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**PROCEEDINGS
OF
*THE INDIAN LEGISLATIVE COUNCIL***

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

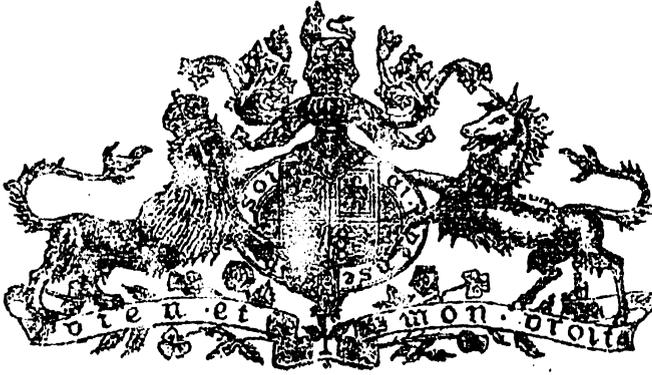
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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER
THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1915.
(5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on
Friday, the 7th February, 1919.

PRESENT :

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.I.E., G.C.M.G., G.C.B.E.,
Viceroy and Governor General, *presiding*, and 58 Members, of whom 51
were Additional Members.

CRIMINAL LAW (EMERGENCY POWERS) BILL—contd.

The Hon'ble Rai Bahadur B. D. Shukul:—" My Lord, after the eloquent speeches of my Hon'ble colleagues Mr. Bannerjea and Mr. Jinnah and the comprehensive survey of the whole situation and detailed examinations of the provisions of the Bill made by the Hon'ble Pandit Madan Mohan Malaviya, I do not think any elaborate argument is further needed to convince the Council of the utter inadvisability of adopting the measure which is now before us. But, my Lord, the principle involved in the Bill is so important, so serious and so far-reaching in consequences, that I do feel that I should not give a silent vote. The Bill affects the natural rights and liberties of the people, their freedom of speech and action, the tranquillity of their sweet homes and, above all, their future attitude towards the Government. In a matter like this, it is not only the spirit in which a measure has been conceived that has to be taken into account, but also the effect which it will produce upon the minds of the people in general, and the amount of hardship that its actual operation would entail. Judged by these vital tests, the proposed Bill will be found to be open to serious objections, as has been so clearly pointed out by the previous speakers.

11 A.M.

" My Lord, we stand at the threshold of a momentous epoch, we have just emerged victorious from the worldwide war, the greatest of all wars in history,

[Rai Bahadur B. D. Shukul.] [7TH FEBRUARY, 1919.]

in which Indian soldiers have fought, side by side with their European comrades, for the highest ideal of humanity, for defending the cause of justice and liberty, and for the establishment of the victory of right over might. To-day the ideas of freedom and liberty are pulsating the life of the nations of the world. Is this, I most humbly ask, an opportune moment when the Government should have brought forward a measure for the approval of the Council which marks yet another step in the policy of repression, which has never been known to have succeeded in achieving its purpose? My Lord, whenever and wherever it has been resorted to, it has only served to stiffen the people's determination for national freedom and to create a feeling of bad blood between the rulers and the ruled.

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

"My Lord, India has always been loyal to the British Crown. The outburst of loyalty and devotion to the Empire displayed by her people, particularly during the time of war, has established her claim to a place of trust and honour in the Empire, and it must be a matter of poignant grief to us all that at a time when India has been led to hope to become ere long a self-governing unit of the British Empire, a hope which has now grown into confidence since the inauguration of the recent scheme of reforms, the Government should have thought the present to be an appropriate occasion for the introduction of this Bill. This is an occasion when we are in the midst of rejoicings and when the people expected many an act of grace from the benign Government in recognition of their loyal services. And consider, my Lord, what the feelings of the people would be when you foist this retrograde and regrettable measure upon them, instead. Indians after all are sentimental people, and any action of the Government which would tend to cast a slur upon their loyalty, particularly at this juncture, is sure to evoke universal discontent. My Lord, when I say this my motive should not be misunderstood. I have not the least sympathy with those misguided youths, the anarchists, who have disregarded all dictates of humanity and tarnished the fair fame of India, the holy land of *Rishis*. Nothing could be more repugnant to Indian sentiment and feelings. It is as much in the interest of the people as in that of the Government that anarchy should be stamped out of the country altogether, but, my Lord, I have my own doubts and misgivings as to whether the measure now placed before the Council will be able to attain that object. On an occasion like this I cannot help recalling to my mind the wise counsel given to the world by that philosopher and man of the world combined, I mean Bacon, who ordained that 'the surest way to prevent seditions is to take away the matter of them, which is of two kinds—much poverty and much discontent.' Repression may afford temporary relief, but as a radical cure it has never proved successful. This is why Lord Morley denounces the policy of repression as worse than useless. Unless and until you alter the very conditions which constantly tend to stir the existing evils into fresh activities of anarchism, how could you check it? The only right way is to find out the root cause, and the true statesmanship would then lie in removing it. Then and then only the Government can achieve the object in view, with which you have my full sympathy.

"The evil in itself which we are called upon to grapple with is not an old one. The very cult of anarchism is foreign to the nature of the people of India,

[7TH FEBRUARY, 1919.] [*Rai Bahadur B. D. Shukla.*]

and we have to congratulate the Government and the people that it has been nipped already, and how, not by mere force of repression. I have only to draw your Lordship's attention to the compliment paid to Indian loyalty by the members of the Rowlatt Committee. They state in their report in paragraph 166 that all (these conspiracies) have been successfully encountered with the support of India's loyalty, and I put it to the Council and to the Government whether it would be fair, just and expedient to put a premium upon that loyalty and pass a measure which would throw a serious reflection upon the character of the Indian people as a whole? This is an aspect of the question which I particularly wish to impress upon the earliest attention of the Council and the Government. Had the proposal been to enact a temporary measure for a limited period, say for one year or so, the matter would have been quite different.

"But here you come with a different proposal altogether. You wish to place permanently upon the Indian Statute-book a piece of repressive legislation, which constitutes in itself a novel departure from the established principles of criminal jurisprudence, and which is regarded by Indians as casting a permanent slur upon the fair fame of the Indian Nation, and will, I am afraid, if passed into law, become a new source of discontent. My Lord, the feelings of the people with regard to the manner, in which the Indian Defence Act has been administered in the past, are not concealed from your Lordship. The people have been emphatic in their disapproval of the action taken by Government in the exercise of the extraordinary powers conferred upon the executive by that Act. So long as the war lasted, the people put up with any amount of inconvenience caused thereby, without a murmur, as they did not wish to create difficulties in the way of the Government. Now the war is happily over. The imminent danger has passed and the era of peace and prosperity has once more dawned upon the world. At this juncture, any attempt to perpetuate measures justified by the exigencies of war and continue them in normal times and under normal conditions, would not only be inexpedient, but I say unwise, and I say so advisedly. It will be fraught with dangerous consequences. It will raise a tremendous storm of opposition and will provoke an agitation of unparalleled magnitude hitherto unknown in the history of India, and I for one shall not advise the Government to take that risk. It is going against the very pledge that the Hon'ble Sir Reginald Craddock gave to the people on behalf of the Government while introducing the Defence of India Bill in 1915. He then assured this Council that those powers were required 'only during the continuance of the war and for six months after, that is to say, until the excitement and disturbance of the general calm, which the state of war engenders have had time to subside.' In view of these definite assurances, my Lord, on behalf of the Government, would it be fair to recede from the position when the war is over? Well, all of us are for the maintenance of law and order in the land. Keep order by all means, but excess of severity, my Lord, is not the path to order, to use the words of Viscount Morley. On the contrary, it is the path to the Bomb. We are as anxious as you are that India should have a long spell of peace and prosperity. We do not wish that India should be plunged into a state of anarchy and rapine, bloodshed and chaos. But, at the same time, we do not wish that India should become desperate and be forced to play the rôle of another Ireland in the East. While we are strongly of opinion that anarchy should be suppressed with a strong hand, it is our sincere desire that, in suppressing anarchism, you do not unreasonably infringe the natural rights and liberties of the people and do not frustrate their legitimate aims and aspirations.

"Well, so far as the present Bill is concerned, without entering into the details thereof, I make bold to say there is a real danger, as the people anticipate, that the Bill will seriously threaten the liberties of even the innocent people. You do not only legalise secret inquiries and trials, but you dispense with all rules of evidence. The accused has no chance to prove his innocence before he is arrested; you deprive him of the right of trial by the ordinary Courts of Justice; you deprive him of the right of trial by jury, and

[*Rai Bahadur B. D. Shukul.*] [7th FEBRUARY, 1919.]

above all you withhold from him the right of appeal and revision. The provisions of the Bill on the whole are immensely wide and drastic, and yet they do not go to the root of the evil, and why? Obviously, because they do not affect the causes which helped the propaganda of anarchism to spread. The authors of the Report of the Rowlatt Committee state in paragraph 28 of the report that 'The education which the people receive is generally literary and ill-adapted to incline the youthful mind to industrial, commercial or agricultural pursuits; they have not succeeded in finding fresh outlets for their energies. Their hold on land too has weakened owing to increasing pressure of population and excessive sub-infeudation. Their economic prospects have narrowed, and the increasing numbers who draw fixed incomes have felt the pinch of rising prices.'

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

[7TH FEBRUARY, 1919.] [*Rai Bahadur B. D. Shukul; His Excellency the President; Sir Verney Lovett.*]

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

His Excellency the President:—"As the Hon'ble Pandit Malaviya is now in the Council, I will give him my decision on his request that he might be supplied with the minutes of my Government and any correspondence with the Secretary of State in regard to the Bill now under consideration. I have decided that the papers in question cannot be supplied to the Hon'ble Member, and I will take this opportunity of stating for the information of the Council that in my judgment records of the confidential deliberations of the Executive Council are not papers or returns within the meaning of Rule 13. I may add, for the information of the Hon'ble Member, that the Secretary of State was asked to agree to the publication of the Bill under Rule 23, and that his reply was in the affirmative." 11-18 A.M.

The Hon'ble Sir Verney Lovett:—"My Lord, as a member of the late Rowlatt Committee, I would like to begin by thanking the Hon'ble Members of this Council who have criticised our recommendations, sometimes in unflattering terms, for the courtesy and consideration with which they have referred to our findings of fact and ourselves. I trust that in whatever I have to say I may show an equal courtesy. 11-19 A.M.

There is no need for me to justify our findings of fact. They have not been seriously impugned, and such remarks as I have to make will proceed on this basis. We each did our utmost to ascertain the real facts, and when we had found them, we considered possible legislative remedies and preventives. The Hon'ble Mr. Jinnah says that the present Bills which simply embody our recommendations are "entirely against the will of the people." Do the people really understand what the issue is and have they grasped the facts? In my opinion they have not, in spite of the earnest endeavours of the Rowlatt Committee to state the issue and to detail the facts in such a manner as to admit of no misunderstanding. I do not think that the Hon'ble Members of this Council who have spoken have grasped the real issue, but I will endeavour to make it clear, and if I succeed in doing so, I will ask Hon'ble Members to explain it to their constituents. They are here after all because they lead and not because they follow, however heavily they may be bombarded by telegrams. There is yet time for them to lead wisely. The issue to-day is this. Is the Government to take legislative measures or not to cope with blood-thirsty crime and sedition in India, and to protect from these hideous evils its subjects and

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loyal servants? That is the present issue. There is no other. The issues before the Rowlatt Committee were first, what do you consider to be the nature and extent of criminal conspiracies connected with the revolutionary movement? Secondly, are you able to suggest to Government new or additional laws by which such violent crimes can be prevented? I would venture to remind Hon'ble Members that the law does not cease to be the law, because it is supplemented or altered in the light of bitter and tragic experience. We are told that the Rowlatt proposals outrage ordinary ideas of British fair play. We were not all British on our Committee. We had the invaluable assistance of two Indians, men of great legal experience and of sterling independence, from whom we parted with the highest respect. They are not men who enjoy newspaper abuse any more than do the Hon'ble Members of this Council. I maintain that our proposals violate neither British nor Indian ideals of fair play. I need not discuss them in detail now, as the Bill has to go to Select Committee. Our most prominent suggestions were devised to meet possibilities, possibilities ranging as we said from incipient sedition to incipient anarchy. These possibilities will not be prevented from materialising by cheerfully ignoring them. Dangers are visible. They were visible to the Rowlatt Committee, and they are visible more clearly now. They are not lessened by the triumph of blood-thirsty violence in Russia, even though that triumph be partial and temporary. We know from the foot-note to page 15 and from paragraphs 90 and 94 of the Sedition Committee's Report that Russian terrorist methods have been already carefully studied by Indian fanatics.

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

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

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

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place whatever in this specious programme. Not one speaker has considered them at all; we have heard a great deal about the poor young men who may be wrongly condemned by three fallible High Court Judges and subjected to police supervision by the orders of an untrustworthy executive. But what about the persons who have to be protected from the movement of which these young men are the exponents? They too are God's creatures, and they are generally, though not always, Indians. What is to happen to them? We know from the Report what has happened to them in the past. I will give two samples. The first is from the record of the year 1915. The Report says :—

'It remains to mention three murders which occurred in Eastern Bengal this year. On the 8rd of March Babu Saast Kumar Basu, the Head Master of the Zilla School at Comilla, was shot dead while walking with his servant. The servant was wounded in the stomach. A Muhammadan who pursued the murderers received two shots in the chest and a woman was accidentally struck by a bullet from one of the pistols. Five empty Mauser pistol cartridges were found upon the scene. The Head Master's servant eventually died. The victim of this murder had come into antagonism with political parties in Bengal in 1908, and shortly before his murder had had occasion to report to the District Magistrate about two students concerned in the distribution of seditious pamphlets. None but political reasons can be assigned for this murder.'

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

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

"In neither of these cases was a single conviction obtained. There have been many such cases. The fate of these poor victims seems to me to deserve a little more than conventional regrets from the Members of this Council. My Lord, what has come from delaying and hesitating to grapple adequately with these evils in the past? What has resulted from the absence of laws broad enough to cope with terrorism and revolutionary conspiracy working together among a simple and heterogeneous population in an enormous country? We know from the Report what has happened. As the Committee pointed out in paragraph 174, it was only when the Bengal conspiracies had enjoyed a two years' run, when two English ladies had been murdered, and as Lord Minto said 'the seeds of wickedness had been sown among a strangely impressionable and imitative people' that the first preventive Bill of these latter years was enacted. Enormous mischief had been done. The Government of India waited then. Again they waited, during that critical period from the 19th December 1914, when the Punjab Government asked for the very early promulgation of a draft Ordinance, in order to deal with the prosecution and suppression of violent crime, waited up to the passing of the Defence of India Act in March 1915. Would they have waited had they foreseen the long tale of intervening crime, had they known that within this period conspiracy would almost achieve widespread bloodshed at large centres from Calcutta to Lahore? Why did they wait? They waited because they were reluctant to supersede the ordinary statute law. The Rowlatt Committee did not think that they would have hesitated to employ special preventive laws had such been ready to hand. My Lord, surely the past teaches us that sacred as is the name of liberty, it should never be so interpreted as to cover license to enemies of us all, of the Government and of Society, to work out their plots as they please. I wonder if Hon'ble Members have read those words spoken on the scaffold, in a last hour of awakening, by one of the victims of the

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French Revolution who had assisted to raise the storm which swept her away. 'Oh, Liberty! What crimes are committed in thy name!' This is indeed a true saying. We are told that the crimes of the Terrorists will disappear before political concessions, that they are merely the product of unsatisfied political idealism. Persons who really think this fail entirely to understand the frenzied and irreconcilable spirit which guides this insane, this inhuman war against Society. It is a spirit which, as the Report shows, burns with racial hatred and spurns political concessions. I am speaking of the spirit of the discolors of the movement; men like-minded with the notorious Hardyal. The others are their tools. The criminals are comparatively few, but their facilities are great, and their organisation has been elaborate and widespread. Their achievements would, as the Report points out, have been more considerable had they been able to procure a more abundant supply of arms. Their designs have been furthered all along by the absence of anything like determined, persistent non-official opposition to their propaganda of racial hatred. I remember indeed one fine courageous speech of Mr. Gokhale's delivered to the Students' Brotherhood at Bombay on the 9th of October 1909. I commend it to all true Indian patriots. It should be graven in their minds. Had there been more of such speeches and had such speeches been followed by determined, widespread action and organisation, a number of misguided youths would have been a credit and a joy instead of a disgrace and sorrow to their parents, and there would have been no Rowlatt Committee. As it is, the attitude of too many politicians towards the Terrorist movement has resembled that of a nervous person who hearing a burglar in his bedroom feels happier and safer when he pulls up the blanket over his head. My Lord, things being as they are, and not as we all hope they will one day be, I do not see how without special legislation of the kind proposed by the Rowlatt Committee, revolutionary plotters are to slink back discouraged and loyal subjects and servants of His Majesty the King-Emperor, whose sole offence is wealth or their loyalty, are to receive from the law that protection which no self-respecting Government in the world would refuse them. The Government of India cannot sit down and twiddle its thumbs, as apparently some Hon'ble Members wish it to do, because all judges and policemen are fallible, the Executive is human and prone to err, and high provincial officials are a truculent lot. When the Congress and Moslem League deputations arrive at Bombay *en route* for England, they will not be deterred from embarking by the reflection that 'ships are but boards, sailors but men and then there is the peril of waters, winds and waves.' Perhaps these pessimistic members forget that in future far more of these frail judges and officials will be Indians than are Indians now. This reflection may reassure them. Be this as it may, Indian parents have a right to expect that Government will take as effective steps as possible to prevent revolutionary plotters from depraving and ruining their sons. There are, too, others who have the strongest claim on all of us, non-officials and officials. It is pre-eminently due to the loyal Police Officers of the Crown, British and Indian, to the loyal landlords and peasant proprietors of the Punjab, that India was not disgraced in the first year of the war, despite the valour of her soldiers and her own general loyalty. They frustrated the plots of the revolutionaries; they stood in the van; they bore the brunt. Should the Government of India fail now to do its utmost to shield the homes of its loyal Indian servants from cruel bereavement, would its own roof-tree stand the firmer? It would not. It would gradually totter to well-deserved catastrophe.

"My Lord, I appeal to our non-official colleagues to look at facts that stare us in the face. It is only by recognising existing facts that we can hope to build truly now. As Mr. Gokhale once said 'Life is not like writing on a clean slate. We have to take the words existing on the slate, and add other words, so as to make complete sentences and produce a harmonious whole.' We must, my Lord, take things as they are, build on what is sound and right, remedy what is horribly wrong if we would indeed rise to higher things and realise the future which your Excellency has so earnestly sought, with infinite labour, for the people of this country."

[THE FEBRUARY, 1919.] [Dr. Tej Bahadur Sapru.]

The Hon'ble Dr. Tej Bahadur Sapru:—"My Lord, in introducing this Bill yesterday the Hon'ble the Home Member assured us that it was in no light-hearted spirit but after very careful and anxious consideration that the Government had decided to take this step. My Lord, may I similarly, on my behalf and on behalf of many of my Indian colleagues, venture to say that it is in no light-hearted spirit but after very careful and anxious consideration, and after very close study of the provisions of this Bill, that we have come to the conclusion that it is our duty to oppose this Bill. My Lord, it is a duty that we owe to ourselves, it is a duty that we owe to our countrymen, it is a duty that we owe to you and to the Government, that we should frankly and without equivocation tell you what we feel about this Bill. My Lord, I think no Indian who is worth his salt in this Council would be true either to his own convictions or to the Government if he were to equivocate on an occasion like this. My Lord, the path of duty being clear, I have decided that I must oppose this Bill and support the motion which has been put before this Council by my Hon'ble colleague, Mr. Patel.

"My Lord, there is one other matter to which I wish to refer at this moment. The Hon'ble Sir William Vincent also reminded us yesterday that our critics in England and our critics in India would judge of us by the attitude that we adopt towards this measure. In other words, the position that is placed before us is this. If we want to establish our capacity for self-government, or responsible government, we must be prepared to support the Government in carrying this measure through. My Lord, if an argument like this did not proceed from the high quarter from which it did, I should not have been disposed to attach much weight to it. We have been hearing this argument for the last several months. We have been reading arguments of that character in various newspapers in India and also in England for some time. But, my Lord, let us examine the position carefully and dispassionately. If we do not support this measure, we are not fit for responsible government or self-government. If we do support this measure we are again not fit for responsible government, because admittedly the country is seething with discontent and anarchy, and where there is anarchy there cannot be self-government or responsible government. My Lord, I frankly confess that whatever other important issues may be raised with regard to the reforms, I think an issue of this character is absolutely a false issue. I do not think that it is the pivot on which the question of reforms turns. My Lord, may I, in all humility, ask our critics to tell us on some authority whether, if we were prepared to support this measure to-day whole-heartedly, they would be prepared to give up all their opposition to our claim for self-government and say 'Oh, well, Indians have now established to the hilt their fitness for self-government.' My Lord, the resources of our critics are inexhaustible, and if an argument like that will fail them I have no doubt that we shall be face to face with a multitude of arguments of a different character to show that we have not yet developed character and capacity for self-government. Therefore, my Lord, whatever else you may do, I will beg of you, and I will earnestly entreat you, not to confuse this issue which we have to consider this morning with the issue of the reforms.

"My Lord, my Hon'ble colleague Sir Verney Lovett in his very spirited speech just now told us that we had absolutely missed the issue, and as he formulated the issue it was like this. Are the Members prepared to realise whether, under the circumstances which exist at the present moment and under the circumstances which had existed during the last few years, the Government is or is not justified in taking large legal powers to cope with the situation. My Lord, I may assure Sir Verney Lovett that we have not missed the issue. We realise that issue. We are fully aware of the issue that has been present in the country, but the real issue now to-day before us is not whether the Government should not assume new legal powers to cope with the situation, but whether this Bill is really the sort of Bill which the Government should put before the country, and whether the powers which Government want to cope with the situation are precisely the powers which they should take under this Bill.

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"My Lord, the Indian politician is somewhat of an unfortunate being. His attitude is seldom correctly appreciated. Indeed, it is far oftener the case that his attitude is misunderstood than appreciated. Throughout the discussion it has been assumed that those of us who are not prepared to support the Government on this occasion have got a soft corner in their hearts for the anarchist or the revolutionary. But let me assure you, my Lord, that that is not so. No one regrets more than the Indian politician or the Indian reformer does that there should have sprung up in this country a breed of that type. But, my Lord, what the Indian politician wants to know is this. Are the measures that you have been taking, is the measure that you propose to take to-day, the sort of step that is necessary, that is essential, for the uprooting of this evil which has grown in this country? My Lord, I have no doubt whatsoever in thinking that these are not the measures which will undo the mischief that has come about in this country or that will uproot the evil that has grown. You have tried repression during the last ten years on various occasions, and yet you find to-day that you are not in a position to say that you have been able to quell or suppress all these activities, and I venture to think, my Lord, that even this measure will fail.

"And I venture to think, my Lord, that this measure will fail. Now, my Lord, I oppose this Bill on many grounds. In the first place, I have no hesitation in saying that it is wholly wrong in principle, unsound in its conception, dangerous in its operation and too sweeping and too comprehensive, indeed far more comprehensive than many of us are prepared to admit at the present moment. In the next place, my Lord, the Bill which is now before us is sought to be placed permanently on the Statute-book, and I say that is not the right thing to do. In the last place, my Lord, I say that this is not the time to introduce a measure of this character. I will take up the question of principle first. My Lord in Part I of this Bill what do we find? You seek to create a new Court. Now I do not for a moment say that you cannot create a new Court. Perhaps that point is no longer open to me to urge, having regard to the recent decision of a High Court in India, but what I do say is, that it should be clearly recognised and realised that you are not conferring a special jurisdiction on the High Court, you are creating an altogether new jurisdiction with a new procedure for admitting evidence and for the examination of the accused. Now, my Lord, it may be that the Court which you are creating, consisting, as it will be, of men who have been, or who are, judges of the High Court is in some respects better than the special tribunals to which we have been accustomed during the last few years. I submit that the other provisions in this part are open to serious objection. I do not propose to go into those objections at this moment, as I have no doubt that the Members of the Select Committee will take care to press their point of view in the Select Committee. It is only when we come to Parts II and III that we have some idea of the dangerous character of this measure. In fact, if we examine Part II what do we find? Section 20 says:—

'If the Governor General in Council is satisfied that movements which are, in his opinion, likely to lead to the commission of offences against the State are being extensively promoted in the whole or any part of British India, he may, by notification in the *Gazette of India*, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.'

"Well, what is exactly the meaning of that expression 'movements' I am not in a position to say. It is not a word of art, it is not a word of law, and as that word stands, it may cover any movement, political, social, or economic, in this country. My Lord, the Governor General in Council having declared a movement to be dangerous, disappears from the scene, and the rest of the powers are exercised by whom? By the Local Government. And what does the Local Government do after that? The Local Government may pass any one of those orders which are specified in Section 21. It may pass an order that a person—

(a) shall, within such period as may be specified in the order, execute a bond with or without sureties to be of good behaviour for such period not exceeding one year as may be so specified;

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

"Now, my Lord, the Local Government having done this, there appears on the scene certain gentlemen who have been dignified with the name of investigating authority under this Statute. These gentlemen must carry on their inquiry *in camera*, within closed doors, with the accused before them, but with no right to the accused to have the benefit of legal advice or legal support. Having finished his work, these gentlemen must submit their report again to the Local Government, and it will be then for the Local Government to decide what order it shall pass consistently with the provisions of section 21. My Lord, when you come to examine Part III, which was admitted to be much more drastic than Part II, inasmuch as under that Part the Local Government may cause any person to be arrested or to be put in confinement and order an investigation to be made in a similar fashion, you realise how very dangerous it is. My Lord, if it is not undiluted coercion, I ask what is it in all humility? If it is not substituting executive discretion, or may I say indiscretion, for judicial process or judicial form of law, what is it I ask? My Lord, I submit that the entire provisions in Parts II and III are so subversive of elementary principles of British jurisprudence, they are so shockingly unlike anything known to British institutions or British law, that I venture to hope that the Statute-book will not find a standing place for this uncanny intruder. My Lord, the homage that is sought to be paid to law in the constitution of this investigating authority is in my opinion nothing but a mockery. Either you must abide by the law inherited by us through ages, or you must frankly say 'we do not care for these judicial forms and we will frankly reserve this power to the executive, and do not care that there shall not be any further inquiry.' Well, if it is supposed that this inquiry by the investigating authority will lead to any satisfaction, I venture to dispel the illusion. I say that an inquiry by the investigating authority under the limitations proposed will not bring satisfaction to popular mind. My Lord, therefore as a lawyer trained in the British system of jurisprudence, as an Indian who loves his country and who is interested in the ordered progress of this country, who wants self-government, who is anxious to have responsible government, at an early date, and who is anxious for the permanent connection between India and England, my Lord, I think it is my duty to oppose this measure. My Lord, I also said that it was an ill-timed measure. My Lord, during the last few months I have been going all over the country with the Reforms Committee, and what has been my experience? My experience has been that the feeling for the proper reception of reform is fast growing in the country. It was growing until day before yesterday, and I venture to think that if nothing untoward happens, it will grow in strength and force very soon. I think, my Lord, it is very unfortunate that a measure like this should have been conceived at this juncture, and it is much more unfortunate that it should have been introduced in the Council at the present moment. My Lord, already unkindly critics of the Government are saying in every part of the country—'well, reforms may come or may not come, goodness only knows whether they will come or when they will come or how they will come, but meanwhile undiluted and pure repression is coming.' My Lord, as one who is deeply interested in the reforms, who realises the difficulty of evolving any scheme of reforms, having worked on that Committee, and who is anxious to have those reforms, who

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thoroughly appreciates the honesty of purpose of your Lordship and Mr. Montagu in regard to reforms, I think it is my duty to raise my humble voice against this measure on this occasion. I will beg of you and entreat you with all the earnestness that I can command to consider whether you will not be immensely gaining in moral strength and prestige by dropping, or even postponing, a measure of this character.

" My Lord, I have not the smallest possible doubt that if you do listen to those who are earnestly pressing this request upon you on this occasion, you will not regret it. On the contrary, you will find that you will have strengthened your position beyond all measure and that, when any untoward situation arises afterwards and you come before this Council or its successor and say ' here is a dangerous situation ', I have not the smallest possible doubt that every one of us, if he happens to be here then, will rally round you and try to do everything to strengthen the hands of Government to meet the situation. My Lord, let it not be said that Indian Members fight shy of responsibility, or let it not be said that they are so meek and so timid that they cannot resist public criticism. My Lord, the history of this Council bears witness to the opposite view. Was it not the Indian Members who supported Government in passing the Indian Press Act ? Was it not the Indian Members who unanimously supported Government in passing the Defence of India Act ? I can give many more instances, my Lord. There have been men among us who have deliberately courted unpopularity, men among our countrymen who have shown that they can stand public criticism when it is a matter of conviction that they should take one line of action rather than another. Therefore, my Lord, if criticism of this nature is levelled against us, I for my part am not disposed to attach any importance to it. My Lord, I will again repeat that this is not the time to go on with a measure like this. I do not say that that is the sole ground on which I oppose it. I oppose it, first and foremost, on the ground that the whole measure is wrong and unsound in its principle. But even if I am wrong there, I will beg you, my Lord, to take into consideration the question of expediency.

" And lastly, my Lord, there is one more point which I would urge upon your Lordship's attention and upon the attention of your Government. I do so not without hesitation, but I do so in the hope that perhaps your legal advisers may throw some light upon that question. My Lord, if there is one principle which is embedded in the British constitution and in the British law it is that no man shall be deprived of his liberty and freedom, without a proper judicial trial. My Lord, I venture to doubt—and my doubts are serious—whether the Government of India have got the power to pass a measure of this character. My Lord, I will refer to section 65 of the Government of India Act, which says that ' the Governor General in Legislative Council has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom '.

" My Lord, the bond of allegiance, the strongest bond of allegiance between the subject and the Crown, is that the Crown protects him against arbitrary executive power and that the subject is entitled, before he is deprived of his liberty and of his freedom, to be tried according to the recognised forms of law. My Lord, I have no doubt that your Government have satisfied themselves that they have such power ; but, speaking for myself, I am not free from doubt on that matter, and I should very much welcome any explanation on that point of law.

" Lastly, my Lord, I will beg you to realise the situation as it has been growing during the last few days and as it threatens to grow in future. My Lord, already there is a wave of indignation running through the country ; from one end to the other protest meetings are being held. Do not dismiss them with a wave of the hand and say, ' Oh ! well, all this will pass away ' . My Lord, what was impossible in this country ten years back is no longer

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impossible now. Political feeling has been growing in this country; political consciousness is much stronger to-day than it was ten years ago, and what the country was prepared to put up with ten years ago it is not prepared to put up with now. As one who does not want this country to be thrown into a vortex of agitation, who is deeply anxious that our programme of work in the future should be constructive rather than destructive, who wants that we should not dissipate our energies in mere protests, I feel, my Lord, that you are going to throw the country into a whirlpool of agitation such as it has never witnessed before. My Lord, that will be prejudicing the Reforms, and I am interested in the Reforms. I beg of you, and I entreat you, to give the Reforms a fair chance and do not prejudice them before they have come into force. Give them a fair chance, and then you will find that you will not have taken a wrong step, a mistaken step, in having listened to your advisers to-day in this Council.

"I would therefore strongly oppose this Bill and support Mr. Patel's motion".

The Hon'ble Mr. G. S. Khaparde:—"My Lord, it is said that every rose has its thorn or that there is no rose without a thorn. Our rose is this Reform Scheme. We have seen it blossom in the air to a certain extent; we have smelt its fragrance; but the unfortunate part of it is that the thorn has begun to prick earlier than was expected, and that is where the trouble of the situation is.

12-7 P.M.

"I will preface my remarks by reading out one sentence from Lord Morley's 'Recollections'. I have copied it out. Here it is: 'Shortcomings of Government lead to outbreaks; outbreaks have to be put down; reformers have to bear the blame and their reforms are scotched. Reaction triumphs, and mischief goes on as before, only worse'. Lord Morley is a great philosopher and a great writer, but it appears to me as if he has produced an aphorism which ranks very high in political life, and deserves to be embodied in a work higher than mere recollections. It happens, as it happened, that there were certain shortcomings which fostered this anarchical spirit in Bengal. Unfortunately, the Rowlatt Committee takes no notice of these shortcomings. Outbreaks have to be put down, I thoroughly agree, no matter what the shortcomings have been. When they are put down, what unfortunately happens is what has actually happened, namely, that the reformers have to bear the blame. Here it has not been made as an allegation, certainly not as an accusation. Nobody has said so much, but there is something in the air, an airy nothing, which implies that people who oppose these measures are people who in their heart of hearts sympathise with the anarchists. This part of the suggestion if I may call it so—it is not even so clear as to call it a suggestion—well, this suggestion or implication or whatever it may be called, I humbly submit is not right, and as Lord Morley foresaw we have got to bear the blame, though really we have absolutely nothing to do with the anarchists. We do not sympathise with them; we would much rather suppress them altogether if we could. But the blame still comes to us. It would not much matter if we had to bear the blame alone and that was all. What becomes worse is that our proposals get scotched and the reforms we propose get to be viewed with some amount of suspicion, and what little is given is diluted a great deal, so as not to be effective.

"'Reaction triumphs and mischief goes on'. This last portion it is which I wish to dwell upon to a certain extent. The Rowlatt Committee in their report did not notice any of the shortcomings, nor suggest any remedies; all that they are concerned with is to propose measures to suppress them, and in the carrying out of those measures reaction triumphs. To that part of the case, therefore, I wish to address myself. This is not the first time that I speak on this subject. This Hon'ble Council may remember that last year in Simla I brought in a motion asking that all action on this report should be kept in abeyance pending certain inquiries. Speaking on that occasion I dwelt on the *ex parte* character of the inquiry. I dwelt upon its being in

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camera. I also dwelt upon all the numerous defects and omissions that I had found in the report, omissions in the face of which it was impossible for us to form an opinion. To-day I propose to raise a question which has already been raised and argued first by my Hon'ble friend Mr. Chanda and then by my Hon'ble friend Dr. Sapru. That question is, whether it is within the competence of this Hon'ble Council to pass this Bill as it is put before us here. Have we got any jurisdiction in a matter of this kind? Our opinion is that we have not. It was mentioned yesterday by the Hon'ble the Law Member that no serious argument had been brought forward on this point, and that so far as he was concerned he was satisfied that there is not the least objection. I shall endeavour to indicate the serious part of the argument that bears on this matter. Section 28 of the Indian Councils Act of 1861 has this paragraph:—

'Provided that the Governor General in Council (unless expressly authorised to do so by Parliament) shall not have the power of making any laws which may affect the authority of Parliament . . . or any part of the unwritten law or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom.'

"This provision has since that time been reproduced in every Act and also finds its place in the present Bill. I think the Hon'ble Dr. Sapru read it out just now. Now, what is meant by 'allegiance' here? Blackstone defines it as follows:—

'Allegiance is the tie which binds the subject to the Crown in return for that protection which the Crown affords to the subject.'

That is the definition given by one who is, I suppose, one of the greatest of English lawyers. Does this Bill affect questions of allegiance? Does it do so at all, and if it does, is this Hon'ble Council competent to make an enactment of this kind? That is the next question that arises to my mind. I submit that it does and there are some points to which I wish to draw special attention. One is the English law that nobody's property or liberty can be taken away without a proper judicial sentence. In this particular instance, that principle of English law is sought to be detracted from and in certain matters the executive authority will be able to deprive a person of his liberty and his property. This, I say, is rather a bold departure because in English law there is no counterpart to it. Even when they were enacting the Defence of the Realm Act, they provided:—

'Where a person, being a British subject but not being a person subject to the Naval Discipline Act or to Military Law, is alleged to be guilty of an offence against any regulations made under the Defence of the Realm Consolidation Act, 1914, he shall be entitled, within six clear days from the time when the general nature of the charge is communicated to him, to claim to be tried by a civil court with a jury'

"Your Excellency will see then that in the Defence of the Realm Act, which was enacted in England, and on the model of which, I presume, our own Defence of India Act was framed, a person against whom a notice was issued could claim a trial by jury. Now England in those days was in a peculiar position, it being nearer to Germany, many German spies were found there and other people who went there to give trouble and raise all kinds of difficulties. Even then, with all those difficulties to face, English law did not depart from its principle of saying that any person who is to be prosecuted can always claim a trial by jury. Whereas here, fortunately for us, being at a distance from the scene of the war, there were not so many spies, or if there were, they were probably taken hold of and all the Germans were interned at Ahmednagar and other places. There was no necessity to constitute this new kind of tribunal, which was unknown up to this time. To this a great deal of objection has been taken both in legal circles as well as in political circles. I am at present speaking of political circles only, but Sir John Simon, who is, I believe, a well-known authority on constitutional matters and a great lawyer practising in England, presented a petition to the King and asked His Majesty to transfer it to the Privy Council. From that petition I propose to read out to your Excellency the following passage:—

'Invasion by the Crown of the constitutional rights and liberties of the subject affects allegiance fundamentally. Also the authority of Parliament is seriously invaded. The

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constitutional rights of the subject stand upon the authority of Parliament and the Coronation Oath. No legislature of a dependency possesses the right to infringe these rights in the name of the King's Government, whether supreme or local, without the express authority of the King in his Parliament. The Governor General in Council of India has not received any express authority by Act of Parliament to pass the Defence of India (Criminal Law Amendment) Act, 1915. The said rules purport to confer powers on Local Governments arbitrarily to invade or destroy, without limitation in degree or time, such rights and liberties as (1) the right of free action and conduct (so far as not prohibited by Municipal Law); (2) freedom to come and go throughout the Realm; (3) the right of free speech and publication; and (4) the enjoyment of property. Even if not so restrained by the Acts mentioned, the Governor General in Council appears to have no power of Common Law to interfere with these rights, at all events in the case of British subjects, who by virtue of citizenship retain these liberties wherever they may go within the British Dominions.' . . .

The Hon'ble Sir George Lowndes:—"Would the Hon'ble Member allow me to see this very interesting document, and does he know what the result of the application to the Privy Council was?"

The Hon'ble Mr. G. S. Khaparde:—"I do not know, but I know it was after the presentation of this petition that Mrs. Besant was released. Then, on her release another petition, very nearly in the same words, was also presented."

The Hon'ble Sir George Lowndes:—"Am I not right in saying that their Lordships of the Privy Council rejected this petition?"

The Hon'ble Mr. G. S. Khaparde:—"No, I have not heard of it. This petition, I believe, is still pending; that is my idea about it."

The Hon'ble Sir George Lowndes:—"The original petition, I believe, was rejected."

The Hon'ble Mr. G. S. Khaparde:—"Because she was released."

The Hon'ble Sir George Lowndes:—"Not because she was released. The Privy Council refused to entertain the application, that is, the one from which the Hon'ble Member is reading."

The Hon'ble Mr. G. S. Khaparde:—"It may be that I am wrong; it may be so, but still the point remains that these arguments are undisposed of. These arguments still remain and there was a commission appointed presided over by Lord Loreburn before whom Sir Courtenay Ilbert was examined and he gave a list of fifteen enactments which according to him were not really speaking authorised by law, that is to say, fifteen *ultra vires* enactments; but that list unfortunately was said to be confidential; I tried to get it but I could not get hold of it and it still stands; among them, however, it has come out that the Defence of India Act stood first. Your Excellency may remember that there was a case recently in Burma in which this point was raised; the enactment said that no person will be allowed to bring a civil suit for anything done *bona fide* under the Act, as it is said also under this Bill. Then the person did bring a suit and it was rejected and he appealed to the Privy Council and the Privy Council allowed that appeal, and they were inclined to hold that the Government of India, this Hon'ble Council, could not pass a law taking away a subject's right to sue the Secretary of State. It comes to this, that this point is still open and has been argued and in the Burma case at any rate it has been so ruled. That being so, I humbly submit that this legislation is, so far as I can see, with due respect to the eminent jurist, the Law Member, who sits opposite to me, with due respect to him, I still believe that this argument is correct and when I read this passage I read it merely to give the authority of Sir John Simon. The practical part, however, is that the enactments are there and I go upon those enactments.

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“The next point which is of importance in this case is that which prohibits all revision. Such a law is repugnant to the British constitution. The House of Lords is the highest Court of justice and to that Court every order passed should be taken. The Privy Council is not really a Court established by any law, but independent of these Courts it has grown up, and as I will show, nobody has disputed its authority, but the fact still remains that the House of Lords is the highest Court for the whole of the British Empire, and I believe one of these days this matter will be taken to the House of Lords and it will be argued there. So, if what I say is true and has got any force, then it follows that this enactment may have to be tested and may be taken by somebody who has the ability, the capability and the money to spend on it before the House of Lords, as to whether it is within the competence of this Hon'ble Council to pass this law. Taking it that we are, as a matter of legal argument, I still submit that it is not within the jurisdiction of this Council. For the sake of argument assume that it is within the jurisdiction of this Council, what is the result? The first question has been raised and argued at great length and with great ability in this Council that it would be inexpedient. It has been also argued that it would affect the reception that the people are willing to accord to the Reform proposals put forward by your Excellency and the Secretary of State. I put forward a third ground to show the inexpediency of it. It is like the old story; a traveller had gone to sleep under a tree and the sun's rays were falling upon his face. A swan was passing and (swans are generally spoken of as good) he saw this and spread his wings to throw shade on the face of the traveller to protect him from the rays of the sun and make him sleep better; in the meantime a squirrel ran across and disturbed his sleep, and the traveller got up and he believed that it was the swan which did the mischief and shot the swan. It comes to be like this here. We have been endeavouring, everybody in this Council has been endeavouring to facilitate the passage of these reforms; we have been endeavouring to speak about them and to discuss them and to bring them home to the people and so on; but there may be,—who knows what squirrels may come in and what trouble may arise?—but anyhow these Bills are to be directed against us here. In fact it was said in this Council that the way in which we dealt with these Bills will or will not facilitate the reforms or something to that effect, I do not quote the exact words, but that the debate on these Bills will have an effect on the reforms. I humbly submit that the two things stand quite apart. It is a question of expediency as it is put forward now. Your Excellency may remember that I ventured to doubt the conclusions of fact as arrived at by the Rowlat Committee in my speech at Simla. I was taken to task for it and everybody spoke against me, but I am a little bit obstinate in that respect, and I do still adhere to that, because the whole evidence is not before me, and not being before me I am not in a position to say that the conclusions arrived at are correct. But I am willing to argue on the basis of those conclusions being correct. Taking it for the sake of argument that those conclusions were correct, even then I submit those conclusions do not justify the kind of Bill that has been brought before us now. I gave my reasons then and I do not propose to repeat what I said before, but I really wish to draw your Excellency's attention to this part of the case; to-day also an Hon'ble gentleman read out to us some passages which, I believe, are already printed in the book from the statements of persons examined then and which are quoted there. Again, the old difficulty comes back to me, that we are not in a position to read the whole of the evidence and quote passages which could refute those passages. We are only given one passage and not the whole of it, and therefore we cannot quote from the other parts of it, if there are any other parts at all, in which that conclusion can be disputed. We should have the whole of it to see if there are any portions which contradict this portion. Even taking these conclusions to be correct, what does it mean? It means at the most, not that new powers are required, nor that a new procedure is required; it does not mean that anything new is to be done. The old Act is quite enough; the only difficulty, as was pointed out yesterday, was that there was not sufficient evidence. Now, whose business is it to collect that

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evidence? I believe it is the business of the police or the Criminal Intelligence Department. Why don't they do it? Well, it is said, they are unable to do it. I say that points to the inefficiency of the police; it does not point to the inefficiency or defect of the law; it points to nothing else. Why not ask them to do their work properly? They say they cannot do it; Why can't they? In England they do it; they do not require these laws in England to unearth these conspiracies; they do not require these very unusual laws. Why do they want these laws here to unearth them? It is like the analogy which was put by an Hon'ble Member here 'Lower the standard of the examination because my son cannot pass now.' 'My police cannot collect evidence; kindly make the law more rigorous and relax the rules of evidence.' That is not the kind of argument that appeals to me, and I believe it will not appeal to anybody here.

"In support of this ground of inexpediency, I take the opportunity to say that I have got, since coming to Delhi, nearly 29 telegrams and letters; most of the telegrams (I hold all of them in my hand) ask me to oppose this Bill; 16 of them are from my constituency and they ask me to oppose the Bill as strongly as I possibly can. I have prepared a kind of analysis of these, because it would take a great deal of time if I read them through as they generally repeat the same thing. In my constituency there are 17 places which have sent telegrams to me, they are from Amraoti, Nagpore, Chhindwara, Wanasta, Mehekar, Wani, Chanda, Bilchpur, Raipur, Wardha, Khadwa, Pusad, Yeotmal, Warora. So many places have asked me to oppose this Bill and they put forward the same ground. There are others Hyderabad in Sind, Bombay, Malgaon, Saharanpore, and there is one from Delhi itself and so on. Your Excellency will see how widespread is the feeling that these Bills, if allowed to pass into law, would seriously curtail the liberty of the people. Then there is another point; it is a little secret and it is this, we believe that if these Bills are passed they will prevent political discussions being held in India. I remember the time when the *Swadeshi* movement came up people who spoke about it were taken up; then I also remember that at the time when to speak of home-rule was looked on as seditious. This spirit gradually disappeared, but people have been taken up for it. There is fear in putting these large powers in the hands of the Local Governments and that speaking on politics will be looked upon as seditious. These reforms do require that we should speak to the people about them and the changes to be introduced. But it is feared that speaking on politics will become a little difficult. I remember a case where it was said 'you have no representation, you have no business to talk on these subjects, why do you do so? What right have you to talk?' I say the highest right, because we have not got it. We have a feeling that this Bill if passed will make discussions on political subjects difficult, if not impossible. Then I doubt the wisdom of the course. We want to make friends, we don't want to quarrel, we don't want to rake up old scores or to open old wounds; we want to forget all about it and to begin afresh. It is no use saying 'this was done, and that was done therefore you are unfit.' Why keep old wounds open, the proper thing to do is to forget all about this, and that is what we intend to do. I myself think it is beyond the jurisdiction of this Hon'ble Council, I say it is inexpedient and unwise, because it is to keep old grievances alive, it will cause a breach. I wish I could find the correct English word, there is not exactly a want of confidence, not absolutely a desire to confide entirely, it is somewhere between a want of confidence and a desire to confide. That feeling if allowed to continue, will spread, it does not now exist but it may have a tendency to spread. It would be very unfortunate if that happened. Apart from this there are numerous objections which I do not like to go into as they were dealt with in more or less detail by Mr. Malaviya. A living body does not tolerate a foreign substance and so Jurisprudence does not tolerate a wrong principle being introduced. A living body will throw off any outside matter, so Jurisprudence will not tolerate this principle of the personal liberty being placed at the mercy of the Executive and being taken out of the jurisdiction of the Courts. This tendency of the principle

[*Mr. C. S. Khaparde ; Sir Gangadhar Chitnavis ;* [17th FEBRUARY, 1919.]
Khan Bahadur Mian Muhammad Shafi.]

of liberty being curbed by the executive authority would lead to a number of principles being violated as was pointed out by Mr. Malaviya. Similarly, many difficulties will arise. We should stick to the good old principles which have endured for centuries, or we will go back to the old principle of personal rule, the pernicious tendency of bringing back the people to the era of personal rule. I don't think that is the tendency of the modern age, the tendency of the modern age runs counter to this kind of legislation. These are the days of democracy, people do not want that things should be decided by a Court sitting *in camera*, that is looked upon with a certain amount of disfavour by people. These provisions of the law run contrary to the tendency of the age. Your Excellency, for the reasons that have been advanced, I ask you not to permit this Bill to be passed into law; if it is, it will be a great misfortune and there will be a great deal of trouble. I therefore oppose the Bill and support the amendment that has been moved by my Hon'ble friend Mr. Patel."

12-10 P.M.

The Hon'ble Sir Gangadhar Chitnavis :—" My Lord, I beg to associate myself with the views expressed by the Hon'ble Surendra Nath Banerjea yesterday that this legislation is rather inopportune at the present time. I do not agree with some of my friends who think that there can be no difference between political offences against the State and offences against the individual. There is a great deal of material difference, and these several offences have to be dealt with according to their relative importance, and the Government and the Council will be failing in their duty both to God and man if they do not do so when the occasion requires. As regards these Bills, there is a general consensus of opinion in the country that these Bills cast an unmerited slur on Provinces where no such anarchical or revolutionary tendencies prevailed as have led to their introduction. The public think that it would have been more appropriate if, in the first instance, this legislation had been introduced in places where Government were confronted largely with these evils. They think that it is not right to have on the Indian Statute-book any legislation of such a general character at a time, especially at a time when people eagerly look up to the peaceful results of the war and when there is a general desire among the public as loyally to co-operate in the new political development which the pronouncement of August 1917 and the subsequent reports are going to inaugurate, as they did during the continuance of the war to bring that war to a successful termination.

" Even in the provinces where such anarchical and revolutionary tendencies prevailed, we now know from statements made in leading journals and by responsible representative men that the opinion of the minority which unfortunately indulged in such vagaries and unlawful and criminal acts is, thanks to the efforts of the Criminal Investigation Department, veering round to the side of moderation and to the support of law and order. If the Government cannot take such men on trust, whom else can they? these are the men who are to be responsible for the future administration of the country and they ought to be trusted in the statements they make. If such is the case there should be no necessity of such great hurry to introduce a general legislation for the whole country, especially when Government has in its hands the necessary power given it by the Defence of India Act and otherwise to regulate and put down any such evil wherever rampant. This legislation has undoubtedly roused passions in the country, not calculated to give this measure of such great importance that calm consideration which is necessary to solve such intricate problems. It would be appropriate if time were allowed to let these passions subside or die out and the smoke to settle by giving time for a reasonable and sober consideration of the advantages and disadvantages involved therein. This can best be done by the amendment now proposed, and I therefore give it my humble support."

12-13 P.M.

The Hon'ble Khan Bahadur Mian Muhammad Shafi. —
 " My Lord, having given to the complicated problem now before the Council

[7TH FEBRUARY, 1919.] [Khan Bahadur Mian Muhammad Shafi.]

my most anxious and careful consideration and having weighed the *pros* and *cons* of this difficult question from every point of view, I am convinced, not that the introduction of such a measure as this would not be justifiable under any circumstances, but that the enactment of the proposed law at this juncture is unnecessary and inopportune. The proposal embodied in the amendment proposed by my friend the Hon'ble Mr. Banerjee furnishes what, in my judgment, is the best solution of the difficult problem which the Government and the country have to face, and I venture to add my humble voice to the earnest and eloquent appeal addressed by my Hon'ble friend to your Excellency's Government for the adoption of a course which is calculated to bring about the desired result without creating widespread nervousness and unnecessary irritation. My Lord, I for one gladly and willingly recognise that in placing this Bill upon the legislative anvil, your Excellency's Government have, in absolute good faith, been influenced to adopt the recommendations of the Rowlatt Committee. I further recognise that in view of the constitution of that Committee, its findings of fact must be accepted without any challenge. And I am sure that the Hon'ble the Home Member needs no assurance from me that, were I convinced of the necessity of the immediate enactment of this law, nothing would deter me from giving him my whole-hearted support. But, my Lord, I cannot help thinking that in arriving at their decision, your Excellency's Government have overlooked a most important part of the Rowlatt Committee's Report. Hon'ble Members are aware that the first 16 Chapters of that Report contain a review of the origin and development of revolutionary movement in India, a description of some of the more serious crimes and dacoities that have been committed from time to time by its members, in some parts of the country, and a brief sketch of the measures adopted by Government in order to put down that movement. It is in the last, that is to say, the 17th Chapter of their Report, that the members of that Committee describe the legislation which they propose, should occasion arise hereafter. To what I consider is the preamble of the proposals in the 17th Chapter, I would invite the earnest and careful attention of this Council. This is what they say in the first two paragraphs of that Chapter:—

'The last part of our task is to advise as to the legislation, if any, mark the use of the expression 'if any' necessary to enable Government to deal effectively with the difficulties that have arisen in dealing with conspiracies.

'This as expressed appears to us to be applicable to the state of circumstances under which the difficulties referred to were encountered. These difficulties have, however, been circumvented for the time being by special temporary legislation and they have not been in operation at the time of our inquiry.'

I earnestly invite the attention of your Excellency's Government to this sentence—

'When this legislation lapses, circumstances may have altered and the position may be better or worse. We do not think it is for us to speculate nicely on these matters. We must of course keep in view that the present war will have come to an end, but we cannot say with what result or with what ulterior consequential effects or possibilities of consequential effects upon the situation. On the other hand, the persons interned under the Defence of India Act will be due for release and the terms of imprisonment of many dangerous convicts will be coming to an end. Further, there will, especially in the Punjab, be a large number of disbanded soldiers, among whom it may be possible to stir up discontent. Nevertheless, if we thought it clear that the measures taken against the revolutionary movement under the Defence of India Act had so broken it that the possibility of the conspiracies being revived could be safely disregarded, we should say so. That is not our view and it is on this footing that we report.'

"Now, my Lord, a careful analysis of the two paragraphs to which I have invited the Council's attention will, I feel sure, convince all Hon'ble Members that what the Rowlatt Committee say in these two paragraphs amounts to this. The revolutionary movement came into being under certain circumstances which are connected with certain years in the past. Certain measures which have been taken since the outbreak of the war have resulted in putting an end, for the time being, to the crimes and outrages committed previously. It

[*Khan Bahadur Alian Muhammad Shafi; Raja of Mahmudabad; Mr. Krishna Sahay.*] [7th FEBRUARY, 1919.]

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

"With these few words, my Lord, I give my cordial support to the amendment proposed by Mr. Surendra Nath Banerjee."

12-55 P.M.

The Hon'ble Raja of Mahmudabad:—"My Lord, having some little property to look after, I think I can claim to value law and order. I assure you, my Lord, that I will vote for the enforcement of martial law if I think it is necessary, but, my Lord, the Bill as it stands is, in my humble opinion and in the opinion of those whom I have the honour to represent, inopportune, unsound, uncalled for and un-British. My Lord, it means the disfigurement of the political life in this country. It is a question of life and death to us. You, my Lord, have got the power under Regulation III of 1818, and also by issuing Ordinances, to suppress any kind of disorder. This legislation, I am sure, will weaken the political activity and political life in India, and it will certainly strengthen the hands of the Sydenhamites, the followers of Dr. Nair and members of the Round Table. I appeal to you, my Lord, that before it has passed the stage of this Select Committee, it may be dropped, and I do not agree with those who want to postpone it, because it is not a right remedy to suppress the present discontent. This discontent is a discontent of bread, and I am of opinion that it cannot be suppressed by repressive legislation."

At this stage the Council adjourned for lunch.

2-15 P.M.

The Hon'ble Mr. Krishna Sahay:—"My Lord, I am one of those who believed that the Government would not hurry up legislation to give effect to the recommendations of the Rowlatt Committee. During the Simla

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Session, only the other day, while opposing the Resolution of my friend the Hon'ble Mr. Khaparde about the report of the Seditious Committee and the working of the Criminal Investigation Department, I said that there was no evidence then that the Government was actually engaged in formulating legislation based on the recommendations of the Committee. In fact, I could not understand my friend when he said that he wanted the consideration and disposal of the Rowlatt Committee's report to be kept in abeyance. And yet, only after a few months, here is this Bill, with its twin brother the Criminal Law Amendment Bill, with all its hideousness before us, conferring extensive powers on the Executive which is liable to be abused or at any rate to be misused when political feelings run high in the country, laying down special rules of evidence and of procedure subversive of all principles of law hitherto accepted in this country. It is not proposed to pass this Bill as an emergency measure, for if that course had been adopted, it would have been possible for some of us, regard being had to some political crisis, to give our assent to it. But it is now proposed that this measure should be placed permanently upon the Statute-book of India and form the law of the land. My Lord, there is a world of difference between an emergency measure and a law which is to form part of the law of the land. It is proposed that it should be referred to a Select Committee on the very day that it is introduced into the Legislative Council. My Lord, I ask why this haste, why this precipitancy over this matter? I admit unhesitatingly the importance of the Rowlatt Committee. I admit the high qualifications of the members who formed that Committee, and the weight that ought to be attached to the conclusions at which they have arrived; but with all respect to what has fallen from Sir Vorney Lovett, I do not admit their infallibility, especially when they proceed to suggest the methods by which anarchism or terrorism in this country can be suppressed.

"But apart from this, my Lord, it seems to me that the present is the most inopportune moment to introduce legislation of this character; for whatever may be the criticisms directed against the Reform Scheme inaugurated by your Excellency and the Right Hon'ble the Secretary of State, there cannot be the least doubt that it has produced a very soothing effect on the public mind. I may go further and say that it has given rise to hopes of more spacious days to come. It has given rise to the hope that there is a brighter outlook for the people of this country in the liberal policy which has now been definitely adopted by the Government in their governance. Is this the time, my Lord, to create a feeling the very reverse of that which is necessary for the success of these reforms? The introduction of this Bill has been received with widespread alarm throughout the country, and it is clear that if it is proceeded with it will give rise to a state of things which will cause incalculable harm to the cause which every one of us has near at heart. We want peace, my Lord; we need rest. A calm atmosphere is essential for the steady and progressive development of our ideals. Above all, we wish to secure this development by co-operation between the Government and the people. It is because I believe that the passage of this Bill through the Council will blast all our anticipations, all our hopes, that I raise my voice against the motion and support the amendment moved by the Hon'ble Mr. Patel."

The Hon'ble Sir Fazulbhoy Currimbhoy:—"My Lord, I rise to submit my respectful protest against the principle of the Bill which has been introduced with regard to the Criminal Law (Emergency Powers) Bill and oppose its being referred to a Select Committee. It is my honest belief that the passing of this Bill in times of comparative peace and quiet would not in reality strengthen the hands of the Executive in so far as it would alarm and alienate a large body of non-official public opinion. My Lord, I associate myself with the abhorrence which is being felt everywhere of the methods of anarchical crimes in this country, and with the severe condemnation of them which has been made by the mover of this Bill, and by various Members who have already spoken. Those of us who have followed the course of Indian politics for the last few years have always deplored the appearance of what is known as the anarchist movement in India and all the forces that led up to it and have consistently supported the Government in their efforts

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to root it out. Many of us have seriously pondered over the tragic story of political crimes outlined by the Rowlatt Committee in their Report. The recommendations made by that Committee, unfortunately do not cover all the remedial measures which are calculated to wipe out political crime from this country. The principal means of removing them is a policy of conciliation, and all communities in this country had entertained the hope that the announcement of August 20th, and the political reforms conferring responsibility upon the people would have effectively quelled the acute political discontent which had been misdirected into these wrong and mischievous channels. My Lord, I cannot help feeling that this is a most inopportune moment for the passing of such a Bill into law. At no time in the history of this country were the forces of political anarchy so much reduced and under control as at the present moment. Coming at the time of the victory of the Allied arms and preceding the beneficent reforms which have been outlined in the Report of your Excellency and Mr. Montagu, such a legislation is bound to spoil the happy effect of circumstances that are welding together the various parts of the Empire into a great and abiding harmony. This will be the last Council called into being under the old constitution, and the life of this Council has been extended by your Lordship's behest until such time as the new Council of a more representative character on a new basis can come into existence. Would it not be better to wait until that moment and to submit this question to the judgment of that Council? Personally, I would very much prefer the exercise by your Lordship of the power vested in your Government to extend the operation of the Defence of India Act and the rules made under them for a period of six or twelve months more so that an opportunity may be given to the people to go into the merits of the case before such a law is put permanently on the Statute-book. I am satisfied that no harmful consequence will ensue if this measure is delayed for some time, and it is possible that an improvement in the political atmosphere of India may actually obviate the necessity of ultimately passing such a law altogether. As a business-man I yield to none in my anxiety for the preservation of law and order and for the maintenance of the stability of the State, but after the most serious consideration, I find myself unable to give my support to an extreme measure of this character.

"I can assure the Government that they would have the best support of the Indian communities if they used the ordinary machinery of the law with a heavy hand to bring to book that band of misguided young men who have adopted the heinous and detestable methods of anarchy and violence.

"If still your Lordship's Government thinks it essential that a Bill of this nature be introduced, I would appeal to your Lordship's Government to accept the Hon'ble Mr. Patel's amendment of deferring this Bill until the Reform Councils are formed."

2-23 P.M.

The Hon'ble Raja Sir Rampal Singh :—"My Lord, the Bill before the Council has been very exhaustively and eloquently discussed and criticised by my Hon'ble Colleagues who have preceded me, and I know it can serve no useful purpose if the same arguments be reiterated over and over again. But the Hon'ble the Home Member has reminded us of the responsibility that we have towards the Government and the people, and I feel I will be failing in my duty towards them if I do not raise my humble but strong voice against it. Telegrams after telegrams have been pouring in from all parts of the country in protest against this Bill. I cannot help observing that the Government have not been well-advised in launching upon this measure which, I am afraid, will not prove efficacious in eradicating the evil that has unfortunately crept into the country, and which is very greatly deplored by all sensible men. But I am constrained to say that the more the repressive measures will be adopted, the more the malady is liable to become serious. The human heart and the human mind are very sensitive and very delicate mechanisms, if I may call them so, in the human body and cannot be won over and brought under control by rough handling.

"Pour more sympathy into the administrative machinery, open more outlets for the realisation of the legitimate aspirations of the people. Let India's interest,

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well-being and prosperity be the first and foremost consideration of the Government, and the evil is sure to die a natural death. My Lord, the provisions of the Bill are a distinct and serious encroachment upon the liberty and the fundamental rights of the people, and are sure to give rise to widespread discontent in the country at a time when it is looking forward with contentment and joyful anticipations to the Reform Scheme of which your Excellency and the Right Hon'ble the Secretary of State are the authors. Is it wise, is it expedient, will it be politic to hurl this law upon the country at this juncture when self-determination is in the air, and when everything seems to point and move towards an era of peace and contentment not only here but all the world over? Both the Bills which are on the agenda paper have created an alarm and anxiety in the minds of the people, and the feeling is shared by even the so-called conservative section of the Indian community. What is the hurry, is there any remotest apprehension that a few individuals who have got their heads turned will succeed in subverting the peace and order of the country and within a short space of time of one or two years? To have any such apprehension is a direct slur upon India's unflinching devotion and loyalty to the Throne. I join my Hon'ble Colleagues in the chorus of appeal that has been made to your Excellency to drop the Bill, at least for the present."

The Hon'ble Mir Asaf Ali, Khan Bahadur :—"My Lord, I beg to associate myself with the other non-official Indian Members in supporting this amendment. In doing so, I would appeal to your Excellency and your Excellency's Government to drop the Bill for the present. If the Government is not prepared to drop it altogether, they can at least accept the motion which is before the Council asking for its postponement. It is a dangerous measure, and were the Bill to be passed the consequences would be disastrous to this country. I trust the Government will consider the matter thoroughly, and knowing the general feeling of almost all Indian communities to be against it, will drop this drastic Bill and give people cause to be satisfied with the Government's action and be contented, but not discontented.

"With these few words, my Lord, I beg to support the motion before the Council."

The Hon'ble Rai Bahadur Sitanath Ray Bahadur :—"My Lord, it is not without considerable hesitation—it is not with a light heart—that I rise to question the desirability of permanently placing on the Statute-book a drastic measure which, I am sure, will be distasteful to the whole country. Though I must freely admit that the internment policy has been attended with very satisfactory results, as would be evident from the absolute cessation of murders and dacoities, which were so rampant in the country only a few years before, I cannot, in view of the proposed Reforms and in the face of what India has done in the war and the sacrifices in men and money made by her, welcome a permanent measure which will seriously interfere with the personal liberties of the people of this country. The Defence of India Act was an emergency legislation and a temporary measure adopted at a time when the British Empire was engaged in a life and death struggle—the greatest war that history has ever known. We accepted it to deal with a special situation. At a time when the energies of the Empire were engaged in bringing to an end the rampant militarism of Germany, and when it was necessary that all internal disorders should be effectively kept under control and crushed out, we readily assented to a measure calculated to put an end to the mischievous activities of the anarchists. Police-officers were shot dead in the streets and daring dacoities became frequent. I am personally aware of several atrocities perpetrated in the houses of my own relatives when thousands of rupees were lost by honest and innocent men who were helpless before gangs of desperadoes armed with loaded revolvers. It was in the house of one of my near relatives that a dacoity of a most atrocious character was perpetrated in the presence of thousands of men who had assembled to enjoy a theatrical performance, and the appearance of masked marauders was considered to be a part of

the programme of the theatrical party, till they made their intention clear by forcing their way into the inner apartments and demanding from the ladies their ornaments, after which they successfully decamped with a booty worth about rupees thirty thousand. I might cite another instance in which another relative of mine carrying on business near my Calcutta residence was the victim of a daring dacoity, and was quietly relieved of ₹12,000 by a band of armed ruffians. I might cite numerous other instances, but they are so well known that I need not weary the Council by reciting them. Whether it was in Calcutta or in the interior of the country, it was always the case that the victims of these nocturnal raids had always been members of the community to which I have the honour to belong. So it will be easily realised that I should naturally feel inclined to uphold any measure intended to keep under complete control the marauders who masquerade under the borrowed plumage of patriots, but whose pleasant pastime it was to rob their own countrymen of their hard-earned money.

"In our younger days when we read in the papers here how the late Dr. Nishikant Chatterjee had been subjected to a search and turned out of his house on mere suspicion in Russia, we thought that an unfortunate country, where such things could happen and personal liberty trifled with, was no place for innocent men to live in. Yet when necessity arose we gave our unstinted support to a measure which empowered the Executive in this country to do such things.

"But I hope the time, when a permanent drastic measure like the Defence of India Act could be considered necessary, has passed away. The Allies have achieved a glorious victory and normal times have returned. At the present moment India is enjoying complete peace, and there is no sign of internal disorders. Moreover, the sacrifices in men and money that India has made in the war cementing with the blood of her sons, a brotherhood in arms with the Allied nations, fighting for a glorious cause has given her sons, as your Lordship has put it in the Reform Report 'a new sense of self-esteem.' The other day the Secretary of State for India recounted the services and sacrifices of my country and pointed out that during the war there had been recruited 11,61,789 Indians, the grand total of all ranks sent oversea from India was 12,15,398, the casualties sustained by this force was 1,01,489. 'Nobody' said the Secretary of State, 'could say that India did not bear her part in our victory and shewn herself to be, as in future, she must be treated a partner of the British Empire.' The Reform proposals made by your Excellency conjointly with the Secretary of State after the announcement of August 1917 have raised new hopes and aspirations in the Indian mind and dispelled dissatisfaction. Under the circumstances it would be a rude shock to the feelings of the people to rush a permanent drastic measure like this through a Legislative Council, whose sands of life are fast running out and whose term of office has been extended only to smooth the advent of a larger and more representative Legislative Assembly. The Defence of India Act is still operative, and though peace is within sight, the war technically is not at an end. Then to deal with persons whom the Government may consider dangerous, you have Regulation III of 1818. Moreover, the Government has the power to issue Ordinances and to bring in a fresh Bill when necessary. So with these three strings to their bow, Government can certainly wait and see how the new policy of conciliation and trust works, and whether the release of a large number of detenus would have a sobering effect on the misguided youths of the country, which I hope it would. Even the Rowlatt Committee in recommending emergency preventive measures said that every order authorising any interference with liberty must be made for a limited period.

"My Lord, to make my position clear I beg leave to say that I might have been willing to give my assent to a temporary measure to last for a short time in order to keep lawless element in society under effective control, provided the necessity for the measure had been proved, but as the Defence of India Act is still in force and is to run six months after the war, I fail to see the necessity for hurriedly enacting a permanent measure which will hurt India's sense of

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self-esteem and cast a slur on her loyalty and which, I am sure, will go to neutralise the high hopes and aspirations raised in the Indian mind by the proposed Reforms Scheme. With these words, I beg to support the amendment proposed by the Hon'ble Mr. Patel."

The Hon'ble Sir George Lowndes:—" My Lord, certain arguments have been addressed to this Council which I ought to deal with ; but before doing so in any detail, I propose to make a few very short general remarks with reference to this debate. No one can conceal from himself that it is a very important debate in this Council and, as representing Government, I admit frankly that we have practically the whole opinion of the non-official Members against us. One Hon'ble Member has asked whether, as a Government, we desire to pay no attention to the opinion of non-official Members of this Council. The answer can only be that we have every desire to do so ; but if we are asked to surrender our own judgment, maturely and carefully come to, on a very difficult question of policy, it is impossible for us to do so even to the unanimous opinion of non-official Members, who are not in the position of responsibility in which the Government is. 2-58 P.M.

" My Lord, one fact at all events has emerged from this debate which to me is a very satisfactory one. Hon'ble Members in this Council have admitted on all sides that the facts as found by this Commission are proved ; no one has attempted in this Council to deny the existence of anarchical revolutionary conspiracies and agitators in India, or, I think, really to belittle the importance of their existence. The facts are fully admitted, and the facts lead necessarily to the conclusion that there is still existent in India an organisation of this description which has been, if you like, repressed, held in restraint and kept down during the war, but which is none the less alive and ready to come into full activity again as soon as the repression is relaxed. That is the inevitable conclusion from the facts found by this Commission. Those are the conclusions to which the Commission itself have come, and I say it is impossible for us, if we are to accept those conclusions, to agree that a further power of repression is not a necessary weapon in the hands of an efficient Government. Hon'ble Members do not dispute the facts ; they only dispute the conclusions, as deductions from the facts, to which the Commission have come. My Lord, we brought out, we created a Commission of the highest possible character, we asked an English Judge of eminence and reputation as a criminal lawyer, to come out here and advise us ; they have advised us and we, as a Government, are bound to accept their recommendations. Surely we should stultify ourselves if we did not. And what have we against it ? Hon'ble Members here, legal practitioners of great eminence, no doubt, in local affairs get up and tell us that they do not agree with the conclusions of the Commission. To which are we to turn ? The Commission consisted of an English Judge, sitting with Indian Judges of long experience and great weight, with a non-official Indian Member as well upon it, and their recommendations were unanimous. Can we as a responsible Government refuse to follow them ? Can we as a responsible Government accept as conclusive my Hon'ble friend, Pandit Madan Mohan Malaviya's statement that he does not agree with their recommendations ? Which are we to turn to ? Which are we to take ? Can any reasonable man doubt ? Well, we have made our choice, and we think as a Government we have made the right choice and the only choice that is possible to us. The position to my mind irresistibly suggests the case of a man who is admittedly sick and who has tried the local doctors and is not satisfied with their opinion ; he brings out a specialist from Europe to examine his case and associates with that specialist all the leading doctors of the place, and then it is proposed that he should not take their advice. Now, in the ordinary things of life, do any of us not like that ? Would any of us resist an opinion of that kind ? The committee of eminent doctors advise a nauseous pill ; the friends of the patient say :—" No, do not take it ; try sugar and water." The specialists advise an operation. The friends of the patient say ' No, put it off for six months ; wait for something else to happen.' Is that the counsel which the ordinary man of the world will

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

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

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

"Then, again, I venture to say that in this debate there has been a large amount of exaggeration with regard to the effect of this Bill; a typical instance of this occurred in the speech of my Hon'ble friend opposite, Mr. Ohanda, when he spoke of the 'untold miseries', I believe those were his words,—the 'untold miseries' that this Bill will bring to the people of India. Well, it seems to me

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that that is a great exaggeration and for all the weight with which my Hon'ble friend spoke, I have yet to learn that the pulse of India is in Assam. Then my Hon'ble friend Mr. Bannerjee talked of innocent millions suffering for the sins of a few hundred,—the Hon'ble Mr. Jinnah said a few thousand. Here it was, I venture to think, his heart that led him away and not his head. We had one form of argument which really was, put into plain language, the threat of agitation. That is an argument to which no reasonable Government can give way. I venture to think that the agitation in India will be exactly what the politicians choose to make it. Then lastly, we were told, though I think I have dealt with the point before, we were told that the measure will be useless. It is admitted that something must be done, but nothing coming within the realm of practical politics has been suggested by our opponents.

“There have been other contentions raised which I should like to deal with as a legal member of this Council; they are possibly not so material to this discussion as they would be when discussing the details of the Bill, but as they have been raised, I should like to answer them to the best of my ability. The argument has been put forward that we have no power to legislate as we propose to do by this Bill. It was brought into being by Mr. Chanda and was taken up by the Hon'ble Pandit Madan Mohan Malaviya yesterday. He called for one of the Acts of the Government of India and told us he would elaborate the argument later, but went no further, and when the Council rose I did not know on what the argument was based.

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

“The Indian Legislature both before and after the passing of the Indian Councils Act, 1861, has from time to time passed similar enactments authorising the privation of liberty in certain circumstances, and no instance has been cited to me in which such acts have been held to be *ultra vires* or in which any of the above arguments' (these are the arguments which the Hon'ble Mr. Khaparde has addressed to us) 'which have been repeated from time to time have ever been accepted as correct'. A similar point, I may note, was raised in England as to the power to restrain the liberty of British subjects and was carried to the House of Lords. My Hon'ble friend Mr. Khaparde read to us from a certain petition before the Privy Council. I know nothing of its contents. I only know that the petition was dismissed, and therefore it is not an unfair assumption that in the Privy Council too this argument found no favour. Is it, under these circumstances, wonderful that I, so far as I am the legal adviser of your Excellency's Government, have declined to suggest that there is any lack of power in the Government of India to legislate to this effect? Remember, that this argument could have been addressed and was addressed to the Courts after the Defence of India Act was in operation. We have had all these years of the war in which the ingenuity of the lawyers has been engaged in trying to attack the powers exercised under the Defence of India Act. We had two very big cases in the High Court at Patna not very long ago in which, as I say, all the ingenuity of lawyers from Calcutta and Patna was employed to try and make the Act of no effect. And these are the arguments upon which my Hon'ble friend Mr. Khaparde says that I ought not to have accepted the position that we have power to legislate. When I interrupted my Hon'ble friend the

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Pandit yesterday it was to say that in my opinion there was not the slightest shadow of a doubt as to our power of legislating in this matter, and I say the same again now.

"Then considerable point was made by more than one speaker with regard to the provision in the Bill as to the admission of evidence which it was said was contrary to the existing law, and with that I quite agree. My Hon'ble friend Mr. Jinnah argued that we should then have a trial within a trial, in order to ascertain whether the particular person whose evidence was being adduced had been spirited away in the interests of the accused. My Hon'ble friend suggested that this was a great blot upon the clause. I do not think I have misrepresented his argument. I think my Hon'ble friend forgot that possibly it was an unwise thing to argue this in an assembly which contains so many lawyers, as we already have a similar provision in section 33 of the Evidence Act. There you may have exactly the same inquiry, the same trial within a trial.....

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

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

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

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

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

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

The Hon'ble Sir George Lowndes :—"It is not merely going back to the English practice. I would remind my Hon'ble lawyer friends of

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what the law in India is. There is no appeal in a criminal case in India where the case has been tried in the High Court in a criminal Sessions. There is no appeal then, and why? Why have we adopted in India from very early times the right of appeal in criminal cases from the district Courts, from mofussil Judges, but not where the case is tried in the sessions of the High Court?

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

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

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

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

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

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

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

The Hon'ble Rao Bahadur B. N. Sarma :—"My Lord, I have had the advantage of listening to the very able and eloquent defence by the Hon'ble the Law Member of the attitude of Government with regard to these Bills. He has asked us not to decide the issues by appeals to emotion, not to be misled by the dictates of our heart, but to use our intellect a bit to see whether the Government's position is justifiable, and whether the course they have adopted is not the right one. Before I deal with these questions, my Lord, I may be permitted to state that I shall try to appeal only to the intellect and not to the heart. Let me begin by saying that I had received instructions, or a mandate if you may so call it, from my constituency, a

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telegram from 18 members of the Madras Legislative Council, to oppose this legislation, and I need hardly say that I have received numerous telegrams from almost every district headquarters, from almost every town in the Madras Presidency, not to speak of other places, asking me to oppose this legislation. But I realise, and I have realised, that there is much truth in what the Hon'ble Sir Verney Lovett has said that we are here to lead and not to be led. I have, therefore, tried my level best to put myself in the position of Government, to realise the responsibilities of Government in maintaining the peace and tranquillity of the country. And to see whether it would be possible for me to reconcile myself or ask the country to reconcile itself to the course which has been pursued by the Government of India in this particular instance. Now, my Lord, what is the issue before the people? The broad, naked issue is whether the people should be satisfied under the present circumstances with a rule by the bureaucracy, by the Executive, pure and simple, uncontrolled by the judiciary. The experiment which the Government has successfully tried during the last century, or century and a half, of ruling the country with the aid of the judiciary, the Government ask us to believe, has miserably failed, and that therefore there is no option left but to rule by the sword, by martial law in essence because the rule by the Executive suggested is practically tantamount to rule by martial law disguised under civilian forms. Therefore, my Lord, the question is, are the people to submit? Is there any necessity for submitting to a rule by the Executive after enjoying the benefits of a judicial administration, pure as far as human ingenuity can devise, is there any justification for asking the people hereafter to forsake their liberty in the name of order and peace and tranquillity in this country? That is the naked issue. Has the Government, I would respectfully ask, realised the full significance of their admission in bringing forward this legislation at the present moment? To my mind they have confessed that, after a century of British rule, the rule of the bureaucracy has brought India to such a state—progressive if you please—that they find that the judicial administration, their own creation, hampers them to such an extent that they would have to discard it if they are to rule India at all peacefully. That is the confession, a confession of inefficiency, a confession of absolute failure, the logical result the admission of the need for this legislation if the Government should press for it. Well, people have been saying that to a very large extent and therefore pressing for reforms, have been asking the Government to take the people into active co-operation as government on the old lines is absolutely impossible. Now the answer of the Government to that may be we have realised that and that is the reason why we have brought forward a scheme of reforms which would give self-government in course of time to India, but meanwhile we find it absolutely necessary to arm ourselves with these powers during the transition stage. It is true that the present system of government is a failure, that we cannot rule on these lines, but we at the same time have to arm ourselves and go back upon our position to some extent and treat the whole of India or portions of India as if they were Agency tracts before the self-government scheme is in working order. My submission is that the policy of the Government for which something has to be said, that the bitter pill which has to be administered to the patient had better be administered prior to the sugar pill, and that the patient would appreciate the sugar pill a little more if the bitter pill were administered first, that repressive legislation should be introduced first and the liberal legislation later on is unsound. What we have to ascertain is whether the bitter pill is a real medicine, whether it may not exasperate and kill the patient, whether it is worth the while of the patient to live an inglorious life, deprived of all security of person and liberty in the hope that on a future day there might be reforms. The next question is as to whether this bitter pill is likely to attain the end which the Government has in view. The Hon'ble Sir George Lowndes and the Hon'ble Sir William Vincent, the Home Member, have practically accepted the dictum in the Report of the Rowlatt Committee that even in 1914, prior to the theft of Messrs. Rodda's arms, it was felt that the forces of law and order had in this respect been vanquished, and that the sedition party was too strong

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

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

"Let me take up another argument which was advanced by the Rowlatt Committee that the convictions have not been able to repress crime. Have they repressed crime in the case of murder? Have they repressed crime in the case of dacoity? We find that the number of crimes has been increasing year after year throughout India. This state of things is not confined to the case of sedition alone; it is to be found in the case of all grave crime. 3,340 reported murders in 1903 and 4,770 in 1915 with 1,103 and 1,401 convictions and 2,389 and 3,738 dacoities with 443 and 733 convictions. I shall not weary the Council with further figures, but that is the state of things.

"Your Lordship, the question has been asked what is your practical suggestion? My practical suggestion is this. Just as you stamped out the Thugs by a

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special department, if need be, create a special department and stamp out this crime. If a province is so beggarly as not to be able to find money for it, take the money from the other provinces, if necessary, in order to be able to finance that province; but in the name of common sense do not deprive the people of other provinces of their rights and liberties, or at any rate do not subject them to the risk of losing their rights and liberties simply because you find one administration unable to cope with crime of a particular character.

Well, therefore, my first position is that the statements upon which the Rowlatt Committee has based its recommendations that the forces of law and order have been found not to be equal to the occasion and that convictions have not been able to repress crime are only partially true, and that if we are to follow up the logic of the proposals, we shall have to discard judicial administration in the case of all grave crimes also in order to be able to attain the ends we have in view. I cannot but feel, my Lord, that, notwithstanding the safeguarding words that it is only in the case of a seditious movement being connected with certain grave crimes that this machinery is to be employed, notwithstanding the employment of these words, an inefficient police would only have to say 'so and so, who is a political preacher, has preached here and dacoities have gone up,' to invoke the provisions of this Act, and we find, as a matter of fact, ordinary Hindu-Muhammadian disturbances being tried by special tribunals under the Defence of India Act. That procedure may be followed hereafter, the name of sedition being conveniently employed. Therefore, I would ask that those essential facts on which the Report has been founded should not be treated as proved or employed as arguments in support of this legislation.

"Then, my Lord, the question was asked what else would you suggest? What are the constructive proposals you have? Well, one of the constructive proposals we have always suggested is to give us the power. If the Government finds that they cannot manage law and order, let them put them under the control of a representative assembly, and I am morally certain that they will be able to repress this sort of crime much sooner than may be imagined. People will know where to hunt for these men, they will devise the necessary machinery. But, my Lord, may I ask, have the people of that particular locality where this crime has been so prevalent been quartered with any punitive police in the past? Has the Government ever tried the experiment between 1906 and 1918 of asking the people where these disturbances occurred to pay for the police and to co-operate with the police in repressing the crime? What practical steps have been taken by the Government beyond the strengthening of the Criminal Investigation Department, working in secret to tackle this sort of crime that they should come forward and ask this assembly to enact that the people should submit to a sacrifice of their fundamental rights of citizenship? After all, what does the Rowlatt Committee itself say? The Rowlatt Committee says that this sort of crime is not indigenous to any province, that it has been accidentally imported into the Punjab, and that even in Bengal there are so very few people who are given to it compared with the total population, that there is no real danger of its spreading. And the proof of there being no real danger is that even before the Defence of India Act was in force rigidly in Bengal, the Government have during the most troublous times of war been able to enforce all their measures, that the people have been loyally co-operating with the Government, and that although there was sedition it was never a hindrance to peaceful administration during the most troublous times of war. I ask, therefore, if the people have been so loyal and if they have co-operated with the authorities so loyally during the most troublous times of war, is there a case made out for asking the Legislative Council to equip the Government with these powers in times of peace? Well, it has been said these powers are not going to be used immediately; they will be on the Statute-book so that people may be told, 'if you employ terroristic methods we will also employ terroristic methods.' It comes to that. If the Executive are going to shut up any man without any inquiry, without allowing him a chance of proving his innocence in a law Court, it means that the Government are prepared to ask this Council

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to equip them with terroristic weapons in order to cope with terrorism. I ask, in this peaceful time, would it be right for the legislature to put on the permanent Statute-book a law giving the executive Government powers to terrorise in the manner they ask that they should be permitted to do? I humbly submit, no. Is there any difficulty in the Government of India passing legislation at a moment's notice? That question has not been answered. It is said, why should we not arm ourselves with power before hand? I say it is dangerous, because a bureaucracy always loves power, loves to arm itself with power and abuses that power, if it is armed, whereas if it has to make out a case on a specific occasion, it will see to it that it does not come up unless it has a very good case. That is one reason why, although we realise that the Government can at a moment's notice or even without notice pass an Ordinance or pass a law—and the Government of India are not going to weaken themselves in any way—we object to arming them in advance because the natural tendency is to accumulate more and more power in the hands of the bureaucracy, and we wish to check it. My Lord, has not that tendency been exhibited in this particular case? What are the powers which the ingenuity and the wit of man, of lawyers and of thorough-bred bureaucrats could devise which have not been given already? What are the measures which are not already on the Statute-book even if this Bill is not passed into law, which can be devised, consistently, with resort to judicial tribunals? You have passed a law prohibiting any public meetings being held when you wish it; you have taken power to search for any seditious article anywhere; you have taken power to suppress the Press, to confiscate the Press. You have taken power about the burden of proof being laid upon persons who are found in possession of explosives. You can prevent any press from publishing seditious matter; you can confiscate the press and prevent the Post Office from being employed for these purposes. You have got all these powers in your hands. The only drawback the Executive sees is that there might be some shadow of supervision by the judicial tribunals. Hitherto the bureaucracy have not been able to resist the invasion of the judicial tribunals into their preserves in every matter, although the Calcutta High Court has admitted that their powers are practically nugatory. Apart from that, you have accepted that in some instances there might be an appeal to the law Courts. You have got in your Statute-book practically all that you ask for in this measure subject to that one reservation. Therefore I ask, what is the necessity for this measure except that you are mortally afraid of a resort to the law Courts? You are so mortally afraid of your own tribunals and your own judicial officers, that you feel you cannot tackle any problem so long as the judicial tribunals can step in and it is because the bureaucracy has been exhibiting for the last 50 years its mortal dread of judicial tribunals, it is because we know that is the only safeguard of the people that we ask to be protected against legislation of this character. My Lord, what is the golden thread, the silken tie, what is the bond of allegiance between the people and the Government? Hitherto, statesmen, jurists, publicists, administrators of the highest character have admitted that although the Government is really bureaucratic, the people are willing to submit themselves to British rule because they feel that their lives, their properties and their persons are subject only to the jurisdiction of lawfully established law Courts. That is the real tie of allegiance. I know what is passing in the minds of some executive officials. They would ask us to remember what was the state of things in the ancient kingdoms ruled by Hindus and Mohammadans, and whether the old monarchs did not enjoy arbitrary powers, and if they had them why the British Government in India, with its British spirit, should not be permitted the same powers which they would not employ in the same arbitrary manner as the former rulers of India, may be presumed to have employed them. My answer to that is, if you want us to revert to that kind of rule, let us revert to it entirely: the only reason why we submit ourselves willingly to you is because we feel that your administration of justice is pure, and it is because we feel that it is not likely to be so pure under any other form of Government that we cheerfully accept our apprenticeship under you before self-government dawns in this

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country. Remove that single link between us and I for one do not see any reason why the people should not say 'Let us have *Swaraj* within the Empire immediately.' My Lord, you are driving the people to desperation. You are snapping the tie—unconsciously and without knowing it—you are snapping the only tie that makes the people submit willingly, nay cheerfully, to your bureaucratic rule, by saying 'We shall suspend the administration of justice when it pleases us to do so.'

"It is unnecessary to elaborate the argument.—I will not say it is unnecessary—but perhaps it is useless to enter into the question of law whether this Council has jurisdiction to pass a law of this description. My own idea is that this Council has not the power. Section 65 of the Government of India Act has been already quoted. I will not waste the time of the Council by reading it; but inasmuch as the question has been raised, I think I shall have to dwell for a few minutes on that point. The unwritten law and constitution of the United Kingdom guaranteeing the liberty of the subject is the bond of allegiance between the people and the Crown. Queen Victoria's proclamation and various other proclamations have laid down that we are to be treated on the same footing as Her Majesty's British subjects. In the Collection of Statutes relating to British India published under the authority of the Government of India, the first Statute which relates to India is the Magna Charta. Statute 28 of Edward the third, 1354, says :

'No man of what estate or condition he be shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death without being brought in answer by due process of the law.'

Hon'ble Members may say that this section and these Statutes have been practically repealed by section 65, which says that the Government of India may repeal all British laws passed before the year 1860; but they are not included among the Statutes repealed and there is a reservation: These Statutes relate only to the constitution of the United Kingdom—the constitution to which we look for the protection of our lives and liberties, and on which our allegiance is based and there would be no meaning otherwise in putting in that last clause dealing with the allegiance of the subject if these also were to be treated as not applicable to India. Technicalities apart, however, that is the only bond, and pray remember that you should not snap that bond.

"Then, the Government have said—'Here is the Rowlatt Committee consisting of such eminent judges, fortifying us in our conclusions, and would it be right on the part of this Legislative Council, consisting of inexperienced who cannot know the facts correctly, to ask us to swerve from our decision because they choose to think in a different way. The responsibility is ours—not theirs.' I realise that the responsibility is chiefly yours and not ours, but may I submit, my Lord, that the Rowlatt Committee were not asked as to what measures were necessary in order to cope with this evil. That political question was entirely out of their jurisdiction, although they have indulged in the first paragraph in the gratuitous remark that representative institutions are foreign to this country. Heaven alone knows what relevancy there is in that. The Government of India had their legislative scheme out and ready practically, and the Rowlatt Committee had an opportunity of examining it and simply followed it. But how can the people accept a Report the evidence on which it has been based having been withheld from the public? Secondly, I am not here impugning the honesty of purpose, the *bona fides* or the ability of any of the members who sat on the Committee; but may I ask if it was impossible for the Government, knowing that a resolution was moved in this Council asking for a mixed committee to be appointed, to ask the Imperial Legislative Council to nominate one or two of their members to sit on this committee and to assist in their deliberations? Will not the people say, have not they already said, that this committee was specially chosen by the Government, that they had no lot or part in its selection, that men of a particular temperament, whose honesty cannot be impugned, might have been selected because they were men of that temperament?

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"I know that in Madras one speaker has alluded to the distinguished President as being of an autocratic temperament, because he walked out of the judges' room when the petition of a conscientious objector was to be heard, saying he had better things to do than listen to such frivolous objections. Such things are being said. It is also said that Government has unwittingly committed a mistake in appointing acting men. I have the highest respect for my distinguished friend the judge from Madras and I say from my knowledge of him that he could not have allowed any corrupt or personal motives to creep into his decision; but still the Rowlett Committee has said that the future is to be safeguarded by permanent judges of the High Court being placed on these tribunals, thereby showing distinctly their opinion that Government were not altogether happy in choosing an acting man. I say the Government has lent itself to these attacks unwittingly, because I for one moment will not attribute the slightest motive to the Government in making their choice; but I cannot help feeling a regret that Government could not associate with this committee men in whom this Council or the Legislative Councils of India have confidence, and then this report might have had greater weight with the people than it has at present. Several official Members of this Council have alluded to the acceptance by this Council of the findings of fact of the Rowlett Committee. What are those facts which this Council has accepted? The facts which the Council has accepted are that there was revolutionary crime of a dastardly character which had to be put down, that there is anti-British feeling in certain parts of India which will have to be stamped out if there is to be peace in the land; to that extent every one of us is agreed; there is absolutely no distinction on that point; we all endorse that. We are in common agreement that it will have to be stamped out and that it does exist. But on the other conclusions, namely, that the existing forces of law have failed or that political remedies that may be applied may not stamp out the evil, and on several other conclusions of facts we respectfully demur to their accuracy. The Rowlett Committee sat *in camera*; it had nobody to put the other view; it had nobody to press any other view, and I will remember several experiences of mine as a lawyer to show how even the ablest judges when they hear only one side of the case but before them come to a rapid conclusion, and how difficult it is for the other advocate to dislodge the judge from a wrong position once taken up. I recollect very well in my early days when I went to argue an appeal before a Collector; he said 'Well, Mr. Sarma, you appear for the appellant. I dismiss your appeal.' I begged for a couple of minutes to permit me to argue my position; I was permitted luckily for my client and I managed to get a reversal of the lower Court's judgment. I will not weary the Council with many other instances, but I think that will illustrate the danger of the best men coming to a wrong conclusion even with regard to facts on an *ex parte* statement. The Government had these facts; the Rowlett Committee had the very same facts and came to certain conclusions based upon these facts. If the Rowlett Committee or the Government wanted the people's approval they ought to have allowed the other side to say what they could; but that is a point which I need not further labour at the present juncture.

"Then, with regard to the repressive measures being taken up before the Reforms are taken up, I say one word: I submit with all humility that there has been a great mistake of policy. There is a revolution in the land which I have been noticing in favour of strengthening the Government's hands and strengthening the cause of moderate reform. The forces of extremism have been or are being slowly but steadily subdued. Government has succeeded in quelling prussianism. Do not allow the people for goodness' sake to say that in quelling prussianism abroad you have to come to establish prussianism in the country. That is what the people are saying. There is a feeling that Germany has been conquered for the benefit of mankind, that freedom and liberty are in the air, that even nationalities much worse placed than we are are hoping and rightly to get governments of their own and that we also may have our fair share. At such a time of hope, when every attempt is being made even by anarchists, to abandon their methods because they see all hope of succour from Germany or from any other country is shut out from them, even they see

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how futile it will be to endeavour to subvert the British Government; at such a time as this, I pray that you should strengthen the moderate element. What will be the result if the representations of all the non-officials being rejected, as possibly will be the case? These anarchists would say 'Now, look here, you have been talking all along about moderates and extremists; what have you moderates succeeded in getting from Government? You have been utilised for certain purposes of Government, but when Government has set its mind on any object there is no use in your trying.' Do not drive moderates into that humiliating position. Nothing is lost when you have got the power to enforce your will at any moment by agreeing to a little delay as has been asked for. Let us not imagine that the Executive would not always abuse its power. I remember very well in my early days when I entered the Madras Legislative Council that a petty quarrel not of a very edifying kind, in which a European was involved, led to an assault and the military were called in because there was political fervour previously in and about the place. There is likely to be a mistake of cause and effect, and unrest will be created by our anticipating it. I therefore pray that that should not be done. If you have to do anything by way of taking legislative powers, create permanent judicial tribunals, even when you want to act under the preventive sections of the Code. Let legislation be temporary, but to think, to dream of putting this on the permanent Statute-book seems to be madness. We ask for co-operation; you ask for co-operation; we reluctantly oppose this Bill because we love the British connection; we realise that it is only by the prolongation, if possible for ever, of the British connection between the two countries India's destiny will be achieved. It is because we feel that our hopes are centred in this permanent union that we ask that you should listen to our advice; it is because we are desirous of safeguarding the elementary rights of citizenship, we do not wish to condemn the bureaucracy of so much inefficiency of which they are unconsciously accusing themselves; it is because of this that you are playing into the hands of the anarchists, we are not satisfied that this measure is necessary, and we do not wish to render the administration more inefficient than it is; it is because it is not competent to the Indian legislature to pass this law, and we do not wish to create unrest by anticipating it; it is because there is the possibility of specific legislation being undertaken to deal with any particular individuals who may be undesirable and who may have to be released when the Defence of India Act is repealed, if the Regulation of 1818 is felt to be inapplicable, that we ask the Government to pause and to listen to our advice."

3-45 P.M.

The Hon'ble Mr. Mazharul Haque :—"My Lord, I do not want to make a long speech and to try the patience of the Council which has already been tried long enough for the last two days. But in this fateful hour in the life of my country, I cannot give a silent vote on this occasion. My Lord, yesterday the Hon'ble the Home Member told us that we the Indian Members of this Council were on our trial, that by the manner we voted on this we would be judged, that is to say, if we voted for the amendment of my friend, the Hon'ble Mr. Patel, we would all prove ourselves unfit for self-government. If we in this Council prove ourselves false to our country, betray our motherland, then surely we are unfit for self-government, otherwise we are not. I for one do not see any logic in that statement of the Hon'ble the Home Member. I refuse to take that statement seriously. To-day we have heard a very eloquent speech from the Hon'ble the Law Member for whose ability and erudition I have the greatest respect. For the exposition of the legal points which he gave us I entirely bow to him, but on the political aspects of this question I beg to differ. My Lord, I oppose this Bill on several grounds. Firstly, I think, that no case has been made out for the introduction of this measure; Secondly, I think it is the negation of all law; Thirdly, I think it is dangerously inexpedient; Fourthly, it is entirely inopportune, and lastly, no urgency has been shown for this measure. My Lord, without entering into details I say this, that coercion has never succeeded in this world. Look at the entire history of mankind and your Lordship will find that it has failed, and

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miscrably failed. Look within the bound of the British Empire itself and your Lordship will find that the history of Ireland is a history of coercive measures, have they succeeded? What I say is this; that in this year of Grace 1919 we find there is a party of Sinn Feiners which is the result of the coercive measures enacted for the benefit of Ireland. My Lord, I know the temper of my people. We Indian Members all have opportunities of mixing with the highest and lowest of Indians; I wish I could say as much for my European colleagues here; and I tell the Council with all the responsibility that attaches to the utterances of a Member of this Council that the temper of this country is not sweet, and that it will not put up with this legislation. My Lord, your Excellency's Government is standing on the brink of a precipice. I entreat your Lordship with all the earnestness I can command to pause before taking the final leap."

The Hon'ble Mr. Srinivasa Sastri:—"My Lord, when some months ago this Council debated the Resolution moved by the Hon'ble Mr. Khaparde on the Rowlatt Committee's Report, I refused to support that part of his Resolution upon the ground that I did not regard the Report as fiction but as a startling revelation of fact. Of course, I said that while it might lead to some legislative action there was time enough to consider the action when it actually came before the Council. That time has now come; the Government have actually made proposals, and we are invited to consider them. I am unable to find that either the nature of, or the time for, legislation is suitable. As to the nature of the legislation laymen like me will not be on sure ground in stating the reasons in a technical way, but as to the time for the legislation I am perfectly clear that the Government have chosen a very unfortunate time. In the first place, your Excellency, I think it is not in accordance with the practice of other Governments to bring in repressive legislation of this nature long before its necessity has become clear. I was listening with the greatest respect to what the Hon'ble the Home Member said on this aspect of the subject, and I beg leave to say that he rather overstated his case when he told the Council that the Government must not be left naked and defenceless when the burglar had made his appearance. The Government cannot be naked and defenceless, it is avowedly in full possession of the powers that it needs to put down wrong of every kind; that will continue for many months yet and if it pleases the Viceroy for another long year yet it will remain in possession of all the needed powers. To say that the necessity has now come and that the Members of this Legislative Council should not leave the Government in a position of defencelessness is certainly in my opinion to over-state the case. Then the Hon'ble the Home Member also relied on the recommendations of the Rowlatt Committee, but I am unable to find in the recommendations of the Rowlatt Committee any mandate or any strong counsel to the effect that any of the measures proposed must be permanent, that they must be worked into the Penal Code, or into the Criminal Procedure Code of the land. Their character as emergency legislation must be recognised. I think the course taken by the Government in recommending to this Council permanent legislation involving alterations in the Penal Code and the Criminal Procedure Code goes beyond the recommendations of the Rowlatt Committee, and has necessarily, therefore, evoked a great deal of alarm. I conceive, your Excellency, that it was hardly necessary to frighten the country by saying that the Government must be armed with powers of a permanent character. I very much wish indeed that the Government had found it possible in the first instance before raising a storm to say that they would be content with these powers being placed in their hands for a temporary period. When in the course of time the Defence of India Act expired or the Defence of India Act extended by the Viceroy expired, it was still necessary to have these powers, it was open to the Government to call a special Session of the Legislative Council, and I do not think that when the Government take such a startling step as to call a sudden session of the Council to equip it with the necessary powers to meet with a dangerous seditious conspiracy, any one in the country will raise his voice against it. Now everything seems to be alright, wrong-doing is under

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full control, and Government can say that in the exercise of the powers they have, they have secured peace and tranquillity. To say now, long before the necessity may arise that we want to equip ourselves permanently with weapons of repression—that word has been used by Government Members themselves and I have no scruple therefore to use it—is in my opinion simply to set the country in an unnecessary state of excitement.

“Then we are told that after all these powers are not placed in the hands of small officials. The small officials come in only after the Viceroy has satisfied himself that in certain areas in the country crime of a very deep-rooted and widespread nature is prevalent or is likely to become prevalent. Now I take leave respectfully to dissent from the implications of this proposition. The implications of this proposition go very deep indeed. We are asked to supplant the experience of civilized Governments. If every word that the Hon'ble Sir George Lowndes told us were to have its due weight, if what he said were to be carried to its logical conclusion, if in every case where the Executive were armed with arbitrary powers they used them only justly, properly and no more than was adequate to the occasion, if in every case of mis-exercise they could be brought to book, if there was provision for publicity, then indeed there is apparently no reason why in the permanent law of England, in the permanent law of France and in the permanent law of America there should not be legislation similar to that which is proposed for this country. After all, it is good to have these powers. No Government will ever abuse its power. The Executive, wherever they have the power, always use it only when it is necessary. If that is so, if there is no fallibility in the Executive, if all high officials charged with responsible power never err'd, then there is no limit to the placing of arbitrary power in the hands of any Executive which a Legislative Council may be called upon to sanction. That, however, is not the way in which responsible people look at things. They ask, are these powers necessary? I was wondering how the Hon'ble Sir George Lowndes himself having made these rather sweeping statements came later on to say 'I myself as a Britisher hate this kind of thing; repression is distasteful to me.' I heard the Hon'ble Sir William Vincent also say 'after all, these things are bad.' Why should they be bad? We are bidden always to trust the Executive, to believe that they will never do wrong, the law will always be used considerately and only in the interests of the poor and the helpless; why should it be wrong then; why then, should we scruple at all to leave all power in the hands of the Executive, to roll up our Courts of law, to suspend or lay low your Legislative Councils altogether? That is not the way that we should look at things. We think that the Executive are apt to make mistakes, and I think they do make mistakes. We know, my Lord, Viceroys who have held, who are holding and who will hold power are under no delusion that the Local Governments can make no mistakes whatever; that the heads of Local Governments may not yield to the public opinion of their community, may not be hounded on by an infuriated press to take in hand a policy of severity, always no doubt with the best of intentions, always no doubt with a feeling of horror and repugnance, always no doubt with a desire to stop everything the moment it should become unnecessary. But we know, my Lord, from bitter experience that these measures are put into force sooner than they become necessary; that while they are put into force they are exercised more harshly than is necessary, and that they are dropped only with the utmost reluctance long after the exigencies that called them into existence have disappeared, long after enormous miseries and frightful hardships have been inflicted. We know that these things have happened, and it is because I take it every Englishman feels that these things may happen that he is obliged to say when he stands up in defence of a legislation of this kind, however strongly he may word it in one part of his speech, 'I certainly dislike these things; they are objectionable on principle.' If they are objectionable on principle in one place, they are objectionable on principle in every place, and their application must be tested by the severest tests and they must at every step be open to challenge. In England, my Lord, as I have read these things, whenever

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a repressive law is in force, every single exercise of it is at once openly challenged. A public inquiry is probably held. Anyhow a committee is appointed to take evidence. What happens in India? A press law is passed. Ten years afterwards in the Supreme Legislative Council an inquiry to be conducted by a mixed commission appointed by the Council is asked for, and your Excellency's Government come forward and say 'we will not appoint a committee. We will not face an inquiry into this affair.' Now that kind of thing is not a circumstance which encourages us to go forward and place summary powers in the hands of the Executive, because we fear with some experience behind us, that you will not submit your actions to the scrutiny of the public as every exercise of arbitrary power should be submitted.

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

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all anxious to punish the wicked. None of us desires that wickedness should go unpunished, but at the same time I think it is one of the fundamental principles of criminal jurisprudence, in fact one of the very foundations of a stable society, that even the wicked must be punished in certain ways. When Skeffington was shot, I remember the whole world was shocked. Roger Casement had an open trial. But if Roger Casement, wicked man as he was, criminal as he was and thought so by all reasonable people, had been shot as Skeffington was shot, I beg leave to say the world would have been shocked. Even Roger Casement had his rights; he must be tried in open Court and must be allowed an opportunity of clearing his character. Now even in war when all humanity throbs with excitement and peril and when nobody thinks of any thing except how to conquer the enemy, even then, my Lord, there are the laws of war, you have got to play the game. The Germans have been condemned for nothing so much as for the callous way in which they treated all the laws of war. I am sorry to think that in some cases England has had to follow Germany, very reluctantly indeed; but any way there are laws not unknown to ancient chivalry, illustrated by the life of Bhishma, laws which, even in war, may not be violated without incurring the serious reprobation of history. When there are criminals abroad in a country there are certain ways in which they ought to be brought to book. You ought not to lay them by the heels and punish them in ways that will shock the sense of justice, in ways that will make the innocent feel that there is no law in the land, in ways that will make honest, virtuous and public-spirited work impossible. The price even for the extinction of wickedness that is demanded then is far too high. Much better; it seems an ungracious thing to say, much better that a few rascals should walk abroad, than that the honest man should be obliged, for fear of the law of the land, to remain shut up in his house, to refrain from the activities which it is in his nature to indulge in, to abstain from all political and public work merely because there is a dreadful law in the land. I was astonished to hear Sir Verney Lovett tell us that it is not enough to indulge in conventional regrets in this Council. I wonder very much whether he will agree to retain and repeat the word 'conventional.' When Hon'ble Members here get up and reprobate wicked deeds, I take leave to say that they do not do it in a merely conventional manner. I take it that we all abhor wickedness as much as Sir Verney Lovett or any member of the Rowlatt Committee does. May I turn back and say that the proposals made by the Government betray a somewhat callous disregard of liberty. I will take back the word 'callous', the moment anybody says that it is too harsh, and I take it that the Hon'ble Sir Verney Lovett will take back his 'conventional'

The Hon'ble Sir Verney Lovett:—"May I explain, my Lord? What I meant by 'conventional' was simply this. I meant that expressions of regret for calamities and for tragic occurrences which are not followed by serious attempts to secure that such calamities and such tragic occurrences shall not happen again, seem to me to be worth nothing more than conventional expressions of regret."

The Hon'ble Mr. Srinivasa Sastri:—"Then, my Lord, the Hon'ble Sir William Vincent told us that those laws are intended only to purify politics, not to suppress but to purify politics. I have taken down his very words 'not the suppression but the purification of politics is our aim,' he said. Ah! if in this world good intentions always bore fruit it would be very well and this would be a splendid world to live in. The history of legislation, both social and political, is strewn with instances of miscarriage of excellent intentions. Laws intended to cure poverty have aggravated it, multiplied it; laws intended to cure crime may run very well in the same unhappy direction; and I take leave to say to the Hon'ble Sir William Vincent that the laws now placed before us which are aimed at purifying politics may come dangerously near suppressing them. You cannot place on the Statute-book such drastic legislation without putting into the hands of over-enthusiastic

[7TH FEBRUARY, 1919.] [Mr. Srinivasa Sastri; Sir William Vincent.]

executive officers what I consider short cuts to administrative peace. As I said before, even peace in administration, valuable as it is, can be sought in wrong ways. You provide them with short cuts to administrative peace and there is no administration that is able to resist the temptation to run across these short cuts when the only royal road to peace is the right road, and the righteous road. Now anarchists, it is said, do not want reform. They spurn these political concessions. Oh! yes, there are two ways in which perhaps this expression is intended to be understood. It means in the first place that the crime with which we have now to deal in Bengal, the Punjab and elsewhere, is partly only political, and partly it has become ordinary. I much regret that, so far as I am able to judge of the matter that has been placed before us, there is very considerable truth in the observation. I do think, my Lord, that however this unfortunate episode has begun, though it may have begun in pure political methods, a part of it perhaps has now passed into what must be described as chronic crime. That is so, but I still think that a good part of it is political, and for political crime, while such repressive laws as may be necessary ought to be put in force, the principal remedy is still political amelioration. But perhaps there is another sense in which this has got to be understood. The anarchist does not want political reform. That is too true. But why? That is the thing we have got to understand. The anarchist is afraid that the friction that he wants in the land, that the excitement in which he continually wishes people to live, will die down if the ways of Government become conformable more and more to democratic ways. If responsible government is granted, if ameliorative measures of one kind or another are passed, it is possible that the people will lie quiet for a time and the anarchist will not find plenty of room for his work. He wants that in this country dissatisfaction and discontent must assume more and more aggravated forms. Quite so, but what is the reason for this abnormal state of things. The anarchist is a morbid creature; the revolutionary, the bomb-thrower, even where their motives are honest, that is to say, even where their motives are unselfish, are blind. In my opinion they dwell too much on the unfavourable aspect of things. They read contemporary affairs wrong, they read history wrong; they see no hand of righteousness anywhere. My Lord, political remedies do not satisfy them, and, because they want the final remedy of destruction, all these things seem wrong to them. But, because the anarchist is in this unfortunate condition of mental derangement, are we to say, since these people are not going to be satisfied by political concessions, we will not think of them; we will only apply the rule of law to them? That is not the way, I think, that sound statesmanship should go about the business. We should offer them satisfying measures of political emancipation. But, after all, it is not these anarchists that have to be satisfied. It is the general atmosphere which feeds anarchy that we have got to cure; and, when the anarchist finds that he gets no sympathy anywhere, that he cannot propagate his wicked doctrines in a soil where there is contentment and political prosperity, he will naturally die, even if the long arm of the law does not get at him.

"There is one thing that I should like to say before I sit down. The Hon'ble Sir Verney Lovett quoted to us on more than one occasion words of Mr. Gokhale. Now it is very easy for me to quote Mr. Gokhale back again for the edification of the Hon'ble Sir Verney Lovett and the Members of the Council. We can all quote passages at each other; we can unearth classical quotations; we can ransack Greek, Latin and Sanskrit for passages of great pith and moment and applicability to the present conditions. But what we have got to see is how far we are prepared to act upon the one side and upon the other up to the spirit of the teachings for which we are all striving.

"The Hon'ble Sir William Vincent said that we are now undergoing a test. Oh! yes,—....."

The Hon'ble Sir William Vincent:—"May I correct the Hon'ble Member? What I said was that their attitude on this Bill would be regarded by many both in this country and outside it as a test of their capacity."

[*Mr. Srinivasa Sastri ; Sir William Vincent.*] [FEBRUARY, 1919.]

The Hon'ble Mr. Srinivasa Sastri :—" Yes, it would be regarded by a few people."

The Hon'ble Sir William Vincent :—" By many."

The Hon'ble Mr. Srinivasa Sastri :—" Not necessarily by the Hon'ble Sir William Vincent"

The Hon'ble Sir William Vincent :—" No."

The Hon'ble Mr. Srinivasa Sastri :—" As a test of our capacity to stand any measure of responsible government, are the Members of this Council going to face the unpopularity, the odium, of passing a repressive measure which has become necessary? That was the question asked. Now, my Lord, I am no member of the Indian Civil Service; I have not been schooled in the stern discipline of that service; I am perhaps too tender by nature. It may be that I and several others like me may be unable to face the storm of unpopularity, but I should like to say—and I am not ashamed of it—that we certainly do not think that the sign of strength, that the sure proof that you are a born administrator, consists in courting unpopularity and defying public opinion. I am not made that way. I do not think I lose by that. But at the same time when the stern call of duty comes, when the requirement of truth is laid on me, when the best interests of my country, as I understand them, require it, I am perfectly prepared to submit to unpopularity. If necessary, I am prepared to go through the fire of public odium. But it has got to be proved to me that it is necessary. I will not, for the mere wantonness of it—merely to demonstrate that I am fit to be in charge of a district or even of a division—court unpopularity for these reasons.

" Now, we have been subjected to many tests. We have given our consent to many repressive laws by now—the Press Act, the Defence of India Act. During the war we were hourly on our trial. We have given 100 millions, we have given this, we have given that. The other day we were told that the gift of 45 millions would also be a matter of test. We submitted to it. What test has been really applied to us to which we have not cheerfully submitted? I can hardly think of one. Bidden to bring the milk of a beast of prey, we have brought a jugful of milk of the tigress. Are you going to throw it aside and say, 'Bring the milk of the male tiger?' That is not fair. Yet, many people in England, testing us probably by this severe standard, may pronounce us not sound, not fit for responsible government. But I do hope, my Lord, that there will be two or three clear-sighted, two or three shrewd people even in England at this time, to say that the Indian Civil Service, the administrators of India,—the Executive, are really on their test. They profess to be prepared in India for a very early beginning of responsible government, when they would be willing not to impose, as they do, their will on the legislature but to take the will of the legislature and carry it out,—when they will be the instruments of the legislature and not its masters. Are they preparing for that time by carrying, in the teeth of the opposition, unanimous and unsparing of their Indian colleagues,—this measure through? Whom have you behind you now amongst Indians? The tragic story of India may be summed up in these words, that you have governed all these centuries in India in isolation, without having any responsible section of public opinion behind you. Now at this supreme hour, whom have you behind you? No section of public opinion supports you. The nominated members have not given their blessing to this Bill. The zamindar members have not given their blessing. The lawyer members will have none of it. The members of commerce will have none of it. And yet the Hon'ble Sir George Lowndes told us, 'We must carry this legislation through because we are satisfied that it is very right: we should have been glad of your help, but with our sense of responsibility we must go on even without your

[7TH FEBRUARY, 1919.] [*Mr. Srinivas Sastri; Pandit Madan Mohan Malaviya; The President; Mr. V. J. Patel.*]

help, however much we would have liked it.' I admire the courage of the Hon'ble the Law Member. I admire the candour with which he said, 'We have the responsibility to-day; you have none of the responsibility.' We realise that position. We have none, my Lord, of the responsibility for this legislation, and I therefore refuse to believe when the case is put correctly before the public opinion that they will say, as the Hon'ble Sir William Vincent seemed to think some sections of the English public might, that we had responsibility and shirked it. We have none.

"Now there is only one more remark, my Lord, I must make and that in justice to the feeling in the country of which for the moment I am the spokesman. I do not think the Hon'ble the Law Member could have meant all that he said when he said that some of us were indulging in threats of agitation. I venture to think that no one here who has spoken against the Bill indulged in anything which might truthfully be described as a threat of agitation. None of us, certainly none of the Moderates, I take leave to say, has power to go and stir up a violent agitation in the country. It is impossible. The agitation must be there already. The heart must be throbbing if any words that we use here can have a possible effect on the general political atmosphere. The agitation is there. I wish to assure my official colleagues that none of us has had a share yet in this business, but if our appeals fall flat, if the Bill goes through, I do not believe there is anyone here who would be doing his duty if he did not join the agitation. That is not a threat. I take leave to think that is by no means a threat. Anyhow I am the best judge of my own mind, and I do not indulge in any threat. I have yet borne no part in this agitation, but if everything goes wrong, if we are face to face with this legislation, how it is possible for me with the views that I hold to abstain from agitation, I for one cannot say."

The Hon'ble Pandit Madan Mohan Malaviya:—"My Lord, may I suggest that the Council now adjourn under rule 8 of the Rules of Business?"

His Excellency the President:—"No, the Council will sit until this is finished."

The Hon'ble Mr. V. J. Patel:—"Your Excellency, I do not think it is necessary for me to detain the Council for more than a minute or two. So far as we non-official Members are concerned, we have made our position perfectly clear. We have with one voice made it clear to you that we are opposed to this measure. We have made it clear that the passage of this measure will put an end to all constitutional agitation in the country. We have also made it quite clear that the passage of this measure will affect the reception of the proposed reforms.

4-55 P.M.

"We have also made it clear that the passage of the measure will, or is likely to, affect the satisfactory passage of the Reform Bill. We have left no stone unturned to convince your Excellency and your Excellency's Government that such a tremendous and unprecedented agitation will follow the passage of this Bill that perhaps it will be difficult for Government to meet the situation. In spite of that, if your Excellency's Government with the assistance of the official majority choose to pass the measure, the responsibility is yours. At the last Simla Session my Hon'ble friend, the Finance Member, told us that the responsibility for consenting to or refusing the contribution of 45 million pounds would rest with the non-official Members. May I say the responsibility for the passage of this Bill and the resulting consequences will lie with the official Members. My Hon'ble friend, Mr. Sastri, just now told us that we non-official Members in this Council have no responsibility. I wish he had realised that situation when he voted for the 45 millions."

[7th FEBRUARY, 1910.]

The motion was put, and the Council divided as follows :—

Ayes—22.

The Hon'ble Sir Chagadhar Chitambar.
 „ Babu S. N. Banerjee.
 „ Raja of Mahmudabad.
 „ Dr. T. B. Sapau.
 „ Pandit M. M. Malaviya.
 „ Mr. S. Sastri.
 „ Mr. B. N. Sarma.
 „ Mir Asad Ali, Khan Bahadur.
 „ Mr. V. J. Patel.
 „ Mr. M. A. Jinnah.
 „ Sir Fazulbhoj Currimbhoy.
 „ Rai Sitanath Ray Bahadur.
 „ Raja Sir Rampal Singh.
 „ Rai Krishna Sahay Bahadur.
 „ Raja of Kanika.
 „ Mr. Mazharul Haque.
 „ Khan Bahadur Mian Muhammad Shaf.
 „ Khan Zulfikar Ali Khan.
 „ Mr. G. S. Khaparde.
 „ Rai B. D. Shukul Bahadur.
 „ K. K. Chanda.
 „ Maung Bah Too.

Noes—35.

His Excellency the Commander-in-Chief.
 The Hon'ble Sir Claude P.M.
 „ Sir Sankaran Nair.
 „ Sir George Lowndes.
 „ Sir William Vincent.
 „ Sir James Meston.
 „ Sir Arthur Anderson.
 „ Mr. W. A. Ironside.
 „ Sir Verney Lovell.
 „ Mr. H. F. Howard.
 „ Sir James DuBoulay.
 „ Mr. A. H. Ley.
 „ Mr. H. Sharp.
 „ Mr. R. A. Mant.
 „ Major-General Sir Alfred Bingley.
 „ Sir Godfrey Pell.
 „ Mr. F. C. Rose.
 „ Mr. C. H. Keateven.
 „ Mr. D. de S. Bray.
 „ Lieutenant-Colonel R. E. Holland.
 „ Surgeon-General W. R. Edwards.
 „ Mr. G. R. Clarke.
 „ Mr. A. P. Muddiman.
 „ Mr. C. A. Barton.
 „ Mr. P. L. Moore.
 „ Mr. M. N. Hogg.
 „ Mr. T. Emerson.
 „ Mr. E. H. C. Walsh.
 „ Mr. C. A. Kincaid.
 „ Sir John Donald.
 „ Mr. P. J. Fagan.
 „ Mr. J. T. Marten.
 „ W. J. Reid.
 „ W. F. Rice.
 „ H. Moncrieff Smith.

The amendment was, therefore, negatived.

[7TH FEBRUARY, 1919.] [Mr. Surendra Nath Banerjee; Sir K. K. Chanda; Sir William Vincent; the President.]

The Hon'ble Mr. Surendra Nath Banerjee:—"My Lord, I have already moved my amendment. I need not make a speech. I pray that the vote may be taken." The motion was put and the Council divided as follows:—

Ayes—21.

The Hon'ble Sir Gangadhar Chitnavis.
 " Babu S. N. Banerjee.
 " Raja of Mahmudabad.
 " Dr. A. B. Sapru.
 " Pandit M. M. Malaviya.
 " Mr. S. Sastri.
 " Mr. D. N. Sarma.
 " Mir Asad Ali, Khan Bahadar.
 " Mr. M. N. Hogg.
 " Sir Fazulbhoj Currimbhoy.
 " Rai Sita Nath Ray Bahadur.
 " Maharaja Sir M. C. Nandi.
 " Nawab Ali Chaudhuri, Khan Bahadur.
 " Rai Krishna Sahay Bahadur.
 " Raja of Kanika.
 " Mr. Mazharul Haque.
 " Khan Bahadur Mian Muhammad Shafi.
 " Khan Zulfikhar Ali Khan.
 " Mr. G. S. Khaparde.
 " Bai B. D. Shukul Bahadur.
 " Maung Bah Too.

Noes—34.

His Excellency the Commander-in-Chief.
 The Hon'ble Sir Claude Hill.
 " Sir Sankaran Nair.
 " Sir George Lowndes.
 " Sir William Vincent.
 " Sir James Meaton.
 " Sir Arthur Anderson.
 " Mr. W. A. Ironside.
 " Sir Verney Lovett.
 " Mr. H. F. Howard.
 " Sir James DuBoulay.
 " Mr. A. H. Ley.
 " Mr. H. Sharp.
 " Mr. R. A. Mant.
 " Major-General Sir Arthur Dingley.
 " Sir Godfrey Fell.
 " Mr. F. C. Rosa.
 " Mr. C. H. Kestoven.
 " Mr. D. de S. Bray.
 " Lieutenant-Colonel R. E. Holland.
 " Surgeon-General W. R. Edwards.
 " Mr. G. R. Clarke.
 " Mr. A. P. Muddiman.
 " Mr. C. A. Barron.
 " Mr. P. L. Moore.
 " Mr. T. Emerson.
 " Mr. E. H. C. Walsh.
 " Mr. C. A. Kincaid.
 " Sir John Donald.
 " Mr. P. J. Fagan.
 " Mr. J. T. Marten.
 " Mr. W. J. Reid.
 " Mr. W. F. Rice.
 " Mr. H. Moncrieff-Smith.

The amendment was, therefore, negatived.

The Hon'ble Mr. Kamini Kumar Chanda:—"My Lord, I have already made my submission in this matter and I do not wish to move my amendment. I, therefore, withdraw it with your permission."

The amendment was by leave withdrawn.

The Hon'ble Sir William Vincent:—"I understand that your Excellency wishes to allow me an opportunity of replying on the general motion. I do not know if any other Hon'ble Member wishes to speak first."

6 P. 3

His Excellency the President:—"We now come to the general resolution that this Bill be referred to a Select Committee. Does any Hon'ble Member wish to speak. After Sir William Vincent speaks the discussion will close."

The Hon'ble Sir William Vincent:—"My Lord, it is now my duty to reply to the Council on the main motion with which I opened this debate. Before I do so, I should like to acknowledge the very great ability and force with which the criticisms directed against this Bill have been put. I submit, however, that the dangers to be apprehended from this legislation have been overcoloured by many of the Members including the Hon'ble Mr. Sastri. I do not myself think that it can be suggested that any action is now being taken under any of the emergency war enactments to suppress legitimate political

[*Sr. William Vincent; Pandit Madan Mohan Malaviya.*] [7TH FEBRUARY, 1919.]

movements, or that any movements other than purely seditious ones will fall within the scope of the Bill. I do not think for instance that there is any case now in Bengal, and it is there that most of these revolutionary crimes have taken place in which it can be suggested that persons are interned or placed under restrictions by reason of their taking part in politics. The men upon whom restrictions have been placed are well-known criminal revolutionaries. Their cases have been investigated by no less an authority than Sir Narayan Chandavarkar, who was himself formerly a Judge of the Bombay High Court, in conjunction with a Judge of the Calcutta High Court. It has never been suggested that action has been taken against any of these men because they are mixed up with politics, and it is far from our intution that anything of that kind should occur under this Bill. If we are able to put in any provisions which will prevent any possibility of this, my Lord, we are perfectly ready to do so, though we believe the possibility is already sufficiently provided against. Turning to the detailed criticisms of the Bill, I am first told that the remedy which we propose is ineffective, that reforms are what are needed and not repression. My Lord, my answer is the answer previously given, that this revolutionary movement is inconsistent with any political programme or organised form of government. We were then asked to be content to hope and pray that these men will reform themselves.....

The Hon'ble Pandit Madan Mohan Malaviya:—"Not entirely."

The Hon'ble Sir William Vincent:—"Well, my Lord, as we were lately told very pertinently by a Local Government administration is a practical matter and we cannot afford to rely on hope and prayer alone in a matter of this kind.

"We have also been told that the Bill will not effect what is required. Well, the answer to it is to be found in the figures and facts which I cited to you at the beginning of this meeting. It has been admitted indeed by more than one Member of this Council that the measures which we have at present in operation have been singularly successful in coping with this political crime. We did try to carry on with the assistance of the ordinary law for some years, and the result was a steady failure to deal with these offences. Every method of conciliation has also been tried from time to time, and even now is being tried, and I am glad to say that in individual cases they are fairly successful. We have a number of men who have been reformed and turned away from their evil courses, but this alone is not sufficient, and I submit to the Council that it cannot be urged with any force that the remedy we now propose is likely to be ineffective.

"We were then told that the framers of the Report itself did not suggest legislation immediately. My Lord, let me read paragraphs 178 and 179 of the Report, which run:—

"To postpone legislation till the danger is instant is in our view to risk a recurrence of the history of the years 1906-17....."

"In these circumstances we think that appropriate provisions should be framed and enacted, but should not come into force save upon a notification by the Governor General in Council."

Who can say in the face of this quotation that the Report did not recommend immediate legislation. Again, in paragraph 187 the authors of the Report say, "We have been forced to the conclusion that it is necessary in order to keep the conspiracies already described under control in the future to provide for the continuance after the expiry of the Defence of India Act of some of the powers which that measure introduced in a temporary form.

"I submit that, in these circumstances, it is idle to say that the framers of the Report did not recommend legislation. Whether they acted wisely or not is of course another matter.

"Again, it is said that revolutionary crime has now ceased and so there is no need for any further legislation of this kind. Well, my Lord, what did Sir

[7TH FEBRUARY, 1919.] [*Sir William Vincent.*]

Henry Wheeler say in a recent speech:—‘We have unfortunately the best reason for going on with what checks have been imposed. Men are still abroad known to be leaders in the revolutionary movement. They are still actively engaged in enlisting boys for their own ends and endeavouring to foment trouble.’ Here, again, is a letter which I intended to read in my opening speech in which after advocating various violent crimes such as looting, arson, assaults on Government officers, and specifically encouraging such offences as murder and dacoity, the writer concludes thus:—

‘Some are of opinion to put a stop to all sorts of violent work till the detenus and State workers come back. Let the old workers come back and we will plan our future, but not till then.’

I think that indicates pretty accurately what the state of mind of some of these men is, that they are waiting for the expiration of the present law in order to renew in a more sinister form their present activities.

‘The next argument that I heard was that the legislation was inopportune in that it would prejudice reform and should not synchronise with the Peace Conference now being held. I have explained, my Lord, as best I could, that this legislation has no connection with reforms or politics at all. We are as much interested in reforms as any one else. We have done the best we can to forward the cause of reform and why should we now introduce this legislation in order to prejudice it if we thought this result possible. My own view is, that any outbreak of revolutionary outrages, any serious recrudescence of this form of crime would do more to endanger the cause of reform than any other thing I can think of.

‘Then it is said, if this crime is still prevalent Government should use the Defence of India Act as long as possible, and then should ask your Excellency to pass an Ordinance extending that Act for six months. In my opinion the continuance of a war measure after peace was declared under the emergency powers of your Excellency would be an abuse of power, and if we had attempted to take that course, we should have been attacked, and with justice, in this Council for this abuse of an emergency power. Further, I believe the use of it would have accentuated opposition when later a Bill was brought, as would have been necessary, before this Council. We do not want to use war measures after the war is over. The Bill I now introduce is not a war measure nor is it co-extensive with the Defence of India Act, it is a Bill to prevent sedition.

‘I am told that the words used by Sir Reginald Craddock, when he introduced the Defence of India Act, preclude the Government from this measure. My Lord, I deny that. I say the measure he then proposed was a special war measure for the period of the war, but it cannot be said that it precluded the Government of India from introducing some years later a measure of a separate character with different provisions, to deal with anarchical crime, which the Defence of India Act was not specifically passed to deal with.

‘I have been asked to postpone consideration of this measure, for varying periods. Well, in my judgment I can only say that delay would be fatal. There must be time to examine this Bill, and we are willing to give that time, but if by sudden events the Defence of India Act was to expire and we had no legislation to take its place, then I submit that the consequences would be disastrous. All the ground that we have gained now in the suppression of this anarchical movement would be lost. Our police efficiency, which has been so seriously, and in my opinion so unfairly, attacked, would be destroyed; the services now employed in suppressing this seditious movement would be so discouraged that I think it would be impossible to expect good work from them and law and order would be sacrificed. We should also not be justified in delaying the passing of this measure, in that the delay would force us to use the Defence of India Act, which is a war measure, in times of peace. I am anxious myself that it should not be so used and that we should not be accused of using a measure designed for war for entirely different purposes. To suggest that this measure is due to police inefficiency, my Lord, is, I think, ungenerous and a grudging tribute to men who have done excellent

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work. On the other hand, it might well be said, if failure to bring these men to trial is what we are accused of, that it is due a great deal to a lack of moral courage, to a lack of that sense of civic responsibility which is really essential in prosecutions of this kind. I will read to the Council what Sir Narayan Chandravarkar and Mr. Justice Beachcroft said:—'Before the Defence of India Act was brought into force the fair trial of a person accused of revolutionary crime had been rendered practically impossible by the murder of approvers, witnesses, police-officers and law-abiding citizens, suspected by revolutionaries of having given information to or otherwise assisted the police: a situation of terrorism was thus created.' My Lord, it was the failure to face this danger which has really led to the necessity for these special measures.

"Lastly, it was said that the measure was an unfair infringement, of the liberties of the subject. My Lord, I admit that it is an infringement, though I know that if I make that admission, I am liable to attack and criticism of the nature delivered now by Mr. Sastri. At the same time, it is useless to minimise what is clearly a fact. But the Government of your Excellency, many of the Members of which are professional lawyers, are the last people in the world who would be willing to impose such restrictions on the liberty of the subject, unless they were satisfied that it was necessary. Who were the members of the Rowlatt Committee? The great majority were men of the same class. Would they have suggested such a course if they had thought any other measure was possible? Have any other practical measures for meeting this difficulty been suggested to this Council? I submit none. For abnormal crime you must have abnormal measures. In fact, there is no remedy other than the measures now proposed so far as we know which has any prospect of success, and I think that this was realised by some Members of this Council, for at least one Member said, 'if the circumstances do not improve in future, or if they get worse, I myself will support you in this measure or a Bill of the same nature.'

"Then I am told that the measure is capable of abuse, that innocent men may be arrested, that constitutional agitation will be stopped, that the decision of investigating authorities will be reached on the evidence of police reports alone and that these committees are really a safeguard of no value. Well, my Lord, every law may be abused. It will be our duty to do the best we can to see that it is not abused. But to undervalue the work of these investigating authorities and to suggest that men will be interned on police reports alone is to overlook plain facts. I have before me now a very careful report from Mr. Justice Beachcroft and Sir Narayan Chandravarkar on a large number of cases, and I defy anybody to say that they proceeded on police evidence alone or otherwise than after the fairest and most scrupulous examination of the actual facts and materials against each person.

"I am then told that we must expect the most terrible agitation if this Bill passes into law. My Lord, this card of agitation has been played a little too much recently, but I see no reason to minimise the prospect of considerable agitation over this Bill. It will therefore be the Government's duty to endeavour to meet any reasonable apprehensions by such changes in the Bill as are necessary without destroying its effectiveness. If there is any way, as my Hon'ble Colleague said just now, in which we can modify this Bill, without destroying the effectiveness of the machinery, we shall be quite prepared to do it. And I hope that if we are able to meet the Hon'ble Members of this Council in a reasonable manner they will assist us in allaying any agitation that may arise over this matter.

"My Lord, I now wish to turn to a very serious allegation or rather to a number of serious statements which were made by the Hon'ble Mr. Malaviya. He began by saying that the trouble in the Punjab was caused by the *Komagata Maru* riot at Budge Budge. He proceeded to attack the conduct of Government and of Government officers in connection with that occurrence. My Lord, I myself was one of a Committee who inquired into this affair in conjunction with two Indian non-officials and two Europeans, one a Judge and one an executive officer, now a Member of this Council. All I can say is that our findings in regard to that riot do not corroborate the allegation

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of the Hon'ble Member, and that they were never, as far as I am aware, challenged by him or anyone else

The Hon'ble Pandit Madan Mohan Malaviya :—" No, because it was during war time ; we did not want to raise a discussion "

The Hon'ble Sir William Vincent :—" It is not always that the Hon'ble Member has been so sparing of Government, my Lord ; even at the beginning of the war. I repeat that our findings were not challenged by anybody. Similarly the allegation that the trouble in the Punjab began with the *Komagata Maru* incident is incorrect : it is contradicted by the facts stated in the Rowlatt Committee's Report which Members of Council now have before them, as well as by Sir Michael O'Dwyer's speech in Council last September. I need only refer to two incidents which occurred before the Budge Budge riot to disprove this allegation. One was the attempt to assassinate Lord Hardinge. That was some years before the *Komagata Maru* incident. And there was, I believe, another outrage in Lahore in 1913. The revolutionary movement had in fact gained some strength before the *Komagata Maru* incident occurred at all. But a more serious allegation was made later, an allegation that the Government was responsible for the outbreak of revolutionary crime in Bengal

The Hon'ble Pandit Madan Mohan Malaviya :—" No, no."

The Hon'ble Sir William Vincent :—The Hon'ble Member wishes to correct his statement. I can well understand that. I say he insinuated throughout that the action of Government was responsible for revolutionary crime in Bengal

The Hon'ble Pandit Madan Mohan Malaviya :—" If my Hon'ble friend will not refer to the whole of what I said on this point, it will be wrong and misleading. I described how there was no revolutionary crime in Bengal until 1905, I described how the thing grew and I described the causes, temporary and permanent, which led up to it."

The Hon'ble Sir William Vincent :—" My Lord, I leave to the Council to judge. Members heard the words used as well as I did. And I maintain that his insinuation throughout was that the Government was responsible for revolutionary crime in Bengal ; there can be no doubt on that point. Well, my Lord, was it Government who sowed the seed of sedition in the minds of these young men ? Was it Government who, by malignant misrepresentation of the action and motives of Government, by persistent vilification of the authorities watered that seed ? Was it Government who instigated neurotic youths to crime ? Was it Government who, when steps were taken to check this crime, stood aside in holy horror at any attempt to exercise this demon which they had raised ? What answer is there to that, my Lord ? There can be only one answer. It was not the Government, and I repeat what I said last Session, the responsibility for much of this crime rests with those political leaders who have aroused visions in the minds of non-politically-minded persons, have incited them to evil deeds and have entirely failed to quell the evil passions which they have aroused. They have aroused these passions and have then stood aside, and the Government has had to bear the brunt.

"Then, my Lord, the Hon'ble Member went on to disclaim all veiled or unveiled sympathy with these anarchists, and at the same time to speak of them as misguided youths guilty of unconstitutional action. My Lord, these are the euphemisms used to describe murders, dacoities, thefts and similar dastardly crimes

The Hon'ble Pandit Madan Mohan Malaviya :—" Does the Hon'ble Member seriously include dacoity and murder in unconstitutional methods ? I was speaking of one kind of method which grew up in Bengal after constitutional agitation had failed."

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The Hon'ble Sir William Vincent:—" We have been discussing revolutionary crime all day, and the worst words the Hon'ble Member could find to define it were 'unconstitutional action,' and the words that he used to describe criminal anarchists are 'misguided youths.' And yet he professed—and rightly I have no doubt in his intentions—to have no sympathy with these men. I do not suggest that he has any sympathy with these men, but I do suggest, however, that by his attitude, by language of this kind, crime of this kind is encouraged. My Lord, if we have things misdescribed in this way you will shortly have the attempt on Lord Hardinge's life described in much the same style as an unfortunate incident.

" I am told by the same Hon'ble Member that India's war effort has been forgotten, and that this Bill is the reward for India's loyalty. I think that was the language one Hon'ble Member used. My Lord, our view is that India's war effort would have been impossible unless order had been preserved, and we shall be only too glad to reward and assist those who have helped us in this crisis, but I do not think that because we seek to take action against revolutionaries it can be said that we are forgetful of India's loyalty. The revolutionaries did nothing in the war; they have not helped. Many, indeed, conspired with the King's enemies. Those who have helped in the war gladly shall we reward, gladly shall we assist, as your Excellency has already said. We were then told that the Hon'ble Member assisted in the passing of the Defence of India Act, and he seemed rather to take credit for having taken an active part in India's war effort. Well, my Lord, I was here when the Defence of India Act was passed, and I think some other Members of this Council were here also, and they know what the attitude of the Hon'ble Member was towards that measure. My recollection is that he introduced or gave notice of no less than 20 amendments to that Bill. . . .

The Hon'ble Pandit Madan Mohan Malaviya:—" Yes, quite so, but still I gave support to the measure."

The Hon'ble Sir William Vincent:—" Yes, my Lord, support of a kind much like the sympathy professed by a certain Member of this Council towards the Education Bill which I heard Mr. Gokhale describe in this Council as of no value to the Government or anybody else.

" I will now leave Mr. Malaviya and come back to the Bill. I put it to the Council very earnestly that there has been no serious attack on the findings of fact that these revolutionary conspiracies exist, and that the men are now ready and actually preparing to renew their activities at the earliest opportunity. No other remedy of a practical nature has been suggested to meet this form of crime. Is it not then reasonable that I should press the Members of this Council to co-operate with the Government in this measure to cope with this evil? . . .

The Hon'ble Mr. Surendra Nath Banerjea:—" What about Regulation III of 1818?"

The Hon'ble Sir William Vincent:—" I am quite sure that the Hon'ble Member would be the last person to advocate an indiscriminate use of Regulation III of 1818 in cases in which it is proposed to apply the less stringent provisions of the Bill. At the same time, as I said before, I see the difficulty in which my Hon'ble friend and other Members of this Council are placed. I am anxious to meet them, and I am impressed by the criticisms of the moderate non-official Members in this Council. I was told that the Government neglects the opinion of the Council and pays no attention to it. Far from it. We are anxious to secure the support of the Council and to secure it I am prepared to make such amendments as I can in this Bill without

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impairing the efficiency of the machinery which is necessary to enable the Government to deal effectively with this anarchical movement

The Hon'ble Mr. Surendra Nath Banerjea :—" Will you kindly make the Bill temporary ? "

The Hon'ble Sir William Vincent :—" That is a question which will have to be considered ; but in the meantime I ask the Council to accept the principle of the measure as necessary and to support the Government in a matter of the greatest moment and importance."

The motion that the Bill be referred to Select Committee was then put and agreed to, and on the motion of the Hon'ble Mr. Patel, the Council divided as follows :—

- Ayes-36.*
- His Excellency the Commander-in-Chief.
 Hon'ble Sir Claude Hill.
 " Sir Sankaran Nair.
 " Sir George Lowndes.
 " Sir Wm. Vincent.
 " Sir James Meston.
 " Sir Arthur Anderson.
 " Sir Gangadhar Chitnavas.
 " Mr. W. A. Ironside.
 " Sir Verney Lovett.
 " Mr. H. F. Howard.
 " Sir James DuBoulay.
 " Mr. A. H. Ley.
 " Mr. H. Sharp.
 " Mr. R. A. Mant.
 " Major-General Sir Alfred Bingley.
 " Sir Godfrey Fell.
 " Mr. F. C. Ross.
 " Mr. C. H. Kesteven.
 " Mr. D. de S. Bray.
 " Lt.-Col. R. E. Holland.
 " Surg.-Genl. W. R. Edwards.
 " Mr. G. R. Clarke.
 " Mr. A. P. Muddiman.
 " Mr. C. A. Barron.
 " Mr. P. L. Moore.
 " Mr. M. N. Hogg.
 " Mr. T. Emerson.
 " Mr. E. H. C. Walsh.
 " Mr. C. A. Kincaid.
 " Sir John Donald.
 " Mr. P. J. Fagan.
 " Mr. J. T. Marten.
 " Mr. W. J. Reid.
 " Mr. W. F. Rice.
 " Mr. H. Monorieff Smith.

- Noes-21.*
- Hon'ble Babu S. N. Banerjea.
 " Raja of Mahmudabad.
 " Dr. T. B. Sapru.
 " Pandit M. M. Malaviya.
 " Mr. S. Sastri.
 " Mr. B. N. Sarina.
 " Mir Asad Ali, Khan Bahadur.
 " Mr. V. J. Patel.
 " Mr. M. A. Jinnah.
 " Sir Fazulbhoj Currimbhoy.
 " Rai Sitanath Ray Bahadur.
 " Raja Sir Rampal Singh.
 " Rai Krishna Sahay Bahadur.
 " Raja of Kanika.
 " Mr. Mazharul Haque.
 " Khan Bahadur M. M. Shafi.
 " Khan Zulfqar Ali Khan.
 " Mr. G. S. Khaparde.
 " Rai B. D. Shukul Bahadur.
 " Mr. K. K. Chanda.
 " Maung Bah Too.

The motion was, therefore, agreed to.

The Council then adjourned till Monday, the 10th instant, at 11 A.M.

A. P. MUDDIMAN,
*Secretary to the Government of India,
 Legislative Department.*

DELHI :
 The 14th February, 1919.