of a racial kind will be allowed to intervene. Sir, expressions of opinion have been given by one Honourable Member which led one to think that those feelings might be liable to intervene. Sir, these provisions which are being placed on the Statute-book are not merely temporary provisions. They are provisions which will abide when India, as she hopes, has gained the boon, the goal, of Swaraj. Well, Sir, as these provisions will apply then, I think it is necessary to consider what the result will be. Sir, if the first three sub-clauses are brought into operation, any officer who orders firing in which any damage is done to any person will be liable to prosecution. Sir, I do hope the House will not be led away by any racial feelings on this connection but will remember that these provisions will apply in the days to come, and I am afraid the result will be less sense of responsibility on the part of officers who have to deal with such situations. Sir, I oppose the Bill.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock, Mr. President in the Chair.

*Mr. M. A. Jinnah (Bombay City : Muhammadan Urban): Sir, I only got up in order to respect your entry into this House, but since you have called upon me and since I undoubtedly intended to speak I shall certainly avail myself of the opportunity that you have kindly given me. Sir, there is a certain amount of confusion about this Bill. In order to understand the position I would like to place a few observations before this House. His Excellency the Commander-in-Chief—and if I may say so the first Field Marshal who has done us in this House the honour of addressing it—spoke, if I may say so, with the precision of a soldier and the logic of a lawyer. Sir, he said that the most essential thing that was needed was that you should place the responsibility upon the commanding officer who is in charge of his regiment. Now, section 131 of the Criminal Procedure Code, which is the law as it has existed up to the present moment, says this :

"When the public security is manifestly endangered by any such assembly and when no magistrate can be communicated with, any commissioned officer of His Majesty's Army may disperse such assembly by military force and may arrest and confine any person forming part of it in order to disperse such assembly."

Therefore it assumes that a commissioned officer of His Majesty's Army will not use or resort to the use of military force if any magistrate is available. I do not think that it can be argued for a single moment that the magistrate should be dispensed with, and I believe that on every occasion when there is need to use military force what happens is that the magistrate's services are requisitioned by the civil authorities. Now, Sir, this Bill says in the first instance in clause 2:

"Where under the provisions of this Chapter any person proceeds or determines to disperse any such assembly by the use of firearms the following further provisions shall apply :

(1) Fire-arms shall not be used unless such assembly cannot otherwise be dispersed and unless a Magistrate of the highest class present specifically authorises such use."

I am sure that His Excellency the Commander-in-Chief will not say that fire-arms should be used although such assembly could otherwise be dispersed. Therefore, the first essential is that fire-arms shall not be used unless such assembly cannot otherwise be dispersed. That, I think, cannot be disputed. But, Sir, objection is taken to the last part of the sub-clause, that a magistrate of the highest class present should specifically authorise the use of fire-arms. I take it that is the first objection ; and in this connection His Excellency the Commander-in-Chief quoted from the King's Regulations. The latest edition of the King's Regulations, if I may put it shortly, stands as follows : in England the magistrate when he comes to the conclusion that it is necessary to use military force hands over the charge from the civil to the commanding officer, and the commanding officer steps in and he is the judge, the sole judge and the only judge, of what military force he should use. We are told, and rightly told, that we are proposing an innovation, a change in that state of the Regulations which prevails in England. Sir, I plead guilty to that charge. But sometimes we are told that we are to follow England and sometimes we are told that we are far far behind England. Now, Sir, I want this House to come to an independent judgment. Are we to follow the English precedents in everything ? We find that what we are proposing to-day existed in England

* Speech not corrected by the Honourable Member.

[Mr. M. A. Jinnah.]

until very recent times—and I believe that the change which His Excellency the Commander-in-Chief pointed out has been brought about within the last few years—in 1920. Now, what was the position in England before 1920 ? It was this :

"All commands to the troops are to be given by the officer ; the troops are not on any account to fire excepting by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of fire and is not to give the word of command to fire unless distinctly required to do so by the magistrate."

Diwan Bahadur T. Rangachariar : I do not know that it is yet repealed.

Mr. M. A. Jinnah : My Honourable friend Diwan Bahadur T. Rangachariar says that he does not know that it is yet repealed. Sir, I have verified it to the best of my ability and if the Honourable Mr. Burdon, who has got a copy, will kindly read out that Regulation it will appear that these last words " unless distinctly required to do so by the Magistrate " are omitted ; I believe I am correct in that. Now, Sir, we are told by His Excellency the Commander-in-Chief and by the Government of India, " Here is an ideal, a pattern which Great Britain has adopted in 1920 and you should follow it." That, I understand to be the argument. Sir, I have great admiration for Great Britain ; I have great admiration for your genius; but I think, with all that admiration, that we cannot always follow in your footsteps. We must also have some regard to our own conditions in this country, and if we choose to follow what you followed until 1920, do not think that we are suggesting a revolutionary change which would frighten the Treasury Benches. I see the Honourable the Home Member is frightened....

The Honourable Sir Alexander Muddiman : I am not in the least frightened.

Mr. M. A. Jinnah : He says he is not frightened, but I say he is frightened, because I see he has written a long minute in the Select Committee's Report. Now, Sir, that is the answer I have to give to His Excellency the Commander-in-Chief.

Now, Sir, why do you assume that a magistrate, who, I take it, will be an experienced officer.....

The Honourable Sir Alexander Muddiman : May be.

Mr. M. A. Jinnah : Then it will be your fault if you appoint an inexperienced officer.

The Honourable Sir Alexander Muddiman : If the Honourable Member will assure me that he will give me 24 hours' notice before a riot takes place, I will make sure that an experienced magistrate is on the spot.

Mr. M. A. Jinnah : I do not know, Sir, whether they got 24 hours' notice in England when the King's Regulation was enacted. I am really surprised that the Honourable the Home Member thinks that that is an answer to what I said. What I said was that a responsible Government will appoint competent, responsible and experienced officers to those posts, and I assume that my magistrate in this country is competent to perform his duties. If you cannot do that, well, you better hand over the Government to somebody else. It is no answer to say that you do not get 24 hours' notice before a riot breaks out. I know that perfectly well.

When I assume, Sir, that I have an experienced, qualified, competent magistrate, I also assume that the officer commanding the regiment has been requisitioned simply because the civil authorities think that the situation can no longer be controlled by them. When he arrives on the scene with the requisition along with his military force, will not the magistrate tell him at once, in a second, what his opinion is, and will not the officer commanding see for himself the situation and tell the magistrate what should be done ? I quite agree with the Honourable the Home Member that there will not be time for a long judicial argument. I quite agree. The decision must be arrived at quickly, precisely and to the best of their abilities, to the best of their judgment, honestly, *bona fide*, and it must be arrived at promptly. But, Sir, you get two men, a soldier and a civilian. What is the difficulty ? Can His Excellency the Commander-in-Chief,—I appeal to him,—can he tell me what were the serious difficulties that were experienced in England since 1892 until 1920 when this Regulation was enacted ? Can His Excellency the Commander-in-Chief tell me what difficulties have been experienced with regard to the use of military force under section 131 ? A magistrate may say, " I think the time has not arrived to fire or to use fire-arms ". " Well ", says the Commander-in-Chief, and I believe there are other Honourable Members who agree with him, " if you do that, more brutality will be perpetrated ". Sir, I have yet got to be convinced, if I am right in my assumption that I have a magistrate who is competent, who is qualified, who is an experienced officer, that such an officer will deliberately restrict the powers of the military force, to use fire-arms, when he thinks that the result of it would be horrible and more brutality would be the result. Why do you assume that ? Don't you give any credit for common sense, for intelligence to your experienced officer who is a magistrate, and who, you think, it is necessary to call before you are allowed to use military force ? If you can trust him to give you orders to use military force, can you not trust him to see that the consequence of his restricting you from using fire-arms might be more horrible and lead to a more brutal result ? Says the Commander-in-Chief, he is not satisfied. Did you not have that in England ?

Mr. H. Tonkinson : No.

Mr. M. A. Jinnah : I have read the King's Regulation.

Mr. H. Tonkinson : I am quite prepared to read the English law to the Honourable Member and to show him that there was nothing of the kind in England.

Mr. M. A. Jinnah : I have read English law 25 years ago, and I do not want a lecture from Mr. Tonkinson. I attended the lectures in the Inns of Court from 1894 to 1896. I have studied the English law, but I have forgotten a good bit of it now. Sir, I do not want the English law. I am talking of the King's Regulation which made it wrong for the commanding officer to use fire-arms unless distinctly required to do so by the magistrate. That you cannot deny.

Now, Sir, that is the first and the foremost objection that has been put forward by the Treasury Bench as far as this part of the Bill is concerned.

Then, Sir, the next objection was that we are providing here subclause (*2*), which runs as follows :

" (*2*) The person who directs that the assembly shall be fired on shall, before so doing, warn the assembly by such means as may be available that unless it disperses it will be fired on."

[Mr. M. A. Jinnah.]

Now, what is wrong with that ? Does it in any way define the particular method or the particular manner or the time as to the warning ? The wording is this, " Warn the assembly by such means as may be available." That warning must necessarily depend upon the exigencies of the situation. And what is wrong ? Sir, even the latest edition of the King's Regulations provides for a great deal of warning. Of course, we are told " Why not trust your officers ? Why not trust the magistrate ? Why not trust the Commanding Officer ? " Sir, I wish to make it quite plain in this House that I shall be the last person if I had anything to do with any Government or even as a humble Member of this Legislature, I shall be the last person to strike any note which will in the slightest degree undermine implicit and complete trust in my officers, whether they are civil or military. And, Sir, I go a little further, and say that, if my officers, military or civil, have *bona fide* discharged their duties in the interests of the people of this country, if they have done their best, I shall be the last person to cavil at them ; I should be prepared to overlook a great deal. And I shall presently point out that even the Statute as it exists makes that distinction and lays down various clauses and various exceptions. What does section 132 say ? It provides in the first instance a complete safeguard, nay, a bar to even a prosecution being launched unless and until you have obtained the sanction of the Government. And I will just read those few lines :

" No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any criminal court except with the sanction of the Governor General in Council."

So a man who finds, or who thinks or who has reason to believe that an officer has used his power in excess of what he was authorised to do and thereby committed an offence, has got to obtain the sanction of the Government before he can launch the prosecution. But, if he does get the sanction of the Government, what are the defences that are open to that officer who may be brought before the judicial tribunal of the country ? My Honourable friend there from Madras gave us his experience as district officer. Sir, after his description—what was it ? He said : Whatever we do, even when we are right, the presumption is made against us by the higher authorities, which, I take it, means either the Local Government or the Government of India. Sir, if that is the belief of the body of those officers, what must be their state of mind that, when they are right, the presumption will be that they are as impartial, as honest, and as just as any one you can get in the world. What object can a jury have to convict an officer who has discharged his duty honestly and faithfully ? I think my Honourable friend, Mr. Hussanally, might retire from this Legislature if he holds those views. Well, Sir, I will proceed with my theme. What are the defences that are open to an honest officer who has done his duty. First, no magistrate (here is my Honourable friend), no magistrate or police officer acting under this Chapter in good faith, no officer acting under section 131 in good faith, no person doing an act in good faith in compliance with the requisition under section 128 or section 138 and no officer or soldier or volunteer doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence. Well, Sir, really it seems to me—I am almost inclined to echo the words of the Honourable the Home Member which he uttered only yesterday—that anything that comes from this

Bench does not receive the same attention from the Treasury Benches as he complained that measures emanating from the Treasury Benches did not receive from this side. Sir, why raise these difficulties ? Why conjure them up ?

Then we get back to the last clause, and we have been addressed by another district officer from Bijapur who I believe is a renowned poet, only the world has not yet made up its mind to appreciate him, though posterity may pronounce judgment in his favour. Sir, he tried to discuss section 132 and sub-clause (*4*). I don't know what conclusion he eventually came to, but he had some difficulty in understanding it. I am not satisfied, Sir, with the conundrums that the Honourable Member started, nor was I satisfied with his conclusions. But I hope—at least I aspire to that ambition—that if I satisfy him, I will be entitled to expect him to vote with me in the lobby.

Now, Sir, what does sub-clause (*4*) say ? It says :

"Notwithstanding anything contained in section 132, any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter."

Section 132 covers the case of an offence committed in the course of the use of military force. Military force may consist of various kinds. It may be a bayonet charge, it may be rifle fire, it may be fire from machine-guns, and so on. Section 132 deals with all cases of offences that may be committed in the course of the use of military force. But you cannot launch a prosecution without the sanction of Government. Sub-clause (*4*) makes an exception. The exception is that in the case of the use of fire-arms, if any offence is committed by any of the officers, in that event no sanction is necessary, but any one of the persons described in that sub-clause may file a complaint. But that does not deprive the officer prosecuted from putting forward his defence. I think that in the speech of Colonel Crawford there was a certain amount of confusion. He felt that the moment an officer is prosecuted, or the moment a complaint is filed against him alleging that he has committed a specific offence,—and I admit that it requires no sanction of the Government under sub-clause (*4*) of the Bill—from that moment the officer prosecuted will have to vindicate his innocence. I can assure him that that is opposed to every elementary principle of criminal law. The officer prosecuted or complained against will stand for the moment in the dock, but it is for the prosecution to prove the offence which they allege against him. They will have to satisfy the tribunal that he is guilty. Even assuming that a person was killed, that an officer deliberately went and shot him down as a soldier according to the orders of a superior officer, that is a defence to the officer complained against. If any officer acted in good faith, that is a defence. All those defences are open to him, as I read out in section 132. It has been suggested that this will undermine the morale of the officers, it will thwart their judgment, it will interfere with the precision of their decisions and that you will demoralise all your magistrates, soldiers and officers if you pass this Bill. Sir, what justification is there for it ? My friend Mr. Goswami read out two or rather three of the highest judicial pronouncements in England. Does not every officer take responsibility ? Does not the Honourable the Home Member take responsibility ? Has he not got to take the consequences ? Has he not got to come to quick decisions, and even precise decisions at times ? Have not we all in our

[Mr. M. A. Jinnah.]

lives to come to decisions and take the consequences of our acts ? Why is a man afraid ? Why does he think that this country is composed of such wicked people, such undesirable people, that when you come to an honest judgment, a *bona fide* decision in the best interests of the people over whom you are appointed as an officer to exercise your authority, human nature is so low that you will not be vindicated by the people of this country ?

Mr. R. G. Gordon : What about your minute of dissent ?

Mr. M. A. Jinnah : I am asked—and I am very glad, because I was just coming to that—about my minute of dissent. I frankly state it to the House that my minute of dissent is that this sub-clause (*4*) might not be made real use of. I want to explain to this House that in the Select Committee the unfortunate position was that Government would not touch this with a pair of tongs. They said it was all bad. I suggested, and I still suggest—and I hope that the Government will take that suggestion of mine into consideration, and I will give my reasons for my suggestion—that the Advocate General should be the authority whose previous sanction must be obtained by any person mentioned in sub-clause (*4*) before filing a complaint. I have thought over it a great deal, and I still feel that that ought to be done. Here I am departing from the English law as it stands at this very moment. According to the English law you need no sanction of anybody. But I would be told that the police is more friendly with the citizens in England than the police of this country. I do not wish to follow any model slavishly. Just as I maintain my first proposition, I also maintain my second proposition, and that is, by all means come forward with that amendment—at least, as far as I am concerned, I assure you I shall support it—that no complaint should be filed unless the previous sanction of the Advocate General is obtained. My reason is this : I believe no Government, whether it is bureaucratic or democratic or any other Government, likes willingly, readily to give sanction to prosecute one of its servants, and if sanction is ever given by Government it will be in a very rare, flagrant, glaring case where you cannot have any possible room for defence, although I do not believe even that has ever been done ; I am not aware of any instance. Therefore, if you say that to me, well we have it as night follows the day that in the case of martial law an act of indemnity follows which gives a complete relief to the officers so far as the civil law is concerned, and up to a certain point even if they come within the provisions of the criminal law. But as Mr. Goswami read out—I do not want to repeat it,—there can be no indemnity against a penal offence, murder, culpable homicide, grievous hurt, felony, and so on. Sir, if we have to depend upon the sanction of the Government before one can even lodge a complaint—it does not follow that the man will be found guilty—but before one can even lodge a complaint, a *bona fide* complaint, I am afraid we shall be ploughing the sand and therefore I suggest that it will be better that the authority should be the Advocate General or a person who is in the same position as the Advocate General. I believe in some of the provinces we have no such thing as an Advocate General, but I use the term in its wider sense.

The Honourable Sir Alexander Muddiman : Law officers of the Crown.

Mr. M. A. Jinnah : Judicial officer of the Crown. Sir, we have already got provisions which undoubtedly impose a very great responsibility upon the Advocate General. There are many things which require the previous sanction of the Advocate General. The Advocate General is a person who has received a judicial training, who occupies a responsible office and has also a sense of responsibility towards Government and he is not likely to go wrong, and I am prepared to rely on him. Sir, with these remarks I support the motion.

Several Honourable Members : I move that the question be now put.

Mr. President : The question is that the question be now put.

The motion was adopted.

Diwan Bahadur T. Rangachariar : Sir, after the very eloquent and able defence of my Bill by my Honourable friend Mr. Jinnah, there is very little for me to say. Taking the speakers in their order, the Honourable the Home Member took only the objections which he had taken already at the last debate when the Bill was referred to a Select Committee. He thinks that the form of force to be used should be left to the police or military as the case may be and the magistrate should not have a voice in that. Now, as regards that point, in addition to what has been stated by my Honourable friend Mr. Jinnah the existing provisions in the Criminal Procedure Code itself will be an answer not only to the Honourable the Home Member but also to His Excellency the Commander-in-Chief. Under the latter part of section 131 which my Honourable friend, Mr. Jinnah, did not read, it is the duty of the officer acting under those circumstances :

> "If, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action."

So that it is only in cases where a magistrate cannot be present that the officer can take action, and where he does take it, as soon as it becomes practicable for him to communicate with a magistrate he is bound to put himself in communication with him and thereafter to obey his instructions. (*An Honourable Member* : "With regard to ?") With regard to the action, whether it should be continued or not, whether the firing should be continued or not. The whole scheme of the Code as well as of the English law is that the magistrate is the authority under whom the military officers who have to discharge their duties ought to act and whom they have to obey. In fact, under the Regulations even if the force is divided into several sections it is considered advisable that a magistrate should accompany each of those sections if possible. Therefore, great importance is attached to the presence of the magistrate in order to assist officers who have to use force. My Honourable friend, Mr. Vijayaraghavacharya, has given us a conclusive instance where the magistrate's judgment was better than that of the police officer who wanted to shoot. Sir, that is our point. The military and police officers have not got a proper judgment in these matters and that is why the law entrusts the magistrate with a discretion to decide whether such and such force should be used or not. I do not deny that the responsibility is not only on the magistrate but it is also equally under the English law on the military or police officers discharging their duty. Both of them have

[Diwan Bahadur T. Rangachariar.]

to justify themselves before the jury that they acted in good faith and in the public interests, in which case they escape punishment.

As regards warning, what is the difficulty when the Government themselves brought in a Bill, as I have stated, in the Council of State accepting this principle of giving warning and when they have themselves used language very similar, if not exactly similar, to the language we have now chosen in the Select Committee to adopt ? All that we say is that warning should be given by such means as are available. That is the rule everywhere, and unless you want to take the crowd unawares and want to shoot them down to create a moral effect in the country, I see no difficulty whatever in giving such a warning as the circumstances of the case demand. In fact you may say, " I am going to shoot you unless you disperse ". Why should not such a warning be given, and if they are far away you can also easily give a warning. If they are very near you can utter that warning. How do you do under the Regulations ? How did you propose to do it when you brought in this clause 131 (2) before the Council of State and brought it down to us for enactment ? I submit that there is really no difficulty. You can conjure up extraordinary cases and say, " Look at them." We are providing for ordinary cases. We are not omniscient. No law is so careful as to provide for all cases which can come up. My gallant friend Colonel Crawford conjured up a case where I was being attacked and he was coming to defend me. I may assure him that no such contingency is likely to arise. My Mussalman friends in Madras are so fond of me that they will not come near my door with any hostile intentions. Now, Sir, it is said that if the magistrates have to decide, the military or police have to act as mere machines and their sense of responsibility will be lost. Every soldier takes a risk like that in England, and why should you not take a risk in this country ? His Excellency the Commander-in-Chief told us that with this fear of prosecution hanging on him—the likelihood of a prosecution—he may not act promptly or as well as he should have done otherwise. Does this feeling operate in his mind in England ? There any subject of His Majesty is at liberty to go to a court and complain of excesses on the part of the soldiery. Does it operate in his mind there ? Why should it operate in his mind in this country and not in England ? Therefore, all the three objections taken by His Excellency the Commander-in-Chief cannot have any force.

My Honourable friend, Colonel Sir Henry Stanyon, rather staggered me by the verbal objections and criticisms that he took. With regard to section 131A, he read :

" Where under the provisions of this Chapter any person proceeds or determines to disperse any such assembly, etc."

and asked me, who is the person who determines. Did he read the Chapter ? I should have thought he would have read the Chapter before asking me the question. It is the three classes of persons who determines to disperse an assembly, the magistrate, the police officer or the military officer, who acts in the absence of the magistrate. Those are the three persons who determine what force is to be used, and those persons have to determine whether fire-arms should be used or not. What is the difficulty he felt I fail to see. Then again he asks, who shall be the

judge as to the necessity for using force? I have already stated that under section 129 the magistrate of the highest rank who is present may cause it to be dispersed by military force, and he will also decide whether fire-arms should be used. If he decides wrongly, the court will take action, but if he acts in good faith he is protected. Then he also asked, what is the meaning of "otherwise" in sub-clause (*1*). "Otherwise" means other than the use of fire-arms. Then he asks how is the warning to be conveyed if people are concealed in a building. I did not know that you were going to disperse an unlawful assembly if they were concealed in a building. Unlawful assemblies are usually dispersed when you come face to face with them. If they are concealed you will be able perhaps to see some person, but if all are concealed then when they come out you had better warn them, or lock them in. The whole object of this section is to disperse unlawful assemblies.

Then some criticism has been levelled as to why I confined my Bill to the use of fire-arms, and I was asked why I did not extend the provisions to the men killed by bayonets. I am willing to accept any other amendments that may be made to my Bill. My Bill is confined to the use of fire-arms. If Honourable Members are more generous, who use the argument that my recommendation is very limited, let them bring in a Bill of their own and if they bring in an amendment to my Bill I will not raise any objection, though it will not be within the Preamble of my Bill, unless my friend the Honourable Home Member objects. One such amendment was suggested by my Honourable friend from Bombay. With reference to the period of time in which a report of the occurrence is to be sent, he said that the period of 24 hours was too long. I bow to his opinion if as a district officer he thinks 24 hours too long and he thinks that the officers concerned are able to manufacture evidence and he thinks that the second report will contradict the first report. My whole object was to give them time, so that in case people are injured they will have time to give them medical relief before writing their report. If my Honourable friend thinks that 24 hours are too long, I am prepared to accept any amendment he thinks. I do not think that these officers will really go to the length of falsifying reports, at any rate the majority of them would not do that. Anyhow I am willing to accept any amendment which will improve that sub-clause.

The Honourable Sir Alexander Muddiman: Sir, His Excellency the Commander-in-Chief put matters so clearly before this House that there is very little left for me to say. His speech, I think, made a great impression on all Members of the House. He explained in the clearest possible language and with great lucidity the relations of the military and their duties in connection with these unfortunate occurrences. In these circumstances I propose to deal very shortly with the position.

The real crux of the position is this. It is contained in sections 130 and 131 of the Criminal Procedure Code. Section 130 deals with the duty of the officer commanding the troops required by a magistrate to disperse an unlawful assembly, that is to say, here you have the case where a magistrate and an officer commanding troops are both present. The magistrate decides when it is necessary to use military force. Once that decision is arrived at, the manner and degree of that military force is to be left to the officer commanding the troops.

[Sir Alexander Muddiman.]

Section 131, which is the next section, is where the commissioned officer is alone and there is no magistrate. My Honourable friend pointed out that once the magistrate comes, the responsibility passes to the magistrate, and there he is perfectly correct. But there again you get back to exactly the same position as under section 130. *Ex hypothesi* in that case you have the magistrate and commanding officer together, and the magistrate will decide whether military force is necessary, but, as in the first instance, the moment he so decides, the manner and degree of military force is to be decided by the military officer and the military officer alone. That is the position which has been supported by His Excellency Field Marshal Sir William Birdwood with arguments so cogent that it is not necessary for me to add to them in any degree. I would merely point out that, as His Excellency has stated, the disposition of the troops and the nature and degree of force to be used should be at the discretion of the military officer who alone possesses the necessary knowledge to decide in such matters. His Excellency also said that one of the reasons that rendered it necessary that this should be the position was that the military officer is responsible for the safety of the troops under his command. You cannot neglect the point that the officer commanding the troops is responsible for his own command. What sort of a situation would arise if the magistrate gave the military officer an order which that military officer knew would result in the destruction of his command. Suppose the magistrate, *ex hypothesi*, a man with no knowledge of military matters, told the military officer to ground arms and stand by. That military officer is perfectly well aware that if he does so his detachment may be massacred. Is he to carry out that order? If he does not carry out that order he will be open to severe civil penalties. If he does, he would be court-martialled. The situation, therefore, would be an impossible one, and I hope the House will see that they are not parties to its creation.

Now, one speaker said, and I desire to refer to this particularly, that the sentiments expressed by His Excellency the Commander-in-Chief were not shared by the British soldier and British officer. As His Excellency stated, and as I am sure everyone in this House knows, the British soldier dislikes these duties and has every desire to carry them out in the most humane manner and does so carry them out. That led to the comment that the British soldier and British officer did not share that feeling. Sir, I do not believe that to be true. We have the recent history of the riots in Agra, Allahabad and in Delhi (several times in Delhi). On each occasion, the citizens of the town have borne witness to the forbearance and restraint with which the British troops have discharged their difficult duties. As Home Member I bear testimony to that, as it was not later than last Bakr Id that British troops were standing by to maintain law and order in many places and it was due to their presence that no disturbances occurred.

Sir, as regards the other remarks that have been made in the course of the debate I will only refer briefly to one or two statements of my Honourable friend, Mr. Jinnah.

4 P.M.

He assumed that competent magistrates would always be available. I wish that was so. I wish this House would place at my disposal

sufficient funds to place at all important centres competent magistrates. I will give an example from my own experience. I was a young Sub-divisional Officer in charge of a Sub-division in which there were about ¾ of a million people, and the area of the Sub-division was something like 700 square miles. I was the only first class magistrate in the place. My headquarters were the sub-divisional headquarters and the only other magistrate there was a third class honorary magistrate, who did not know a word of English. My duties used to take me sometimes for a week or ten days many miles from the headquarters of my Sub-division, and if the Honourable Member thinks that an Honorary magistrate with third class powers is competent to issue orders to officers commanding troops as to what kind of military force is to be used, I think he is mistaken.

Mr. M. A. Jinnah : It says Magistrate of the highest class.

The Honourable Sir Alexander Muddiman : Available. The next point in his speech to which I wish to draw attention is his reference to the fact that the King's Regulations have been altered. Well, Sir, they have been altered, and I will tell him why, and he probably will remember it well because, as he told us, at about that time he must have been eating his dinners. Sir, that alteration was obviously made as the result of the judgment in the Ackton Colliery case. That case took place in 1893, and it was thereafter that the King's Regulations were altered, and I have no doubt they were altered in view of this passage in the judgment which, with your permission, I should like to read to the Assembly :

" The question whether, on any occasion, the moment has come for firing upon a mob of rioters, depends, as we have said, on the necessities of the case. Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to ; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists."

I have no doubt it was in view of that judgment that the King's Regulations were altered. Now I have only one remaining remark to make, and that is in regard to the question which was raised also by my Honourable friend Mr. Jinnah, who said, why do you not substitute the Advocate General for the Local Government, or the Government of India as the case may be ? Sir, the main object of the provision is to secure due examination before a prosecution is undertaken, and normally, at any rate in my experience, in an important case, there is no doubt that the Local Government, or the Government of India as the case may be, would consult their principal lawyer. First of all, no Government would embark upon a prosecution, at least if I had anything to do with it, without competent legal advice, and therefore you may be sure that the Local Government or the Government of India would have before them the opinion of their legal officer. I am not authorised, nor in a position to accept such an amendment on behalf of the Government of India, but if such a proposal was brought

[Sir Alexander Muddiman.]

up personally, I should be inclined to consider it favourably. It only remains for me to say that His Excellency has pointed out how impossible the provisions of this Bill are in so far as they interfere with the discretion of the military authorities, and I think I myself, Sir, have answered every other argument which has been brought forward in favour of this Bill. I therefore hope that the House will refuse to take it into consideration.

Mr. President : The question is :

"That the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, as reported by the Select Committee, be taken into consideration."

The Assembly divided :

AYES—56.

Abhyankar, Mr. M. V.	Lohokare, Dr. K. G.
Aiyangar, Mr. C. Duraiswami.	Mahmood Schamnad Sahib Bahadur, Mr.
Aiyangar, Mr. K. Rama.	Majid Baksh, Syed.
Aiyer, Sir P. S. Sivaswamy.	Malaviya, Pandit Madan Mohan.
Alimuzzaman Chowdhry, Khan Bahadur.	Mehta, Mr. Jamnadas M.
Aney, Mr. M. S.	Misra, Pandit Shambhu Dayal.
Belvi, Mr. D. V.	Misra, Pandit Harkaran Nath.
Chaman Lall, Mr.	Murtuza Sahib Bahadur, Maulvi Sayad.
Chanda, Mr. Kamini Kumar.	Mutalik, Sardar V. N.
Chetty, Mr. R. K. Shanmukham.	Narain Dass, Mr.
Das, Mr. B.	Nehru, Dr. Kishenlal.
Dumasia, Mr. N. M.	Nehru, Pandit Motilal.
Duni Chand, Lala.	Neogy, Mr. K. C.
Dutt, Mr. Amar Nath.	Purshotamdas Thakurdas, Sir.
Ghazanfar Ali Khan, Raja.	Ramachandra Rao, Diwan Bahadur M.
Goswami, Mr. T. C.	Rangachariar, Diwan Bahadur T.
Govind Das, Seth.	Ranga Iyer, Mr. C. S.
Gulab Singh, Sardar.	Ray, Mr. Kumar Sankar.
Hari Prasad Lal, Rai.	Samiullah Khan, Mr. M.
Ismail Khan, Mr.	Sarfaraz Hussain Khan, Khan Bahadur.
Iyengar, Mr. A. Rangaswami.	Singh, Mr. Gaya Prasad.
Jeelani, Haji S. A. K.	Sinha, Mr. Devaki Prasad.
Jinnah, Mr. M. A.	Sinha, Kumar Ganganand.
Joshi, Mr. N. M.	Syamacharan, Mr.
Kartar Singh, Sardar.	Venkatapatiraju, Mr. B.
Kasturbhai Lalbhai, Mr.	Vishindas, Mr. Harchandrai.
Kazim Ali, Shaikh-e-Chatgam Maulvi Muhammad.	Yakub, Maulvi Muhammad.
Kelkar, Mr. N. C.	Yusuf Imam, Mr. M.

NOES—47.

Abdul Mumin, Khan Bahadur Muhammad.	Cocke, Mr. H. G.
Abdul Qaiyum, Nawab Sir Sahibzada.	Cosgrave, Mr. W. A.
Ahmad Ali Khan, Mr.	Crawford, Colonel J. D.
Ahmed, Mr. K.	Fleming, Mr. E. G.
Ajab Khan, Captain.	Ghulam Bari, Khan Bahadur.
Akram Hussain, Prince A. M. M.	Gordon, Mr. E.
Ashworth, Mr. E. H.	Gordon, Mr. R. G.
Ayyar, Mr. C. V. Krishnaswami.	Graham, Mr. L.
Bajpai, Mr. R. S.	Gurner, Mr. C. W.
Bhore, Mr. J. W.	Harper, Mr. K. G.
Blackett, The Honourable Sir Basil.	Hussanally, Khan Bahadur W. M.
Burdon, Mr. E.	Innes, The Honourable Sir Charles.
Carey, Sir Willoughby.	Langley, Mr. A.
Chalmers, Mr. T. A.	Lindsay, Sir Darcy.
Chartres, Mr. C. B.	Lloyd, Mr. A. H.
Clow, Mr. A. G.	Macphail, Rev. Dr. E. M.

Maguire, Mr. L. T.
Mitra, The Honourable Sir Bhupendra Nath.
Muddiman, The Honourable Sir Alexander.
Naidu, Mr. M. C.
Panduranga Rao, Mr. V.
Rajan Baksh Shah, Khan Bahadur Makhdum Syed.
Raj Narain, Rai Bahadur.
Roy, Mr. G. P.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Vijayaraghavacharya, Diwan Bahadur T.
Webb, Mr. M.

The motion was adopted.

Mr. President : The question is :

" That clause 2 do stand part of the Bill."

Sir Sivaswamy Aiyer (Madras Nominated : Non-Official) : Sir, I beg to move the amendment which stands in my name :

" That in clause 2 of the Bill in sub-section (*1*) of the proposed section 131A for the words ' such assembly cannot otherwise be dispersed ', the words ' it is unavoidable ' be substituted."

My object in proposing this amendment is this. The words " such assembly cannot otherwise be dispersed " rather seem to suggest that it is necessary for the person resorting to fire-arms to prove that he could not possibly have dispersed the assembly by force of bayonets, a cavalry charge of some other form of military force. It is quite certain that where it can be shown that the use of fire-arms is unavoidable, it should not be necessary for a person to resort to other weapons or to prove that he could not have dispersed the assembly even if he had resorted to other weapons.

I believe the words which I suggest—" it is unavoidable "—will fully meet the wishes of the Honourable Diwan Bahadur Rangachariar. What he really wants is to insist that fire-arms shall not be used except in cases of absolute necessity. I think my amendment carries out his idea while at the same time it obviates some of the objections that might possibly be raised to the clause as it stands.

Diwan Bahadur T. Rangachariar : Sir, I must confess I do not see the difference between my Honourable friend's motion and the language of the clause as it stands. I have chosen to adopt the language used in that Chapter. It is not right to introduce two different clauses in the same Chapter. Under section 129 as it stands " if any such assembly cannot otherwise be dispersed " is the language used, and you will be introducing confusion if you adopt another phraseology when you mean the same thing. All that we mean is " in the last resort " to follow the wording of the executive order. That is what is intended and that is what is conveyed by the clause as it stands. That is why I have adopted that language and I really do not think there is any difference in substance between my Honourable friend's amendment and the language I have used. I do not think it will be an improvement in the section if we accept this amendment.

Khan Bahadur Sarfaraz Hussain Khan (Patna and Chota Nagpur *cum* Orissa : Muhammadan) : Sir, my amendment is the same as that of Sir Sivaswamy Aiyer and therefore I do not formally move that amendment but simply support him. In my opinion, the words " such assembly cannot otherwise be dispersed " conveys the idea that it must be dispersed whereas " unless it is unavoidable " brings out the intention more clearly. I think therefore it is better for the people interested,

[Khan Bahadur Sarfaraz Hussain Khan.]

the people who will be dispersed, that " unless it is unavoidable " should take the place of the words " unless such assembly cannot otherwise be dispersed ".

With these words I support the amendment.

Mr. H. Tonkinson : Sir, I should like to say a few words in support of the amendment which has been moved. My reason for doing so is briefly that I think it does to some extent remove an objection which has been urged to the Bill as it stands at present. My Honourable friend Diwan Bahadur Rangachariar suggests that the words in clause (*1*) of the proposed section 131A are the same words as are used in another section of the Chapter. Well now, Sir, if one reads section 129 where the same words are used, one will realise that " otherwise dispersed " there has the effect of meaning " cannot be dispersed otherwise than by military force ". Here of course it is just one particular form of military force—fire-arms—to which it is applied, and the phrase " unless it is unavoidable " would probably be an improvement in that it would enable fire-arms to be used instead of a bayonet or a cavalry charge.

Mr. President : The question is :

" That in clause 2 of the Bill in sub-section (*1*) of the proposed section 131A, for the words ' such assembly cannot otherwise be dispersed ' the words ' it is unavoidable ' be substituted."

The motion was adopted.

Mr. K. Rama Aiyangar (Madura and Ramnad *cum* Tinnevelly : Non-Muhammadan Rural) : Sir, I beg to move:

" That in clause 2 of the Bill to sub-section (*1*) of the proposed section 131A, the following explanation be added :

' *Explanation.*—A magistrate shall be deemed to be present if he is in the same compound or very near the same within a few minutes walk of it '."

(Laughter.)

Sir, I am glad that the Assembly feels the force of my amendment. The House might like to know why I put this amendment forward—an amendment which I feel is very important. The whole question that has been raised with respect to the military may be treated separately. They are called in only when the civil officers give way ; so that the remark of His Excellency the Commander-in-Chief will not apply to a case of the ordinary kind. In those circumstances whatever the next step the military may take will be a question that might be dealt with having regard to all aspects that have been discussed in this House already. But I should like to draw the attention of the Assembly to an incident that happened in Madura to which reference was made by my Honourable friend, Dewan Bahadur Rangachariar, that is, an instance in which the police were outside the Collector's office building, Madura. The trial of a sedition case against one Dr. Varadarajulu Naidu was going on inside. A first class magistrate was inside ; the Collector of Madura, the District Magistrate, was in the same compound—divided by a small partition wall three feet in height. But all the same, while both these magistrates were there the order to fire was given against a body of people who had been used to attend the trial of the case from day to day. The case was going on for a number of days and this was after eight or nine days. As I said, the magistrate was inside : probably the con-

struction that would be put on this section, which is now being enacted with such great difficulty, would be that the magistrate should be present before the officer, and unless that was so the officer could give the order to fire and he need not consult the magistrate at all ; though the latter might be inside, the officer outside might give the order to fire. That is what it comes to practically. I therefore ask that the word " present " must be definitely explained. Otherwise any officer might plead that he need not go into the House and tell the magistrate the circumstances of the case—I can well understand that when the military are called in they are called in only under extraordinary circumstances. In this instance that I related an innocent boy was killed and two or three persons were injured and the Government would not move in the matter. The people who were fired on had neither brickbats nor any of the things that were referred to by Diwan Bahadur Rangachariar. It is absolutely necessary that the officer who decides to fire in such cases must not resort to firing if he can communicate with any magistrate within easy distance—in the same compound or very near. The thing may look very small at first sight, but is important in this way : that the Assembly which enacts a provision like this in the Statute-book ought not simply to stop with saying " present ". " Present " actually means that unless the officer sees the magistrate before him he need not take his order. Is that the object of this Bill ? Are we going to leave it at this stage ? It is not in every place and at every time that occasions of this kind arise, but they do occur ; and in the Madura district I could refer to two or three instances more. In one of them the magistrate and police inspector who resorted to firing were both dismissed or sent out of service. My object in putting forward this amendment is that this instruction should be there clearly ; otherwise any officer is likely to commit this mistake and unless you make it plain we will not be doing our duty. I therefore propose my amendment.

Diwan Bahadur T. Rangachariar : Sir, I can understand my Honourable friend's position. Only I am afraid he is under some slight misapprehension. Section 131A is supplemental to section 131. It is only under section 131 that a police officer or military officer can act ; that is, when public security is manifestly endangered by any such assembly and when no magistrate can be communicated with, any commissioned officer can take the steps which he is taking. Therefore if a magistrate can be communicated with he certainly cannot act. Certainly when the magistrate is within the building he cannot act under section 131. But my Honourable friend's proposal is " or within a few minutes' walk of it " ; a few minutes may make all the difference. As I say, section 131A is supplemental to section 131 and if he cannot act under 131 he cannot act under 131A. Therefore I think this amendment is unnecessary. The case which the Honourable Member referred to is a very notorious case no doubt in which the police officer acted without communicating with the magistrate who was in the building ; but the remedy for that I have suggested in sub-clause (4)—prosecution without the intervention of Government. In that case the Government neglected their plain duty in not prosecuting the officer who disobeyed the law. Therefore those cases really do not require a provision like this, and I think my Honourable friend will see that that being so his amendment is unnecessary.

The motion was negatived.

Mr. D. V. Belvi (Bombay Southern Division : Non-Muhammadan Rural) : Sir, the amendment which I wish to move is of the simplest kind. It is admitted even by my friends on the Treasury Benches that it is stated explicitly in the executive orders which have already been issued to officers on the point of warnings that there must be the fullest warning given to an unlawful assembly before fire-arms are resorted to. My amendment is simply intended to translate these executive orders into the law which it is proposed to enact. If it is necessary to give warning, then it is reasonable to contend that the warning should be sufficient. We know that sometimes very technical interpretations are put upon words in an Act. We know the old proverb that the law is an ass; but it is not an ass of an ordinary kind; it is an ass which has a temperamental tendency always to go wrong unless it is kept within control. It is necessary to control the phraseology of a section with all the circumspection and caution that we may command. I do not think a longer speech in support of my amendment is necessary and I therefore beg your leave to move it. The amendment is :

"That in clause 2, in sub-section (2) of the proposed section 131A, before the word 'warn' the word 'sufficiently' be inserted."

Diwan Bahadur T. Rangachariar : Sir, I am sorry it has fallen to my lot to speak on this amendment. The wording in my original Bill ran as follows :

"Before the assembly is fired on, the fullest warning should be given by all means available and that unless it disperses it will be fired on."

We sat over this clause in the Select Committee for over an hour and discussed it very thoroughly, and I was satisfied with the explanation given for the alteration that has been made. It is no doubt true that the executive instructions require that the fullest warning should be given, but it was pointed out to me that when we are enacting a piece of legislation which will have to be construed by the courts later on, the law must be quite clear, because when an officer is put on this trial, these words may create another doubt which it will be very difficult for the magistrate to solve. I was satisfied with that explanation. Whether the warning was given or not is a question of fact which can easily be decided, but whether the fullest warning was given or not is a very difficult matter, because opinions may vary on that point, and they honestly vary, and therefore when these points were explained to me, I thought I should not stick to the wording which I ordinarily proposed, and I thought that as we are enacting a new piece of legislation we should not make it more vague than is necessary. Sir, I do not think this amendment is necessary. I hope the Government will now accept the law and will not create any further difficulty in another place, and therefore I want this to become law.

An Honourable Member. Difficulty will be created in another place.

Diwan Bahadur T. Rangachariar : But I hope the Government will accept the decision of this House. We are already complaining that our votes do not count, but I hope that in this instance they will see that our votes do count, because in this matter there is a strong public feeling that the law should be put right. I am sure that the Government will not adopt an attitude of opposition. Let us meet them half-way, and let us not make it more difficult for them to accept this measure. On that ground I would ask my Honourable friend not to press his amendment.

Mr. President : The question I have to put is :

"That in clause 2, in sub-section (*2*) of the proposed section 131A, before the word 'warn' the word 'sufficiently' be inserted."

The motion was negatived.

Mr. K. Rama Aiyangar : Sir, the amendment that stands in my name reads thus :

"In clause 2 of the Bill in sub-section (*3*) of the proposed section 131A, for the words 'within twenty-four hours of' the words 'immediately after' be substituted."

Sir, I do not think that I need make a long speech in support of this amendment. Another Honourable gentleman has already dealt with this question and I hope that the Honourable Diwan Bahadur Rangachariar will see his way to accept this small amendment. It is clear that twenty-four hours is certainly not the period which we ought to fix in connection with a firing incident. It is not an ordinary case. Therefore, all steps which will have to be taken to protect those who are injured in the incident immediately after the incident will not be by the officer who gave orders to fire. All reports will be sent by that officer, and if it is the headquarters of the district, the District Magistrate or some such authority should be immediately informed. Even a moment's delay should be counted against the *bona fides* of the officer. In these cases you ought not to delay in reporting the matter to the highest authorities. In a country like India, the necessity for immediately making a report to the higher authorities is very necessary. It may be done in whatever form possible, it may be by express wire or by any other means available on the spot. The information must be communicated immediately to the nearest magistrate or to the district authorities. Under those circumstances, I do not think that the period of twenty-four hours that has been fixed will be suitable. Therefore, Sir, I move my amendment.

Diwan Bahadur T. Rangachariar : Sir, while I am tempted to accepted this amendment in view of the observations which fell from the district officer who spoke with authority on this point this morning, I still appeal to my Honourable friend Mr. Rama Aiyangar not to press his amendment, because the time provided is the maximum. It does not provide that the officer who gives orders to fire should not make a report immediately. I am sure the executive instructions which are already in force will be applied in all rigour. Twenty-four hours is only the maximum limit. We are enacting this for all cases. For instance, in a big riot such as the one which took place at the Jallianwalla Bagh where several persons were injured, the officer who issued orders to fire did not take care of the dead and the wounded, he made no provision for them; he took no precautions for this purpose. Let the officer in charge not wait for ink and paper to write the report. Let him be engaged in the more humane task of relieving the wounded and curing them. Therefore, as we are providing for all cases, I have fixed only the maximum time. We only provide that in no case should the officer exceed twenty-four hours. Therefore, I think that in that view my Honourable friend will not press his amendment.

Mr. K. Rama Aiyangar : If the Government do not want it, I do not want to press my amendment, Sir.

Mr. President : Does the Honourable Member withdraw his amendment ?

Mr. K. Rama Aiyangar : Yes, Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Khan Bahadur Sarfaraz Hussain Khan (Patna and Chota Nagpur *cum* Orissa : Muhammadan) : Sir, I gave notice of my amendment after reading.....

Mr. President : Does the Honourable Member wish to move his amendment ?

Khan Bahadur Sarfaraz Hussain Khan : No, Sir.

Mr. President : Very well, then he need not make a speech. The question is :

"That clause 2, as amended, do stand part of the Bill."

Sir P. S. Sivaswamy Aiyer : Sir, I want to move another small amendment to sub-clause (*4*) of clause 2. It is purely a verbal amendment.

Diwan Bahadur T. Rangachariar : I do not object.

Sir P. S. Sivaswamy Aiyer : Sir, sub-clause (*4*) of clause 2 provides that :

"Notwithstanding anything contained in section 132, any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter."

The meaning of this clause, as it is drafted, is very very obscure. Apparently the intention in the mind of the framer of the Bill was to dispense with the necessity of sanction in these cases. But the clause as drafted goes, in my opinion, much further and not merely does it do away with the necessity for sanction, but it also sweeps away the protection clauses contained in section 132. At any rate, it is a permissible and a legitimate construction and contention, and I am sure that it is not beyond the capacity of an ingenious lawyer to argue that that contention is correct. The words are "Notwithstanding anything contained in section 132". The protection clauses contained in clauses (*a*) to (*d*) of section 132 are part of section 132. Therefore when you say notwithstanding anything contained in that, a person may make a complaint against any person for any offence committed by the officer by reason of any act purporting to be done under the Chapter, it is open to grave doubt whether the acts referred to would receive the benefit conferred by clauses (*a*) to (*d*). There is this uncertainty with regard to the construction of this clause and if it is intended to say that these acts shall not have the benefit of the protection, then it is mischievous.

Diwan Bahadur T. Rangachariar : You need not argue that ; nobody intends that.

Sir P. S. Sivaswamy Aiyer : Then, that being the intention, the correct way of drafting would be :

"Notwithstanding anything contained in section 132, no sanction shall be necessary for the institution of a prosecution by any person"

and so on.

Mr. President : Will the Honourable Member put it down on paper and hand it to me ?

The Honourable Sir Alexander Muddiman : As the draft does not seem ready and time is passing, I would suggest one thing. If this is merely a drafting amendment, it might be moved when we pass to the next motion, at the third reading of the Bill ; and the draft could then be properly examined.

(The amendment was handed in.)

Mr. President : Amendment moved :

" That in clause 2, for sub-section (*4*) of the proposed section 131A, the following be substituted :

' (*d*) Notwithstanding anything contained in section 132, no sanction shall be necessary for the institution of a prosecution by any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms against any person in respect of any offence committed by him by reason of any act purporting to be done under this Chapter '."

Diwan Bahadur T. Rangachariar : Although it is unnecessary, Sir, I accept it.

The Honourable Sir Alexander Muddiman : I have had no opportunity to examine it and I therefore disavow any responsibility for the amendment.

Mr. President : The question I have to put is that that amendment be made.

The motion was adopted.

The Honourable Sir Alexander Muddiman : Sir, if you now propose to put clause 2 to the House, I would ask you to put sub-clauses (*1*), (*2*) and (*3*) together and sub-clause (*4*) separately, as I wish to divide the House on (*4*).

Mr. President : The question I have to put is :

" That sub-clauses (*1*), (*2*) and (*3*) of clause 2, as amended, do stand part of the Bill."

The motion was adopted.

Mr. President : The question is :

" That sub-clause (*4*) of clause 2, as amended, do stand part of the Bill."

The Assembly divided :

AYES—58.

Abhyankar, Mr. M. V.	Datta, Dr. S. K.
Aiyangar, Mr. C. Duraiswami.	Dumasia, Mr. N. M.
Aiyangar, Mr. K. Rama.	Duni Chand, Lala.
Aiyer, Sir P. S. Sivaswamy.	Dutt, Mr. Amar Nath.
Alimuzzaman Chowdhry, Khan Bahadur.	Ghulam Abbas, Sayyad.
Aney, Mr. M. S.	Goswami, Mr. T. C.
Belvi, Mr. D. V.	Govind Das, Seth.
Chaman Lall, Mr.	Gulab Singh, Sardar.
Chetty, Mr. R. K. Shanmukham.	Ismail Khan, Mr.
Das, Mr. B.	Iyengar, Mr. A. Rangaswami.

Jeelani, Haji S. A. K.
Joshi, Mr. N. M.
Kartar Singh, Sardar.
Kasturbhai Lalbhai, Mr.
Kazim Ali, Shaikh-e-Chatgam Maulvi Muhammad.
Kelkar, Mr. N. C.
Lohokare, Dr. K. G.
Mahmood Schammad Sahib Bahadur, Mr.
Majid Baksh, Syed.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.
Misra, Pandit Shambhu Dayal.
Misra, Pandit Harkaran Nath.
Murtuza Sahib Bahadur, Maulvi Sayad.
Narain Dass, Mr.
Nehru, Dr. Kishenlal.
Nehru, Pandit Motilal.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Purshotamdas Thakurdas, Sir.
Rajan Baksh Shah, Khan Bahadur Makhdum Syed.
Ramachandra Rao, Diwan Bahadur M.
Rangachariar, Diwan Bahadur T.
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Sadiq Hasan, Mr. S.
Samiullah Khan, Mr. M.
Sarfaraz Hussain Khan, Khan Bahadur.
Shafee, Maulvi Mohammad.
Singh, Mr. Gaya Prasad.
Sinha, Mr. Ambika Prasad.
Sinha, Mr. Devaki Prasad.
Sinha, Kumar Ganganand.
Syamacharan, Mr.
Venkatapatiraju, Mr. B.
Vishindas, Mr. Harchandrai.
Yakub, Maulvi Muhammad.
Yusuf Imam, Mr. M.

NOES—45.

Abdul Mumin, Khan Bahadur Muhammad.
Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Ashworth, Mr. E. H.
Ayyar, Mr. C. V. Krishnaswami.
Bajpai, Mr. R. S.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Burdon, Mr. E.
Carey, Sir Willoughby.
Chalmers, Mr. T. A.
Chartres, Mr. C. B.
Clow, Mr. A. G.
Cocke, Mr. H. G.
Cosgrave, Mr. W. A.
Crawford, Colonel J. D.
Fleming, Mr. E. G.
Ghulam Bari, Khan Bahadur.
Gordon, Mr. E.
Gordon, Mr. R. G.
Graham, Mr. L.
Gurner, Mr. C. W.
Harper, Mr. K. G.
Hussanally, Khan Bahadur W. M.
Innes, The Honourable Sir Charles.
Langley, Mr. A.
Lindsay, Sir Darcy.
Lloyd, Mr. A. H.
Macphail, Rev. Dr. E. M.
Maguire, Mr. L. T.
Mitra, The Honourable Sir Bhupendra Nath.
Muddiman, The Honourable Sir Alexander.
Naidu, Mr. M. C.
Panduranga Rao, Mr. V.
Raj Narain, Rai Bahadur.
Roy, Mr. G. P.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Vijayaraghavacharya, Diwan Bahadur T.
Webb, Mr. M.

The motion was adopted.

Clause 1 was added to the Bill. The Title and Preamble were added to the Bill.

Diwan Bahadur T. Rangachariar : I move, Sir, that the Bill, as amended, be passed.

The Honourable Sir Alexander Muddiman : Sir, I object to the passing of the Bill.

Mr. President : Motion moved :

"That the Bill, as amended, be passed."

***Mr. M. A. Jinnah** : Sir, I would like to say one word before this Bill is passed. Sir, as the Honourable the Home Member has given us an assurance—no doubt it was his own personal opinion ; he was not speaking on behalf of the Government of India—I hope he will see that the section of the Criminal Procedure Code which provides for the

* Speech not corrected by the Honourable Member.

previous sanction of the Government will be amended in the light of my suggestion to the House.

The Honourable Sir Alexander Muddiman : I will give the assurance that I gave you before that I personally consider that it would not be a bad amendment. I give no assurance on behalf of the Government of India nor will I promise any action on my own part unless the House refuses to pass this Bill. I object to the passing of this Bill.

5 P.M.

Mr. President : The question is :

"That the Bill, as amended, be passed."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 10th September, 1925.