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**PROCEEDINGS  
OF  
THE INDIAN LEGISLATIVE COUNCIL**

***ASSEMBLED FOR THE PURPOSE OF MAKING***

**LAWS AND REGULATIONS**

**VOL. LVII**

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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 14th March, 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 61 Members, of whom 53  
were Additional Members.

**CRIMINAL LAW (EMERGENCY POWERS) BILL—contd.**

**His Excellency the President:**—"I think, it may be for the convenience of Hon'ble Members if I state that I propose to sit until we have disposed of the amendments on the paper, and that at quarter past 1, I shall adjourn for an hour for lunch, at 5 o'clock we shall have a half hour's tea interval and at a quarter to 8, there will be an hour and a quarter for dinner. I very much regret to have to press Hon'ble Members like this, but the Session is drawing to a close rapidly, and we shall have to have another day for the passing of the Bill, when the Bill has gone through this stage and the drafting has been carefully examined, and, I think, Hon'ble Members must see that the time really forces us to sit continuously in this manner. 11-3 A.M.

"We now come to Part II."

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move that Part II be deleted. My Lord, we considered the provisions of Part I yesterday, or rather yesterday and to-day, and I may say at the outset that some of us might think of attempting to reconcile ourselves to the provisions of that Part, however drastic they may be, but so far as the provisions of Part II and the subsequent Parts are concerned, I must confess that I for one cannot and will never be able to reconcile myself to them, and I venture to think that no Indian who loves his country will ever reconcile himself to the provisions of these Parts. My Lord, these provisions are, in the words of Dr. Sapru, in his speech at the time of the introduction of this Bill, 'wrong in principle, unsound in their conception, dangerous in operation and too sweeping and too comprehensive.' They are in my humble opinion, your Excellency, utterly subversive of the order of things hitherto recognised and acted upon in all civilised countries. 11-4 A.M.

[ Mr. V. J. Patel. ] [ 14TH MARCH, 1919. ]

They in fact substitute the rule of the executive for the rule of law and they are, to quote again my Hon'ble friend Dr. Sapru, nothing but 'undiluted coercion,' pure and simple." My Lord, I venture to think that the provisions of these Parts will strike a death-blow to all legitimate and constitutional agitation in the country, and I for one see in them the grave of all our political aspirations. They will defeat their own purpose, for the reason that they will drive all agitation into hidden channels, with the result, my Lord, that consequential evils will follow as night follows the day. I am respectfully of opinion that the Government that contends that the country cannot be governed, even in ordinary times, without the assistance of such unconstitutional laws as are proposed to be enacted in these clauses forfeits its claim to be regarded as a constitutional government. Just consider for a moment what the provisions are. But before doing so, let us examine what powers Government actually have in their armoury in the way of preventive measures. I invite the attention of the Council to sections 106 to 110 of the Criminal Procedure Code. The heading of the Chapter is 'Prevention of Offences,' the very object with which the present provisions are proposed to be enacted. Section 106 provides that, whenever a person is found guilty of any offence which involves a breach of the peace, then he can be bound over on conviction. You may say that that applies to cases in which the accused is already convicted, but I refer this Council to section 107, which is purely preventive in its scope. Section 107, sub-clause (1), says :—

'Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.'

"The period for security, as provided in the provisions now proposed to be enacted is also one year. Sub-clause (2) says :—

'Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.'

"And clause (3) is very important :—

'When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.'

"My Lord, this is not all, section 108 goes further. It says :—

'Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in anywise abets the dissemination of—

- (a) any seditious matter, that is to say any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or
- (b) any matter the publication of which is punishable under section 153-A of the Indian Penal Code, or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.'



[14TH MARCH, 1919.]

[Mr. V. J. Patel.]

“Now, my Lord, these powers in themselves are ample. However, there are further powers given by sections 109 and 110, which I do not propose to read to this Council and take up its time unnecessarily; but I will read only one other section, section 144, which has a great bearing on the question that we are considering. It says:—

‘In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act (mark the words) or to take certain order with certain property in his possession or under his management, if such Magistrate considers such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk, of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.’

“My Lord, I do not understand what more powers you want for the prevention of offences. The fact is that even the semblance of a trial before a Magistrate in cases under the prevention Chapter is proposed to be taken away and the executive is to be made the sole authority to decide whether a person's liberty shall be taken away.

“Let us now, my Lord, turn to the provisions of this Bill. Under section 20 the Governor-General in Council is empowered to say that in respect of what offences the magisterial inquiry shall be entirely dispensed with *i.e.*, there shall be no inquiry whatever before a Magistrate or before any judicial authority. Once the Executive Government makes up its mind that a certain area should be proclaimed it shall be proclaimed, and in that area the Provincial executive shall be entitled to call upon any person ‘(1) to execute a bond with or without sureties for such period not exceeding one year as may be specified in the order, that he will not commit, or attempt or conspire to commit, or abet the commitment of any offence against any provision of the law which is referred to in the Schedule; without any trial, without any inquiry, (2) to notify his residence and any change of residence to such authority as may be specified; (3) to remain or reside in any area in British India 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 is first obtained; (4) to abstain from any act specified which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety; and (5) to report himself to the officer in charge of the police-station nearest to his residence at such periods as may be specified.’ Any or all of these orders may be passed all at once if the Local Government so chooses. And we are told that there are safeguards. Well, I am respectfully of opinion, your Excellency, that these safeguards are merely, if it is not unparliamentary to use the expression, ‘farical;’ they are merely illusory; they mean nothing. I wish they had not provided these safeguards at all; there is no meaning in them. It is said the Local Government is to pass an *interim* order which may remain in force for one month or more if the Local Government so determines. The case will then be sent to the investigating authority for investigation. Now, who is to appoint this investigating authority? The authority passing the *interim* order will also appoint the investigating authority. And how is that investigating authority to conduct its inquiry? Inquiry is not the proper word for that. There is no inquiry. Call it investigation if you like. Inquiry is certainly an inappropriate and, I should say, wrong use of the word. The word inquiry, according to the Code of Criminal Procedure, applies to proceedings before a Magistrate, not by any other authority; and yet the word used is the word inquiry. However, the authority that will pass the *interim* order will appoint the investigating authority. Then again, that authority will hold its investigation—I will use the word investigation—in *camera*. For that purpose I will refer you to section 25, sub-clause (2), which says ‘The investigating authority shall then hold an inquiry *in camera*.’

[ Mr. V. J. Patel. ] [ 14TH MARCH, 1919. ]

“ It is not left to its discretion to decide whether it should hold an open inquiry, whether in part or in whole, but that it should hold the whole inquiry *in camera* for the purpose of ascertaining what in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Then, will the person concerned be entitled to appear? No, the person concerned shall not as of right be entitled to appear and present his view of the case before the so-called investigating authority. My Lord, this means if the investigating authority so decides, the man may be condemned unheard—a principle unparalleled in the legislative history of any civilised country. However, if the investigating authority chooses to do so, the accused may be allowed a reasonable opportunity to appear before it—not at all its stages, but at some stage that the authority may deem proper. The section says:—

‘ Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer.’

“ This further shows that the investigating authority is not bound to record the statements of witnesses on behalf of the prosecution or on behalf of the accused; and I go further and say that the investigating authority, under the proposals that we are now considering, has no power to summon and compel the attendance of witnesses for either party. If the Local Government chooses to produce some witnesses and asks—or I should say directs—the investigating authority to examine certain witnesses, the investigating authority may do so; but it has got no power to summon and compel the attendance of any witnesses. Apart from this, my Lord, the investigating authority is not bound to examine the witnesses produced by the person concerned. The investigating authority is not bound to record the statements which they make. The person concerned says ‘ I don’t want summonses; I produce these witnesses; pray examine them; ’ but the investigating authority in its wisdom will say ‘ No, we are not going to examine these witnesses.’ After hearing the explanation, if the person in question is called upon at all to do so, and after making such further investigation, if any, as appears to such authority to be relevant and reasonable—relevant not in the sense of the Evidence Act, but what he considers to be relevant—the authority shall record its conclusions. He may imagine a rule for himself and consider whether, in his opinion, certain statements, or certain inquiries are relevant or not, and decide whether he should make those inquiries or summon those witnesses. Then there is this proviso:

‘ Provided that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of the individual.’

“ My Lord, I can quite understand—no, I cannot understand—it may be that you might leave the question of disclosing or not disclosing any facts to the person concerned to the discretion of the investigating authority; but to say ‘ it shall not disclose to the person whose case is before it any fact the communication of which is, etc., etc., ’ however material such fact may be for the purposes of the defence of the person concerned, of the person whose liberty is at stake, to say, my Lord, that ‘ the investigating authority shall not disclose ’ is to leave no discretion to the investigating authority.

“ The second proviso says:—

‘ Provided further that nothing in this sub-section shall be deemed to entitle the person in question to appear or to be represented before the investigating authority by pleader, nor shall the Local Government be so entitled.’

“ Well, my Lord, I have already pointed out that it is for the investigating authority to consider whether the person concerned should be given an opportunity at any stage to appear before it or not. But who is to give that opportunity? And this provision says: ‘ Well, you appear in person. Do not embarrass our investigating authority by the presence of your pleader, we

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shall not have anything to do with the pleader, you appear and we shall ask you certain questions and take down what you say, but no pleader.' My Lord, and what next? The investigating authority, after making the inquiry in the manner I have described, is to record a finding. Is the investigating authority to record a distinct finding that the person concerned is connected with any anarchical or revolutionary movement as alleged by the Local Government? No, it is left entirely to the discretion of the investigating authority to record what finding it pleases to record. And after that finding is recorded, it is sent on to the provincial executive. And here we find, your Excellency, what the real significance of these provisions is. After the Local Government receives the so-called finding of the investigating authority, it looks into it, and if perchance that finding happens to be favourable to the person concerned, the provincial executive is entitled to say 'We shall have nothing to do with it; we never appointed you for this purpose; we do not agree with you and we shall not accept your finding;' and then the provincial executive makes the *interim* order final.

"The provincial executive is not bound to pay any attention to the findings of the investigating authority, not at all bound to follow that finding. Then I pray why do you insert these provisions at all? Why make a show of an investigation in these cases? If the Local Government is pleased to believe that a person is concerned in any movement referred to in section 20 take the power you want and be done with it. You provide safeguards and those safeguards mean nothing. It looks as if these safeguards are provided to delude people; there is no meaning in these safeguards. You are not bound in any way to carry out the recommendations of the investigating authority.

"These, then, shortly, my Lord, are the provisions of this Chapter, and as I have observed in the beginning, speaking for myself I shall, with any modifications, never be able to reconcile myself to the provisions of this Part and the Part that follows, and I respectfully venture to submit that no Indian will ever do it."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"My Lord, the Council will see that there is an identical motion in my name, and I think it is convenient that I should speak at this stage. My Lord, my work has been lightened very much by the exhaustive and eloquent speech of my Hon'ble friend Mr. Patel. All that I need do is to associate myself with his arguments and just to add a word or two. My Lord, as regards Part I, which we disposed of last night or early this morning, as my Hon'ble friend has said, we can in some manner reconcile ourselves to it. We find there is some precedent for it. As a humble fry in the profession I have been accustomed to look for precedents for everything extraordinary, everything novel, and here I find some precedent because some of the provisions of that Part are based upon the Irish Crimes Act. Nobody will say or claim that India is Ireland, and I sincerely hope and trust that it will not become another Ireland in spite of this measure which you are going to pass; but there is some precedent for that Part. There is also precedent in an earlier Act of this Council, namely, the Criminal Law Amendment Act, 1908, and therefore we are in a manner reconciled to that; and speaking for myself I can refer to the fact that, although I sent in notice of a very large number of amendments on this Bill, I did not propose that that Part should be deleted. But now coming to this Part which is now under discussion, what do you find? What about this Part, my Lord? Is there any sort of precedent anywhere in this big world? I earnestly invite the Hon'ble the Home Member and the Hon'ble the Law Member to tell this Council if there is such a precedent to be found anywhere in the civilised world. But, my Lord, I think I might give to this Council the benefit of my own researches in this domain, and I have made a discovery and come across a law upon which this Part can be based to some extent. I found, my Lord, I learned that there was a law in the Scottish border town of Jedburgh where they had execution before trial. Surely you can see that this Part has some resemblance to that. Here the executive Government first punishes a man; you pass an order interning him, confining him to any place, compelling him to dance attendance at the police-station; you pass an order directing him to abstain

11-31 A.M.

[*Mr. Kamini Kumar Chanda; Rao Bahadur* [14TH MARCH, 1919.]  
*B. N. Sarma.*]

from any act which, in the opinion of the Local Government, is calculated to disturb the public peace or is prejudicial to the public safety—dangerously wide and vague terms; but these orders may be passed and not only that, but you direct that order to be carried out by all means, you do not even say by all lawful means; and we know, my Lord, there have been complaints of torture committed upon persons who were detained; those complaints, those stories may for aught we know to be false; but in the face of those complaints one would have expected that this Part ought to be a little better, ought to have said at any rate 'Use lawful means'. However, having passed an order of punishment, having had the execution as it were, you now give him a chance of some sort of inquiry, a Star Chamber inquiry. My Lord, every artist tries to improve upon his model and here we find the same thing. In Jedburgh they had a trial at least after the execution. Here you do not even find a trial. Although you say it is an inquiry, as my Hon'ble friend has just now told us, it is not an inquiry even. If it is anything at all it is a police investigation. Now, my Lord, what are the main features of this Part? My Hon'ble friend has dilated upon them and I need not repeat them again. You do not allow the accused to be present throughout and let the accuser confront him; you do not tell him what the evidence is against him; you do not even allow a lawyer to defend him; you do not allow him to call evidence which he wishes to call, and such as it is what is the result of this inquiry or the investigation? I prefer to call it what my Hon'ble friend called it, investigation. Well, when that authority comes to a sort of finding and reports it to you, it is not binding upon you. And this is the sort of inquiry you give to the man after having punished him. My Lord, these are the provisions of this Part in brief, and it is impossible that any one with a grain of self-respect in him, any one having the country's welfare at heart, can possibly give any sort of support to this. I join my Hon'ble friend in moving that this Part be deleted."

11-37 A.M.

**The Hon'ble Rao Bahadur B. N. Sarma** :--" My Lord, I have given notice of a similar amendment, and it would be convenient that I should have my say on the subject so that the Hon'ble the Home Member may know what some of us feel and think on the subject before he gives his ultimatum to the Council. My Lord, I have given notice for the deletion of only Part II of this Bill, because I feel that this is the most objectionable part of the Bill, the defensible part of the Bill, the most anti-British part of the Bill that one can most in conceive of. I can understand that there might be materials for action on the part of the Government of India under Parts I and III. Under Part I the Government of India will be invited to specify the offences connected or supposed to be connected with revolutionary or anarchical crime of which a person is accused. So would in a minor degree be the state of things under Part III. But, my Lord, under Part II there is no such criterion, there is no such basis to go upon. It is but the bare opinion of the Government of India that there are revolutionary movements at work, and we do not know exactly what may be passing in the mind of the Local Government or the Government of India for the time being as to what is revolutionary. I say there will be nothing for the Government of India to go upon except its bare opinion that the stage has been reached when there might be offences following. I ask, my Lord, in all humility, has not the Government powers at present to deal with cases of seditious persons who may be disposed to disturb the public peace, to promote revolutionary movements? Is not the definition of 'sedition' in section 124-A., sufficiently elastic for the purpose? Have you not got a press law which puts the press at the mercy of the executive, no doubt under the protection, it may be an illusory protection, of the judiciary, but still at the mercy of the executive?

"What you want here is that you should not be subjected to the scrutiny of the judicial authority at any time whatsoever, you want to be free from all control; is not that the Eastern spirit as it is conceived to be by Westerners *in excelis*? Are we the educated Indians who have imbibed the true British spirit, that have imbibed the true British traditions, are we not really trying to

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save the Government from the crisis, from the yawning gulf into which they are falling? You wish to take power now to prevent any scrutiny of the exercise of your authority by an independent judicial tribunal. Wherein, my Lord, does this differ from the true Eastern Government, as it is conceived to be in the imagination of the Westerners? You imagine that an Eastern potentate would have a man shot straight away should he be suspected of being guilty of being connected with the movements such as are referred to in this Part, would have him trampled under the feet of an elephant in order to strike terror into the hearts of the people, but your methods are more insidious, more dangerous and they are proposed to be sanctioned by a law passed by a British Legislature and in co-operation with the representatives of the people. What do these clauses give you? The power to ask a man to give any security whatever; you are not limited, you are not controlled in your discretion as to the grant of the security that may be demanded. I know of a poor man from whom was demanded a security to the extent of a lakh of rupees, making it practically impossible for him to give that security; you may be rendering the protection nugatory by reason of the excess of the security that may be demanded; you arrange that a man should be confined in any area that you please, is that not worse than any open cruelty by an Oriental Monarch? Take the case of a school-master who is in receipt of a fairly decent salary but is not able to save anything. He has got a large family; you think that the man is guilty of some connection with a revolutionary movement, and you ask him to reside outside the province, or it may be inside the province in a far off malarial tract, it may be a plague stricken jungle, don't you deprive him of his means of livelihood? Regulation III of 1818 provides at least that a man's livelihood should be secured to him, but this is denied here. How is the man to eke out his livelihood, don't you drive him into wild despair, into the commission of the very crimes that you desire to put down. How is the accused to eke out his livelihood, but you say 'oh my good fellow you are exaggerating, can you conceive of a liberal British Government ever being guilty of excesses' an Eastern Monarch would not have done otherwise than to wreak his vengeance on one who had thwarted him. I would ask wherein differs this frankly Eastern despotism from the law as it is going to be under Part II; then you may say the Government of India has power to consider dispassionately the recommendations of the Local Governments and control them. Is that always so? May it not be said that the demands of provincial autonomy would prevent the Government of India from interfering with the discretion of the Provincial Government. May it not be said that there is danger of a Governor who conceives his duties to lie in the rigorous enforcement of his powers, threatening to resign his office if he is not supported by the Government of India; may not the Governor be oppressed by the idea that the services have set their hearts upon a particular measure; when you come to analyse the true factors you reach the bedrock of Indian rule. The idea as to what constitutes proper government and public safety as they may be conceived by the British services may be honest, we have nothing to do with the question of honesty here, but may be opposed to what lofty vision, far sighted wisdom or true British spirit would recommend. You find in New India a daughter nation, it is in the fitness of things that it should be so, there is more of true British spirit than perhaps among some of those who though British nevertheless are of opinion that the British spirit does not pay with an Eastern people. Well, here the Government are asked to do one of several things which I have described. What does it mean? A district officer believes that a man is dangerous, the Government finds it impossible to decline to act upon such a strong report as is sent up by the district officer against a man. The officer may say 'I cannot carry on the administration of my district unless a particular person here is muzzled;' the Government asks for an explanation, the explanation will be forthcoming, reports from subordinates will be forthcoming and an order is passed. Is not the prestige of the whole Government being placed in favour of a presumption of the correctness of an *ex-parte* order. I can conceive of an *ex-parte* order being passed under Part III or under Part I, but I cannot conceive of *interim* orders being passed always or under

[ *Rao Bahadur B. N. Sarma* ; *Sir Verney Lovett* ; [ 14TH MARCH, 1919. ]  
*The President.* ]

Part II. Then again the members of this tribunal may be suspected that they look forward to the favour and pleasure of the Government. Are we not really depriving a man of the only means he has at present to prove his innocence by the enactment of this Part. I shall not expatiate further on the evils. I think, my Lord we, as conscientious advisers and true and loyal subjects of His Majesty, must risk any displeasure, must risk any misconception of our loyalty, must advise, your Excellency and your Excellency's Government what we feel to be the wisest and safest course. Pray do not enslave us. You are making us slaves by the enactment of this measure without knowing it perhaps, you are doing so. We know that we are living under a despotism. The will of the people is not associated with the Government so as to command it. Let us not talk now of a Reform Bill which may or may not be enacted into law ; we do not know what is in the embryo of the future. Let us take the present as it is. We have but the shadow of a judicial protection in some cases, in others the protection of the judiciary under the partial control of an executive Government for the reform of which we have been agitating for the last so many years. Pray, do not remove that one protection which prevents our being reminded continuously, harassingly, of the condition into which we have fallen. Pray, My Lord, rescue us from a law which places us at the sweet mercy of a police officer, of a Magistrate, he may be honest or dishonest, he may be honest but foolish, ignorant of the true conditions of the world, unequal to his task and therefore, in the zealous discharge and performance of his task, may land the people and the Government alike in danger."

11-531.x.

**The Hon'ble Sir Verney Lovett** :—" My Lord, I suppose it is a hopeless endeavour, but I should like to make a last attempt to induce my non-official friends to see the broad facts of this matter as they really are and not as they seem in the strange light in which they present themselves to the point of view which we have heard so frequently reiterated in the debates of this and last month. The same point of view, with considerable extravagances, is constantly put forward in the press. I have seen reports of speeches and articles in newspapers the object of which plainly is to persuade people that Government in introducing this Bill is trying to erect a monstrous engine of tyranny and oppression. Only the other day I read an article accusing Government of being blinded by *sid* enmity and of doing the Empire unmitigated harm, by driving people mad ' without rhyme or reason.' Again I saw that a speaker had compared the action of Government to the action of Nadir Shah, the man who sacked this famous city. The speaker implied that Nadir Shah was at any rate an honest tyrant, but the Government is not even honest in its tyranny . . . .

**The Hon'ble Rao Bahadur B. N. Sarma** :—" My Lord, I have never by implication or otherwise tried to impute any dishonesty to the Government here or anywhere, and if I have used such expressions I beg that I may not

**His Excellency the President** :—" Sir Verney Lovett has not imputed anything to the Hon'ble Member. He is merely quoting statements which he has seen made. No imputation has been made against the Hon'ble Member."

**The Hon'ble Sir Verney Lovett** :—" Your Lordship is quite right in your explanation. I was not referring to the Hon'ble Member. If he asks me afterwards I can tell him to whom I was referring.

" Our friends here are not so hard on Government, but they have managed to persuade themselves that Government really is very hard on them and on the country. Yet the truth is that Government is not only not hard on them, but is simply performing its plain and obvious duty to Society. It cannot possibly do otherwise without forfeiting all claim to public respect and confidence.

" The facts stated in the Rowlett Report are now universally admitted except by a few ingenious persons like my friend Mr. Khaparde. It is further admitted by so vigorous an opponent of this Bill as my friend Mr. Jinnah

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that—I will use his own words ‘it is commonsense that by these powers’ by the powers which Government now proposes to take, ‘you can more effectively deal with conspiracies’. But, says Mr. Jinnah and say other members: “If you take these powers you will take them against our will, for, as Mr. Jinnah put it, you will be restraining personal liberty, you will be internment men without open trial, and thus you will deprive us of what you yourself have fought for in England from the time of King John.’ This is the real main argument which prompts the opposition to this Bill, and I would like to answer it. The idea is that the British Government is doing in India or is trying to do in India what it would not do or try to do in Great Britain. Let us summarise the facts. Certain clever conspirators discovered that in a portion of this vast Continent of India, with its 315 millions of people sprung from various racial stocks, speaking many languages, professing various religious creeds, living in numberless towns and villages, and for the most part extremely credulous and simple, they discovered, I say, that in a particular province of India, where communications are extraordinarily difficult and educated young men are often poor, badly taught and impressionable, it was possible to organise revolutionary associations over wide areas. These associations at first conducted their operations with caution and trepidation. As the Rowlatt Report puts it—‘at first the persons undertaking to commit outrages showed a lack of resolution,’ but as they discovered gradually how extremely easy it was to outwit a sparse and ill-armed police working in a great big capital city and its suburbs, or in the towns and villages of a vast water-country mainly devoid of roads and proper communications; as too they obtained modern fire-arms and learnt how to manufacture bombs under the cover of a big political agitation, they contrived a remarkably elaborate and complete series of criminal organisations. They also established an extraordinary terrorism over the minds both of the lower classes and of many sane members of their own class. To give an instance of what I mean, let me read a passage from a speech by Lord Carmichael, dated the 11th of December 1916:

‘Only a few days ago I spoke to one of you, one who has influence, one who has eloquence, and who knows how to use both, and who, I believe, hates the crimes as much as I do; he told me that if he were to go as he would like to go to certain places in Bengal, and were to denounce the crimes publicly as he would like to denounce them, he would do it at the risk of his life; and I told him that this is not a risk which he ought lightly to undertake, and is certainly not a risk which I ought to ask him to undertake.’

“There is no doubt about all this. Anyone who knows Bengal could, if he chose, confirm my statement. What have Mr. Justice Beachcroft and Sir N. G. Chandavarkar said quite recently in a document which can be bought for three annas in booksellers’ shops in Calcutta? They wrote this:—‘The records before us conclusively prove that the revolutionary organisations are secret conspiracies which have spread into different parts of the province, entered homes, schools and colleges, and have reduced their secrecy of operations almost to scientific methods. They have pledged their members to the closest secrecy of their movements on pain of instant death by murder in the event of disclosure; that is one of their rules, and every attempt has been made to give effect to it. 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 murders of approvers, witnesses, police officers and law-abiding citizens suspected by revolutionaries of having given information to, or otherwise assisted, the police in the detection of revolutionary crime. A situation of terrorism was created, the current of truth and justice was disturbed, so as to prevent a fair, open and impartial trial in the ordinary criminal courts, with the result that approvers and witnesses would not come forward to give evidence openly lest they should be assassinated.’ Not only were the revolutionary conspirators so successful in the province of Bengal, but they succeeded in extending their operations or their influence to other provinces and in causing considerable trouble there. In February 1915, in conjunction with the Sikh *Ghadr* conspirators, they nearly brought about widespread bloodshed and tragedy; and was there ever a more cruel, brutal

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murder than the murder of the Mahant and the boy in Bihar described in the Rowlatt Committee's Chapter VIII? Now, I need hardly remind Mr. Jinnah that Great Britain is a small country endowed with excellent communications and inhabited by a homogeneous community which differs widely from the great masses who dwell together in the enormous Continent of India. It would be impossible for any gangs of conspirators to organise and keep going in Great Britain an elusive, potent and enduring system of robbery, murder and terrorism, of the sort which has been so successful in Bengal and has attempted operations in other provinces. But we may be quite certain that if anything of the kind were attempted in Great Britain, and achieved even a small measure of success, if witnesses were extensively terrorised, if evidence was therefore unobtainable, and if policemen were constantly shot, if the ordinary law were for reasons of this kind inefficacious, my countrymen would most certainly devise remedies as drastic, and probably much more drastic, than that contained in the Bill now before this Council. As it is, different as are conditions in India and England, successive Secretaries of State and successive Governments of India, have always been most reluctant to undertake in India legislation of the preventive kind now proposed. Let me refer the Council to paragraph 176 of the Rowatt Report. It deserves careful reading. As a matter of fact the whole history of the attempts of the Secretary of State, of the Government of Bengal and of the Government of India to deal with and stop anarchical and revolutionary crimes is a history of extreme reluctance to deprive any man of his liberty in any measure except after an ordinary trial in an ordinary court of law. It was only when they were forced by a developing and extending criminal propaganda and organisation from position to position, when things got worse and worse, when 'the forces of law and order working through the ordinary channels' were beaten, that early in 1914, they contemplated a substantial number of internments. Even then they did not act till the war broke out, and by adducing other considerations and greatly encouraging the revolutionary crimes compelled prompt and effective remedy. What were the effects of that remedy? They are apparent from the Rowlatt Report, are admitted by some gentlemen now in opposition and were described by Lord Carmichael in a farewell speech. What he said was this :—

'The Defence of India Act is what has helped us. I am only saying what I believe to be absolutely true when I say that the Defence of India Act has helped to defend the young educated men of Bengal as nothing else has defended them—not their own fathers—not their teachers, for they were ignorant, not their associates, nor they themselves, for they were blind to the danger'.

"So it comes to this, that faced for years by a bloodthirsty criminal organisation which flourished on the perversion of the young and on the timidity of older persons, the Secretary of State and the Government of India, at last under the added stress of the War, discovered an effective remedy.

"In order to secure the country against any revival of the disease they wished to place a measure permanently on the Statute-book which would warn intending conspirators of what renewed revolutionary conspiracies would have to meet. In deference to the view of Hon'ble Members that such a measure would attach a serious strain to the fair name of India, they consented to make it operative for three years only. Still the measure is objected to, and they are asked either to postpone legislation, to abandon it, or if it cannot be abandoned, to make it entirely ineffectual. I have not been able to gather from any of my non-official friends how such action would be consonant with the indefeasible obligation which lies on Government to protect the lives and property of its servants and subjects, and to safeguard the future from a rekindling of revolutionary embers which, as Mr. Banerjea himself has admitted, have not expired."

12-9 P. M. **The Hon'ble Mr. P. J. Fagan** :—"My Lord, the amendment moved by the Hon'ble Member, taken in combination with the amendments which were disposed of yesterday and other amendments which are yet to come dealing with parts of the Bill as units, all appear to be part of an attempt to



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secure the extinction of this measure by a process of gradual and progressive amputation. As such, the amendment seems to me to aim at the very heart of the Bill before the Council. In the very few observations which I propose to inflict on the Council, I will confine myself as strictly as possible to Part II of the Bill. The criticisms of the Hon'ble Member regarding that Part appear to me to be very largely beside the point. They appear to be based on the assumption that Part II is an attempt to set up a judicial authority of a more or less normal kind. It is hardly necessary for me to point out that that is not their object. Part II of the Bill, as I understand it, seeks to set up certain executive and preventive machinery to be used and used only under very special and, as we may hope, very rare circumstances. The Hon'ble Member in the course of his rather lengthy argument has vouchsafed scarcely a word of reference to the fact that the whole Bill, including Part II, is to come into active operation only under conditions of grave peril to public law and order with which, in the opinion of the Supreme Government, the ordinary judicial procedure is incapable of dealing effectively. A casual listener might have inferred from the arguments of the Hon'ble Member, and his supporters, that this portion of the Bill, and in fact the whole Bill, is to be in practical operation in every part of India at all times, and not under the very special and rare circumstances to which I have referred. That, my Lord, is a matter which I hope to have an opportunity of referring to at greater length when the time comes for making some general observations on the Bill. I do not propose to follow the Hon'ble Member in his analysis of the provisions of Part II, but I will content myself with this remark that the machinery set up by it is as mild and as protective of the interests of the person who is involved in its operation, as is possible under the special circumstances which, from start to finish, constitute the view point not only of Part II but of the whole measure."

**The Hon'ble Sir James DuBoulay:**—"My Lord, this Bill is 12-14 P.M., divided into two main divisions embodying two great principles. The one is punitive and the other is preventive, and it seems to me that when we had our debate on the question of referring the Bill to the Select Committee, this Council decided those principles; and I confess I was somewhat puzzled to know what line the Hon'ble Mr. Patel and the other Members who had proposed this motion would take in supporting their amendments. As a matter of fact, the Hon'ble Member in charge of this Bill told the Council that he regarded the preventive measures as almost the more important of the two, and he reminded us that the Rowlatt Committee themselves did not expect very much from the punitive measures without the adoption of preventive measures in addition. The mainspring of the opposition to this Part of the Bill lies in that principle which has been so often referred to, namely, that no man's liberty should be taken away without a judicial trial in accordance with the ordinary rules of procedure and evidence, and that, my Lord, is the common ground between those who oppose this measure and those who support it. It is recognised on all hands that it is objectionable that these canons should not be observed whenever a man's liberty is interfered with. But there are people who carry this objection to an extreme point. 'Perish law and order, but let not one innocent man be touched'; and that is where we differ from them. While there are those who carry the principle beyond the bounds of reason, I feel that there are many Members in this Council who do not go so far. I think the Hon'ble Mr. Jinnah recognised that there might be a time when he would stand side by side with Government with the utmost reluctance it might be, and I feel it is just a question of this. Is our case strong enough? I say it could not be stronger. We have heard the case explained to us by the Hon'ble Sir Verney Lovett and the only way in which I could conceive that anybody could maintain that it would be stronger would be if they should be in a position to say 'You have got these crimes rampant now, and therefore it is essential to take drastic action.' But I maintain, my Lord, that this is not a sound position. It is the very fact that the measures which we have taken have been so successful, which justifies us in asking this Council to give us a continuance of those powers."

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"I do not propose to follow the Hon'ble Mr. Patel into the various details of the Part to which he has referred, because I think every one of the points which he has taken will be dealt with in the amendments that are to come before us.

"I would only say to the Hon'ble Mr. Sarma, as regards his remarks that we have got section 124-A. and so on, that the whole of our case lies in the fact that terrorism has made our ordinary judicial procedure impossible for dealing with this class of crime. Again, as to the Hon'ble Mr. Patel's remark that we could use the provisions of Chapter VIII of the Criminal Procedure Code, I would first of all point out that there is an amendment on the Agenda paper on which we shall discuss that very proposal or very much the same proposal, and that the same argument that I have already used applies here too, inasmuch as in the case of the Criminal Procedure Code you are bound by the ordinary laws of evidence and all those rules of procedure which, as I have explained, cannot be adopted in cases of this class.

"There is only one other point, my Lord, that I wish to refer to. The Hon'ble Mr. Sarma has thrown it in our teeth that we contemplate to use the provisions contained in Part II before they are necessary and under conditions when they are not necessary. I would only say that the conditions laid down for bringing Part II into operation are the result of the recommendation, which I think must carry conviction to a great many minds, of the Rowlatt Committee. We venture to lay some stress on the desirability from every point of view of the Government being able to take mild measures early. The Rowlatt Committee emphasize the importance of this. Government have endeavoured to follow their recommendation; they have endeavoured to provide some minor forms of restriction in this Part for a less dangerous state of affairs, and they have endeavoured to introduce reasonable safeguards. The question whether those forms of restriction are in their detail proper is a matter which will be dealt with when the various amendments concerning them come under discussion and I do not think, I need say any more now, my Lord, than that Government must oppose the amendment now before us."

12-20 P.M.

**The Hon'ble Mr. M. A. Jinnah:**—"My Lord, this Part of the Bill is, as I said on the very first occasion, to me abhorrent and shocking, and on that occasion, my Lord, I stated my reasons for it. I would not really have spoken in the Council on this motion of the Hon'ble Mr. Patel's more than by merely saying that I am strongly opposed to this Part of the Bill, and I would have done that, my Lord, for this reason, that I really feel that I cannot even trust myself to discuss this Part lest I may give vent to my feelings and my opinion, which I honestly say to this Council I cannot possibly express in words, namely, my repugnance for this Part of the Bill. But it is the first time that the Government side have tried to meet the real point in this debate, and that point having been made, I venture to make a few observations.

"The Hon'ble Sir Verney Lovett quoted me, but only portions of my reasons for opposing this Part II. Therefore, as he has quoted me, he does not quite correctly represent my position or the grounds of my position. But I will meet his point. And the point which he endeavoured to make was that there is real danger, and that being so, are we, as a Government, not entitled to enact this measure into law? Now, my Lord, that is the sole question which the Council has got to decide. If I may quote an authority—and I am quoting Blackstone who has been quoted by Lord Shaw (I am not quoting this as a judgment, but merely as a quotation from Blackstone and for convenience sake I am quoting it from his judgments). This is what he says:

"Blackstone is quite clear upon the practice of the Constitution. He searchingly treats the case both of liberty and life as tests both and equally of one and the same principle—the very principle which is under scrutiny in the present case. To bereave a man of life or by violence to confiscate his estate without accusation or trial would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout

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the whole kingdom; but confinement of the person, by secretly hurrying him to jail where his sufferings are unknown or forgotten, is a less public and less striking and therefore a more dangerous engine of arbitrary government.'

"And this is, my Lord, the point.

'And yet sometimes when the State is in real danger, even this may be a necessary measure.'

"Therefore, my Lord, to stop here for a moment, this measure is justified by the Government on the ground that the State is in real danger. Now I shall proceed:

'But the happiness of our constitution is that it is not left to the executive power to determine when the danger of a State is so great as to render this measure expedient.'

"My Lord, I repeat this—What is happening here? Who is determining that danger to the State here to-day? I emphatically say, the Executive Government. The Hon'ble Sir Verney Lovett said 'If a danger was made out in my own country, my own countrymen would have no hesitation in passing a measure of this kind.' My Lord, I venture to say that we have the case of Ireland in front of us, and I am sure the Hon'ble Sir Verney Lovett knows more about Ireland than I do. Have you taken any steps of this kind in Ireland? Are there not revolutionary movements? Is Ireland not in danger? Did you not find that in the midst of this war, when the Empire was in the throes of danger and death, Ireland was conspiring with your enemies and rebelled? What has happened in India? In India it is acknowledged that a large body of men are absolutely loyal. Because a few hundred men or a few thousand men have gone astray, and there again, my Lord, I make bold to say in this Council that wrong as their actions are, I again repeat what I said, that it is also due to your policy; and because from this position you ask us to enact measures of this kind which are opposed to the teachings of history, which are opposed to the fundamental principles of the constitution, which are opposed to the fundamental principles of justice; and says the Hon'ble Sir Verney Lovett that I admitted that it is commonsense, that if I give these powers to Government, the Government will secure a larger number of guilty persons. Of course, if you spread your nets with these arbitrary engines you will certainly get a larger number of the guilty; but how many will you also take into that net of yours who are innocent; and why should the Legislature give you such powers unless the State was in real danger, and what is the danger that you have made out? That is the sole question. I shall proceed with my quotation, my Lord:—

'The authority is Parliament only or legislative power that whenever it sees proper can authorise the Crown, by suspending the Habeas Corpus Act for a short and limited time, to imprison suspected persons without giving any reasons for so doing.'

"Therefore, my Lord, if these powers are given to you, you will be imprisoning suspected persons, not necessarily guilty persons, and if you are going to suspect 500 people, I daresay in that 500 lot you may have some really guilty ones. But what about the innocent? The Hon'ble Sir Verney Lovett, my Lord, on the last occasion gave us a harrowing account of those whose properties were robbed and those whose lives were taken away by some of these revolutionaries, and he said 'what about them?'

"My Lord, I am equally anxious to protect them. I entirely agree with him that they are entitled to the protection of Government; but they at any rate were there face to face with the person who assaulted them; they at any rate had the chance of giving it back. But what about the innocents that will get into your net? What chance have they except to rot in jail without a remedy? My Lord, therefore, I quite agree, I quite admit that; and I again say this to Sir James DuBoulay, who spoke on behalf of Government. I assure you that if I was convinced that the British rule was in danger, if I was convinced that there was a real danger to India, I shall have no hesitation, as I said, although in my own heart I shall be loath to give my sanction to a measure of this character, yet I shall do it. But I am not satisfied, my Lord, I am not satisfied that you have made out a case to ask us to place these powers in your hands. What will this be, my Lord? We know that

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even the Star Chambers were condemned. They at least had the semblance of a judicial trial. Why were they condemned? They were condemned because, in the words of a great constitutional authority, Maitland, 'it was a court of politicians enforcing a policy, not a court of judges administering the law.' That is what you will constitute yourself, a court of politicians, and what is worse, even without the semblance of a trial as there was in the Star Chamber.

"My Lord, I do not wish to detain this Council any longer. I do not wish to repeat what I have said, but I really cannot understand, especially in view of the facts which were stated to this Council by the Hon'ble the Home Member, who said that these revolutionary movements—I am not quoting his exact words, but I believe I am correctly representing it—he said that these revolutionary movements were brought under hand to a very large extent; it is said that the Defence of India Act has done a great deal of good; it is also well known that large numbers of detenees have been released, that things are much better than they were. But Government say 'Oh they might at any time get worse; therefore please pass these laws.' I say, my Lord, that is again opposed to the very fundamental principle. Government say it might get worse. I say these powers can only be granted if Government really feel that there is imminent and real danger. Then you come to the Legislature and I am sure, as I said before, you will have the support of at least some representatives of the people, and I am sure that you will also have the support of the people themselves. By this what are you doing now? Unless I am wrong, and I am sure I am not wrong, the people are against this, and my Lord, I should like to see a Minister in England or the Government in England, however much they may be convinced of the wisdom of a measure like this, bringing a measure in Parliament; and my Lord, I should like to see Sir Verney Lovett as the Prime Minister. His Premiership will not be worth 24 hours, if he ever dared to bring such a Bill as this. Here the people are opposed and the representatives of the people are opposed: but say the executive Government 'We have got the welfare of the country at heart; we know your interests; we know your interests better, we know your welfare better than you understand it yourselves. We shall take these powers, and (to use again the words of the Hon'ble the Law Member) we are not going to surrender our considered judgment.' Well, if you think you are not going to surrender your considered judgment, I have not the power that you have. But I make bold to say that we are not going to surrender our considered judgment, and we say that you are wrong, and I hope that the consequences will be less disastrous than I expect."

12-36 P.M.

**The Hon'ble Dr. Tej Bahadur Sapru** :—"My Lord, when the Bill was introduced in this Council I ventured to characterise it as undiluted coercion. During the month that has elapsed since, I have most dispassionately applied my mind to a consideration of this Bill; and, my Lord, although one might find a possible excuse for altering the ordinary recognised rules of law so far as Part I is concerned, I think he would be a bold man who could assert that Part II has the remotest resemblance to any law in any part of the world. Now, my Lord, we have been talking during the last two days of the Irish Coercion Bill. So far as I have been able to analyse that Act of 1882, it seems to me that it is possible to institute a comparison between that Act and some of the provisions of Part I of the present Bill. But there the parallel ends. When you come to examine the provisions of Part II of this Bill, what do you find? You find that all pretence to conformity with recognised judicial forms is frankly given up, and you find that it is the opinion of the Local Government which really decides for the time being that a person is or has been actively concerned in a particular area in any dangerous movement. It is not as if you ask the investigating authority to decide first as to whether that man is or has been concerned in any dangerous act or has been connected with any dangerous movement. You first decide it for yourself: you say to the investigating authority: 'This is our belief; we

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believe that this man has been concerned in a dangerous movement, and now we want you to investigate.' My Lord, I venture to repeat again that is not complying with recognised judicial forms of inquiry. I say deliberately it is nothing short of mockery. Well, either the Local Government feels confident of its own opinion or it does not. If it feels so absolutely confident, why then waste the time of three valuable public servants? Why then ask that particular individual to go unaided by counsel before the investigating authority and take further risks of having to answer questions which he may or may not appreciate, and why then ask the investigating authority to submit his report to the Local Government when that Local Government may either accept or refuse to accept it? All that seems to me to be perfectly superfluous. Now, my Lord, the Hon'ble Sir Verney Lovett has given us again this morning a very graphic picture of the sad condition of Bengal. My Lord, I do not dispute those facts. I will assume for the sake of argument that every single fact given by Sir Verney Lovett is absolutely correct; still the question which arises is, do you think that by providing these remedies you would be able to kill the mischief that has arisen in Bengal?

"What has been our experience during the last twelve years? Have you not come time after time to this Council and said: 'We find this law is inadequate, we find we cannot carry on the administration effectively, we find we cannot cope with the growing mischief, please give us more powers.' You have come every now and again with requests like this to the Council and the Council has rightly or wrongly complied with your request? What do we find now? You say: 'Well we have not been able to carry on the administration effectively.' The Hon'ble Sir James DuBoulay said: 'We have been so successful in the past that we are encouraged to ask you to continue a measure of this character.' Well I say with all respect to Sir James DuBoulay: 'Neither have you been successful in the past nor will you be successful with this measure in bringing about that result.' I say deliberately that you cannot possibly ignore the lessons of history. In England ever since 1882 you have had Coercion Acts, passed for Ireland. Have they solved the Irish questions? Has Ireland been reconciled, has Ireland not given its answer at a time when everyone expected that Ireland would have stood by England? Coercive measures have never succeeded in history, they may have satisfied the administration for the time being, they may enable the administration to imagine that it has been able to cope with a dangerous movement, but the dangerous movement is there and will be there in spite of coercive measures.

"My Lord, there is only one name to which I will refer. I do so with great pleasure, because so far as that name is concerned, my Hon'ble friend Sir Verney Lovett agrees that great weight is to be attached to it. I refer to Sir Narayan Chandravarkar. Sir Verney Lovett referred to the report of Sir Narayan Chandravarkar and Mr. Justice Beachcroft in support of his position. May I ask Sir Verney Lovett to read the letters of Sir Narayan Chandravarkar which have appeared recently in the 'Times of India.' If Sir Narayan Chandravarkar is to be quoted as an authority for the position that Sir Verney Lovett has taken, may I ask the Council to remember what this learned Judge has to say after having gone through the papers? He has publicly said of this measure that the remedy you are providing will prove worse than the evil it is intended to cure. My Lord, it is not for me to say what other things you may do, but I can tell you that the provisions of Part II will never be acceptable. Much as I appreciate the desire of the Government, much as I sympathise with the Government in its desire to give protection and security to its servants, and to its subjects, much as I should like to co-operate with them in everything that seems reasonable, I think, my Lord, I owe it to you, I owe it to my conscience, to say that so far as Part II is concerned, its provisions will never be accepted by Indians, whether they are Extremists or whether they are Moderates."

**The Hon'ble Mr. Surendra Nath Banerjea:**—"My Lord, reference has been made to the condition of Bengal by some of the speakers. I feel that it is my duty to make a few observations with regard to that condition, 12-15 P.M.

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and to show how far improvement may be secured by the provision which it is now proposed to enact into law. My Lord, I think it is admitted by all the upholders of official policy, as well as by its Indian critics, that the condition of Bengal has improved. I think this is admitted and it can be proved by a reference to facts and figures. As I had observed the other day, and the statement was not challenged by my Hon'ble friend the Home Member, that whereas the number of detenus this time last year was about one thousand, there are now less than four hundred. That is to say the condition of Bengal has so far improved that the Government has felt that it is in a position to release nearly 2-3rds of the number of the detenus, and not only that, but the conditions of their confinement have been very materially improved and relaxed; and the question has been asked in this Council in the course of the debate to which we have been listening, what may be the causes of this improvement? Here, again, we have got two versions. The popular version is that the Reforms scheme and the policy of the Government have had a large share in the process of tranquillising. My Hon'ble friend Mr. Chanda the other day read out a letter, I think from a person in confinement in the Andamans, a revolutionary. He distinctly said—and these revolutionaries are not in the habit of dissembling their ideas and convictions—that the Reform proposals with which the honoured name of your Excellency will for ever be associated, have had a mollifying effect on the situation. I have not the slightest doubt that this conciliatory policy has had an excellent effect, but whatever it may be, whether it be the policy of conciliation or whether it be the policy of coercion, or whether it be the joint operation of these two policies, the improvement is there and no one can question or gainsay that that is the common ground upon which we and the authorities take our stand. Let us apply that as a test by which to judge of this Bill. If the condition of Bengal is good, if the condition of Bengal has improved and is fairly satisfactory, is there any justification for this Bill or at any rate for this Part of the Bill, which admittedly is the most objectionable? Bengal is the greatest sinner in this matter, the Punjab occupies the next place. Well that being so, I think the position of Bengal is a crucial consideration in this matter.

“The circumstances have changed, and therefore the recommendations of the Rowlatt Committee do not maintain the same ground as they did last year. And if that be so, I maintain that a law largely based upon these recommendations ought not to be accepted by this Council. My Lord, I am quite sure if there was any danger, any real menace to the State, this Council would be unanimous in supporting any proposal, any law that you might think fit to enact. The safety of the State is the supremest of all considerations, *salus civitatis suprema lex*. But the safety of the State is not the consideration here, the safety of the State is not involved here, therefore, your drastic provision is altogether out of proportion to the requirements of the situation, and it may do harm, it is bound to do harm, creating an atmosphere of uneasiness and excitement. It has already produced an atmosphere of conflict and controversy; it has already generated a large measure of alarm, anxiety and apprehension in the public mind. Is it desirable, is it expedient, ought not the Council to pause and hesitate before it enacts this Bill into law? My Lord, this Council has never shown the smallest hesitation in enacting such laws as you thought necessary for the ends of the administration, for the pacification and the tranquillising of the country. You passed the Seditious Meetings Act in 1910; you passed the Press Act; you passed the Criminal Law (Amendment) Act, you passed the Defence of India Act, was there any serious opposition in this Council on those occasions similar to the one which you are now witnessing? Is it not unique, is it not something which had never happened in the history of this country? Have you ever had such a large number of amendments, about 187 or so? Was there a midnight sitting, members going to sleep on the benches? It was a unique thing which never happened in the history of this Council, and you are enacting this measure in a half somnolent condition. What will the country say to it? I believe it will add to the anxieties, to the fears and the excitement it has already produced. Therefore, my Lord, having regard

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to the volume of opposition that has been awakened and to the fact that such opposition is unique in the history of this Legislative Council, and having regard to the fact that there is really no necessity for a drastic piece of legislation of this kind, and in view of the altered conditions of Bengal, I do implore your Excellency's Government to reconsider the situation and to give up at least this Part which seems to be the most offending part of this Bill."

**The Hon'ble Sirdar Sundar Singh Majithia:**—"My Lord, I do 12.55 P.M. not want to express any opinion on the provisions of Part II of the Bill, but what I am concerned at present is, about certain remarks which fell from my Hon'ble friend Sir Verney Lovett about the members of my community who had returned from Canada and who, I am sorry to say, had been led astray by clever persons under the grievances and the hardships and suffering they had to undergo in their self-sought exile from their country, of being separated from their families and kith and kin by the laws of that country. It is no wonder then, that smarting under these grievances they were easily misled from their established traditions. My community, my Lord, has met with a merited measure of praise from the Rowlatt Committee, who in paragraph 137 say that in the Punjab 'the most martial section is the Sikh which, during the present war with less than one-hundredth of the population, has supplied about one-sixth of the fighting forces of the Indian Empire.' The services of my community from the time of their connection with the British are proof positive of what this small, though important, community has done in the past. The various fields of battle red with the blood of the community is a living testimony and will ever remain so of the loyalty of a community to which I have the honour to belong. You can, therefore, imagine, my Lord, how grieved I am at the allusion that the Sikh *Ghadr* conspirators were concerned in the troublesome times in my province. My friend forgets that many of these people had totally estranged themselves from the Sikh religion and ideals of the community. The Rowlatt Committee admits these Sikh conspirators to be 'ignorant peasants who have been misled by Har Dayal' who by the way has now turned a new page in his life and become a Home Ruler. No wonder then that these ignorant people were misled by clever people who wanted to serve their own ends and who played upon the real grievances of these simple persons. But what do we find further in the report? A deputation of the leading Sikhs came forward to assist the authorities to deal with their kith and kin, and in paragraph 142 of their Report, the Rowlatt Committee say:—

'On the 31st January 1916, the Punjab Government wrote: 'The returned emigrants among the Sikhs are reported to be settling down, and the feeling among the Sikhs generally is reported to be more satisfactory than at any time for some years. The gallant behaviour of Sikh regiments at the front has done much to restore *amour propre* of the community which was apprehensive that its good name would suffer from the crimes of the returned emigrants. . . .''

**The Hon'ble Mr. K. V. Rangaswamy Ayyangar:**—"I beg to rise to a point of order. May I know, your Excellency, if there is any connection of all this with the amendment before the Council?"

**His Excellency the President:**—"Yes, I am waiting to hear what it has got to do with the amendment."

**The Hon'ble Sir Verney Lovett:**—"I merely wish to make a personal explanation. All I wished to say was that I merely referred to the Sikh conspirators of the *Ghadr* party who joined the attempt of a secret outbreak in 1915. No one is more desirous than I am of doing entire justice to the splendid loyalty and spirit of the Sikh community as a body."

**The Hon'ble Sirdar Sundar Singh Majithia:**—"My point, my Lord, is simply this, that many of these people were not Sikhs at all."

[The President; Mr. V. J. Patel; Sir William Vincent; Mr. Kamini Kumar Chanda.] [14TH MARCH, 1919.]

**His Excellency the President:**—"Yes, but the Hon'ble Member must adhere to the amendment before the Council. He is now entirely off the amendment."

**The Hon'ble Mr. V. J. Patel:**—"I have nothing more to add, my Lord."

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

<i>Ayes—21.</i>		<i>Noes—35.</i>	
The Hon'ble	Sir Gangadhar Chitnavis.	His Excellency the	Commander-in-Chief.
" "	Mr. S. N. Banerjee.	The Hon'ble	Sir Claude Hill.
" "	Raja of Mahmudabad.	" "	Sir Sankaran Nair.
" "	Dr. T. B. Sapru.	" "	Sir George Lowndes.
" "	Pandit Madan Mohan Malaviya.	" "	Sir Thomas Holland.
" "	Mr. S. Sastri.	" "	Sir William Vincent.
" "	Mr. B. Ayyangar.	" "	Sir James Meston.
" "	Mr. B. N. Sarma.	" "	Sir Arthur Anderson
" "	Mir Asad Ali, Khan Bahadur.	" "	Sir Verney Lovett.
" "	Sir Dinsbaw Waoha.	" "	Mr. H. F. Howard.
" "	Mr. V. J. Patel.	" "	Sir James DuBoulay.
" "	Mr. M. A. Jinnah.	" "	Mr. A. H. Ley.
" "	Sir Fazulbhoj Currimbhoy.	" "	Mr. W. M. Hailey.
" "	Rai Sitanath Ray Bahadur.	" "	Mr. H. Sharp.
" "	Maharaja Sir M. C. Nandi.	" "	Mr. R. A. Mant.
" "	Rai Krishna Sahay Bahadur.	" "	Maj-Genl. Sir Alfred Bingley.
" "	Raja of Kanika.	" "	Sir Godfrey Fell.
" "	Khan Bahadur Mian Muhammad Shafi.	" "	Mr. F. C. Rose.
" "	Mr. G. S. Khaparde.	" "	Mr. C. H. Kesteven.
" "	Rai B. D. Shukul Bahadur.	" "	Mr. D. de S. Bray.
" "	Mr. K. K. Chanda.	" "	Lieut.-Colonel R. E. Holland.
		" "	Surg.-General W. R. Edwards.
		" "	Mr. G. B. Clarke.
		" "	Mr. H. Moncrieff Smith.
		" "	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."

The amendment was therefore negatived.

[At this stage the Council adjourned for Lunch till 2-15 P.M.]

2-15 P.M.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 20, as amended by the Select Committee, stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move that in clause 20 for the words 'in Council' the words 'with the consent of the Legislative Council of India' be substituted.



[14TH MARCH, 1919.] [ *Mr. Kamini Kumar Chanda ; Mr. V. J. Patel ;  
Mr. G. S. Khaparde ; Sir William Vincent ;  
The President ; Rai Bahadur B. D. Shukul.* ]

"I will not make any speech, my Lord. This matter was argued yesterday. The point we contend for is, that under the peculiar circumstances of this measure, it is desirable that the Governor General should receive the consent of this Legislative Council before a notification is issued under this section.

I beg to move this amendment."

**The Hon'ble Mr. V. J. Patel** :—"My Lord, as I have an amend-<sup>2-17 P.M.</sup>ment, I rise to support the amendment of my Hon'ble friend Mr. Chanda and merely desire to add this that, whatever may be said for not taking the sanction of the Legislative Council with regard to the provisions of Part I before issuing a notification, there is a good deal to be said in favour of taking such sanction in connection with Part II, because under Part I a man is to be put on his trial before a special tribunal. Under Part II, however, there is no such thing. It is necessary, therefore, that the representatives of the people should be given an opportunity of expressing their opinion on the question whether a notification under the provisions of Part II should issue or not."

**The Hon'ble Mr. G. S. Khaparde** :—"My Lord, I have got an amendment of the same kind. The reasons have been given by Hon'ble speakers already, so I do not propose to repeat them."

**The Hon'ble Sir William Vincent** :—"My Lord, I dealt with this question at some length yesterday, and I do not propose to repeat what I said then ; but, for the reasons given in the case of the previous amendments, which apply equally to this one, I must oppose the amendment."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I have nothing more to add, my Lord."

The motion was put and negatived.

**His Excellency the President** :—"I think, Mr. Patel, you do not

\* That in clause 20 after the words 'he wish to press your amendment,'\* may the words 'with the previous approval of the Indian Legislative Council' be inserted.

**The Hon'ble Mr. V. J. Patel** :—"No, I do not."

**His Excellency the President** :—"Nor you, Mr. Khaparde ?"

\* That in clause 20 after the words 'he may' the words 'with the concurrence of the Indian Legislative Council' be inserted.

**The Hon'ble Mr. G. S. Khaparde** :—"No, my Lord."

**The Hon'ble Rai Bahadur B. D. Shukul** :—"Your Excel-<sup>2-19 P.M.</sup>lency, before I move this amendment formally, I beg to point out that I have made an omission in the second part of the amendment. Will your Lordship allow me to have it corrected ?"

**His Excellency the President** :—"What are you referring to ?"

**The Hon'ble Rai Bahadur B. D. Shukul** :—"The second part of the amendment reads :—

'If within the period of 14 days after the notification has been laid before the Indian Legislative Council, and a Resolution is carried by the Council, then, etc.'

"Between the words 'Council' and 'then', there ought to have been the words 'that such a notification shall not continue in force'.

"This is an omission : I cannot say whether it is due to a slip of the pen or a mistake in printing, but it is a clerical error after all."

[ *Sir William Vincent; The President; Rai Bahadur B. D. Shukul.* ] [ 14TH MARCH, 1919. ]

**The Hon'ble Sir William Vincent:**—"My Lord, I am informed that the amendment in the Agenda is exactly as proposed by the Hon'ble Member."

**His Excellency the President:**—"Do you raise any objection?"

**The Hon'ble Sir William Vincent:**—"I am afraid I cannot hear the Hon'ble Member."

**His Excellency the President:**—"I understand you wish to put in certain words?"

**The Hon'ble Rai Bahadur B. D. Shukul:**—"Yes, my Lord. I wish to put in these words 'that such a notification shall not continue in force' between the words 'carried by the Council' and 'then.' Without these words the clause will not be complete."

**His Excellency the President:**—"He means 'and a Resolution is carried by the Council that such a notification shall not continue in force, then such notification shall not continue in force, etc.' Go on, Mr. Shukul."

**The Hon'ble Rai Bahadur B. D. Shukul:**—"My Lord, I beg to move the following amendment:—

'That to clause 20 the following proviso be added:—

'Provided that such notification shall be laid before the Indian Legislative Council within seven days after the making thereof if the said Council is then sitting and if not sitting, within seven days after the next meeting of the Indian Legislative Council. If within the period of 14 days after the notification has been laid before the Indian Legislative Council and a Resolution is carried by the Council that such notification shall not continue in force, then such notification shall not continue in force, but shall be deemed to have expired. When such notification expires the powers conferred by this Act shall cease to be in force.'

"My Lord, it is not concealed from you what alarm this Bill has created in the country, and particularly Part II. My Hon'ble friends, the previous speakers, have already pointed this out, and it was for these reasons that they asked for the deletion of this Part. The next best was asked for by my Hon'ble friends Messrs. Khaparde and Patel, but this also has not been conceded. This is the third best that I am now asking for

"My Lord, the object of this amendment is practically the same as that of the amendment just moved by my Hon'ble friends Messrs. Patel and Khaparde, and I fully associate myself with all that they have said on the subject, particularly as regards the probable danger of giving the Executive an altogether free hand in a matter so serious and delicate as this. My Lord, Part II contains provisions of a very drastic nature. Thereby we are substituting an executive inquiry for a judicial trial, and further arming the executive with extraordinary powers to take away the rights and liberties of the people. The interest of the whole country as also of Government demands that such an action of the Executive Government should be scrutinised and adequate safeguards imposed upon their action especially in a matter which involves the abrogation of all the accepted principles of British law and justice.

"It is a sound maxim of politics as enunciated by Lord Macaulay, that eminent English Jurist, that 'since we cannot, without the risk of evil from which the imagination recoils, employ physical force as a check on misgovernment, it is evidently our wisdom to keep all the constitutional checks on misgovernment in the highest state of efficiency to watch with jealousy the first beginning of encroachment and never to suffer irregularities even when harmless in themselves to pass unchallenged lest they acquire the force of precedents.' It is, my Lord, such a constitutional check upon the executive action of the Government that I wish to be imposed. I do not ask the Government to accept any novel principle of law or practice; rather, I urge upon them to bring the provisions of this law into conformity with the law and

[14TH MARCH, 1919.] [Rai Bahadur B. D. Shukul; Rao Bahadur B. N. Sarma.]

practice as obtaining in the United Kingdom and Ireland. The provision which I want to be inserted in this section already finds place in the Criminal Law and Procedure (Ireland) Act, 1897 (50 and 51 Vict., ch. 20) in clause 6 which reads thus :

‘(2) A copy of every special proclamation shall be laid before each House of Parliament within seven days after the making thereof, if Parliament is then sitting and if not, within seven days after the next meeting of Parliament.’

“It also provides that—

‘(5) When a special proclamation expires or is revoked, the powers conferred by the seventh section of this Act shall for the time being cease to be in force in respect of the association or associations as to which such special proclamation has expired or been revoked, etc., etc.’

“Well, my Lord, if such is the law in Ireland why should not a similar provision be made here in this Act? My suggestion would not cause any inconvenience to the executive, as the executive will be quite at liberty to take action under this section should a case of emergency arise, even without any previous reference to the Legislative Council, but what I am very particular about is that the executive should be under an obligation to submit their proposals and notification to the Legislative Council. The matter, my Lord, is so serious, so grave, so disquieting, involving as it does a question of life and death to the people, that it is but proper that their accredited representatives, your Councillors, should have an opportunity of discussing the *pros* and *cons* of the whole question and be convinced of the necessity of the extraordinary legislation you deem necessary in order to meet extraordinary circumstances. My Lord, you should not be suspicious of the non-official members of your Council at least that they will not support you in the nick of time. The past record of this Council should encourage you, I think, to have confidence in us. During the war time whatever stringent and repressive measures you proposed, they received our unanimous consent and support, and on no previous occasion have the non-official members of this Council failed you at any critical moment. It is only a few months back that you asked us to vote for 45 millions of the war expenditure and left the decision to us, and what was the result? We approved of it and did so against the wishes of the people of the country and with the full knowledge that a poor country like India could but ill-afford to incur that huge expenditure. So, my Lord, you have no reason to be nervous on that account. Have confidence in your Legislative Council and take it from me, my Lord, that the Council will not fail you. Rather by enlisting public opinion on your side you will be strengthening your own hands, and the operation of the Act will be very much facilitated. Certainly it would be a distinct advantage to the executive Government if their action were confirmed by the Legislative Council, as they would then have the support of the representative opinion of the people at their back.

“With these words, my Lord, I move this amendment and hope it will be accepted.”

The motion was put and negatived.

**The Hon'ble Rao Bahadur B. N. Sarma :—**“My Lord, I have fully discussed already both yesterday and this morning my reasons in support of this amendment, which I beg to formally move. 2-30 P.M.

“That to clause 20 the following provisos be added :—

‘Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made an opportunity of expressing its opinion by a Resolution passed on the subject.

‘Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a Resolution passed by three-fifths of the members of either of the said Councils.’

[ *Eao Bahadur B. N. Sarmu ; Mr. V. J. Patel ;* [ 14TH MARCH, 1910. ]  
*Mr. Kamini Kumar Chanda ; The President.* ]

“This is a preventive measure, where the scheduled offences are not yet prevalent, the amendment is suggested to ensure that the people should have due warning and that the Council should have an opportunity of expressing its opinion. I believe I need add no further argument in support of my amendment.”

The motion was put and negatived.

2-31 P.M.

**The Hon'ble Mr. V. J. Patel:**—“My Lord, I beg to move—

‘That in clause 20 for the words ‘scheduled offences’ the words ‘offences against the State’ be substituted.’

“The amended clause would read thus:—

‘If the Governor General in Council is satisfied that anarchical or revolutionary 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, etc. etc.’

“My Lord, in the Bill as introduced in this Council, clause 20 contained the words ‘offences against the State.’ The offences against the State are 10 or 11 in number according to the Indian Penal Code. The scheduled offences, my Lord, are numerous. This change has been made by the Select Committee. We have been told times out of number that the Select Committee have made several alterations in the Bill as it stood when introduced. I grant that they did make several alterations in the Bill; but I contend, my Lord, that all those amendments are on non-essentials. The only amendment on any important point is the one that we are now considering.

“It is a boon that comes to the country from the Select Committee, call it a concession if you like; and I on behalf of the country respectfully decline to accept that boon or that concession. I say, please put us back where we were when the Bill was introduced, and we shall be thankful to the Select Committee and your Excellency's Government and this Council too.”

2-35 P.M.

**The Hon'ble Mr. Kamini Kumar Chanda:**—“My Lord, I have got the same thing in slightly different language, and think that if my Hon'ble friend, Mr Patel, will just consider the point he will see that the words in my amendment ought to be accepted in preference to his amendment. My amendment is:—

‘That in clause 20 for the words ‘scheduled offences’ the words ‘offences under Chapter VI (other than an offence under section 124-A) and sections 131 and 132 of the Indian Penal Code’ be substituted.’

“My Lord, ‘scheduled offences’ occurs in the original Bill in this clause and my Hon'ble friend evidently wants this reinstated; but there is another thing; when this term found place in this clause in the original Bill there was the definition of ‘scheduled offence’ given in clause 1 where we find that scheduled offence is ‘Any offence under Chapter VI (i.e., including 124-A) and sections 131 and 132 of the Indian Penal Code.’ But in revising this Bill the Select Committee have omitted the definition of scheduled offences, and in the list of scheduled offences they have inserted about 50 offences as I described it the day before yesterday. Under these circumstances, by reason of the fact that a new definition of scheduled offences has been inserted in the Bill, it will be necessary to adopt the definition which I have suggested in my amendment in place of ‘scheduled offences’ of my Hon'ble friend, Mr. Patel. With these remarks, I move my amendment.”

**His Excellency the President:**—“Do you accept it, Mr. Patel?”

**The Hon'ble Mr. V. J. Patel:**—“I have no objection, my Lord, to accepting it.”

**His Excellency the President:**—“Do you withdraw your amendment in favour of Mr. Chanda?”

[ 14TH MARCH, 1919. ] [ *Mr. V. J. Patel; Sir William Vincent; Mr. Kamini Kumar Chanda; The President.* ]

**The Hon'ble Mr. V. J. Patel:**—" I would rather move the amended amendment."

The Hon'ble Mr. Chanda's amendment was put and negatived.

The motion that clause 20 as amended by the Select Committee stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—" My Lord, I move that clause 21 as amended by the Select Committee stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—" May I draw your Lordship's attention to No. 95? It is really a part of this amendment, and I think it ought to go with it. No. 88 deals with the whole clause and 95 with one part of it."

**His Excellency the President:**—" Do you wish to reserve your remarks on this amendment till you come to 95?"

**The Hon'ble Mr. Kamini Kumar Chanda:**—" I want to move these together. It is the same clause; I do not know how this came to be separated from the other."

**His Excellency the President:**—" I do not know whether any embarrassment will be caused by putting these two amendments together."

**The Hon'ble Mr. Kamini Kumar Chanda:**—" I think it will remove embarrassment."

**His Excellency the President:**—" Well, you must take it upon your own head."

**The Hon'ble Mr. Kamini Kumar Chanda:**—" My Lord, then 2-50 P.M.  
I move this amendment:—

'That in clause 21 (1) for the words 'by order in writing containing a declaration to that effect give all or any of the following directions, namely, that such persons' the following words be substituted:—

'Either itself or through any officer authorised in that behalf apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (a) or in clauses (b) to (e) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further materials if any which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute.

'(a) And in the same clause—for the word 'shall' in sub-clause (a) the words 'to execute' be substituted and the word 'execute' be deleted.

'(b) For the word 'shall' in sub-clauses (b) to (e) when that word occurs for the first time the word 'to' be substituted.

'(c) In sub-clause (d) the words 'in the opinion of the Local Government' be deleted and the word 'reasonably' be inserted before the word 'calculated'.

'That in clause 21 (1) for the words 'give all' the words 'give the directions in clause (a)' and for the words 'following directions' the word 'directions' in clauses (b) to (e) be substituted.'

"If these amendments are incorporated in the clause, my Lord, it will read like this:—

'21 (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may either itself or through any officer authorised in that behalf, apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (a)

[ *Mr. Kamini Kumar Chanda; Rao Bahadur* [14TH MARCH, 1919.]  
*B. N. Sarma.* ]

or in clauses (b) to (e) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further materials, if any, which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute.

- (a) to execute within such period as may be specified in the order a bond with or without sureties undertaking, for such period not exceeding one year as may be so specified, that he will not commit, or attempt or conspire to commit, or abet the commission of, any offence against any provision of the law which is referred to in the Schedule;
  - (b) to notify his residence and any change of residence to such authority as may be so specified;
  - (c) to 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) to abstain from any act so specified which is reasonably calculated to disturb the public peace or is prejudicial to the public safety; and
  - (e) to report himself to the officer in charge of the police-station nearest to his residence at such periods as may be so specified.'

"My Lord, I shall confess at once that the object of this amendment is to destroy the principle of the Bill. My object is to take away the machinery by which you propose to arm the executive with powers of the judiciary to punish a man yourself and then call upon an investigating authority to inquire into the matter. I need not dilate upon this at any length; it has been more than once dilated upon. My object, my Lord, is to maintain, to establish permanently the British tone of administration of justice, not of the administration—that is a phrase I do not understand, it is unintelligible to me as I said in the evidence before the Royal Commission—but I wish to maintain the British tone of administration of justice.

"I said in my evidence before the Commission that we wish to maintain the British tone of justice, and my amendment is drawn up with that object. This clause is designed to arm the executive with power. It says:—

- '(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,
- (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 officer in charge of the police-station nearest to his residence at such periods as may be so specified.'

"Now, my Lord, I maintain that the circumstances have changed from what they were formerly. I put it to the Council, are the recommendations which might have been suitable twelve months ago suitable now? The circumstances which gave rise to the law have changed and therefore the recommendations of the Committee do not maintain their same force, to put it as low as that, as they did last year. Then there is a point which seems to have inadvertently come in. You say in clause 21 'where in the opinion of the Local Government . . . the Local Government may by order in writing containing a declaration to that effect give all or any of the following directions:—(a) (b) (c) (d) and (e).' Now the man will come under the orders from (b) to (e), then what is the necessity of the order under (a)? I do not think I need say more on the point."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I think it would be convenient at this stage if we could clearly understand whether there is any chance of Government accepting the principles upon which a number of our amendments are based. It will be time enough to discuss them if the principles

[ 14TH MARCH, 1919. ] [ *Rao Bahadur B. N. Sarma; Sir William Vincent; Mr. V. J. Patel; Sir George Lowndes.* ]

are accepted. I take it, my Lord, that the first part of this amendment deals with the question as to whether an investigation should precede the *interim* order of the Government or succeed it. It is the first part of the amendment. A large number of us are of opinion that it would be safer and in consonance with the expediency of the matter if the Government armed themselves with the opinion of the investigating authority before it passed an order of its own on the subject. The accused person would be prejudiced to a certain extent by reason of the *interim* order of such an authoritative body as the Local Government. Practically the same materials which the Government has in its possession upon which to pass its orders will be placed before the investigating authority; therefore it will be a mere repetition of the procedure adopted with reference to the Rowlatt Committee. The Government had certain materials on hand; they had the opinions of the Local Government . . . .

**The Hon'ble Sir William Vincent:**—" May I rise to make a 2-54 P.M. personal explanation? The Hon'ble Member said it would be helpful if I gave certain information. I am prepared to accept an amendment on the lines of the Hon'ble Mr. Sastri's amendment No. 89, it corresponds very nearly with the Hon'ble Mr. Patel's amendment No. 90 and provides that the Local Government before making a preliminary order should lay the papers before a judicial officer. I may say, however, that we do not propose to convert the investigating authority into a judicial authority."

**The Hon'ble Mr. V. J. Patel:**—" My amendment is similar to the Hon'ble Mr. Sastri's. Will the Hon'ble the Home Member say if he has any objection to have mine instead of Mr. Sastri's?"

**The Hon'ble Sir William Vincent:**—" I have accepted Mr. Sastri's; it is the one that seemed most suitable."

**The Hon'ble Rao Bahadur B. N. Sarma:**—" May we still suggest that the Government should be pleased to consider whether they will act on the recommendations of the investigating authority? I am suggesting that it may be inconvenient to the investigating authority as well as to the accused person to have two decisions against him instead of one as is proposed in the Bill. The Local Government would place the materials before the Sessions Judge or an officer of that standing. The only object served thereby would be to weigh the evidence and matters of that description. I take it that the Local Government would have many officers who are accustomed to weigh evidence and who know as much law as an ordinary Sessions Judge. There is also the difficulty that the learned Sessions Judge would have only an *ex-parte* statement made before him and not the materials furnished by both sides and, therefore, ordinarily he would arrive at practically the same conclusion as the Local Government, that is the Local Government would be fortified by the previous recommendation of the Sessions Judge."

**The Hon'ble Sir William Vincent:**—" I was asked by the Hon'ble Member to give an explanation on a point, and when I do so he proceeds to base his arguments on an amendment which has not yet been moved." William

**The Hon'ble Rao Bahadur B. N. Sarma:**—" I am only asking the Hon'ble the Home Member to consider whether it is possible to extend the concession further, and instead of taking the opinion of the Sessions Judge, we think the Government might take the opinion of the investigating authority."

**The Hon'ble Sir George Lowndes:**—" The Hon'ble Member is not entitled to speak on an amendment which is not before the Council. The amendment before the Council is that moved by the Hon'ble Mr. Chanda."

[*Rao Bahadur B. N. Sarma ; Khan Bahadur Mian Muhammad Shafi.*] [14TH MARCH, 1919.]

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I shall confine myself to the point. It really is whether any advice is to be taken by the Local Government prior to passing its order. That is one point, the other is whose advice is to be taken? I say that previous advice should be taken before an order is passed by the Local Government. I ask for the acceptance of that principle. I go further and say that the principle would be practically nugatory unless it be the opinion of a person who can weigh the materials on both sides and then come to a decision and advise the Government as to what is to be done. I do not want a double procedure and a triple procedure merely lengthening the proceedings and doing no good to anybody. I want a simple procedure, a practicable procedure, a speedy procedure, a procedure that is likely to attain the objects which we have in view. Go straight to some authority, get as speedy a trial as possible, let the Local Government make up its mind and let the decision be final for the purposes of this Court and I can understand it: I therefore request that that principle which is embodied in the first part of the Hon'ble Mr. Chanda's amendment may be accepted."

2-56 P.M.

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, I would advise my friend, Mr. Chanda, to withdraw his amendment in favour of the amendment which stands in the name of my Hon'ble friend, Mr. Sastri, and my reason is a very simple one. The idea embodied in the Hon'ble Mr. Chanda's amendment was very carefully considered by some of us at the time when the Hon'ble Mr. Sastri's amendment was drafted, and of the two courses proposed, one by Mr. Chanda and the other by Mr. Sastri, the one proposed by Mr. Sastri was preferred for a very obvious reason to that which the Hon'ble Mr. Chanda proposes, that before action is taken under Part II, the Local Government shall move the investigating authority to pass, so to speak, an *ad interim* order before the final inquiry is held and the order is passed. Now the danger of this procedure is an obvious one. If the Local Government places all the material in its possession before the investigating authority, and the investigating authority after careful consideration of those materials passes an *ad interim* order, it may to a certain extent have prejudged the accused person who is to be dealt with under Part II. While if the course suggested by Mr. Sastri is adopted, the Local Government will place the material in its possession before the District and Sessions Judge and take his opinion thereon, and after having taken his opinion it will pass an *ad interim* order. So that in resorting to the procedure suggested by Mr. Sastri the person to be proceeded against is in no way prejudged so far as his ultimate enquiry into the case by the investigating authority is concerned, and I am sure that my Hon'ble friend will see that it is far better that the case should be placed before the investigating authority without the investigating authority having any preconceived ideas whatsoever with regard to his case rather than they should prejudice him before dealing with it. And I would also request my friend, Mr. Patel, to withdraw his amendment in favour of that of the Hon'ble Mr. Sastri for a very simple reason. He would make the action of the Local Government depend on the previous approval of the District and Sessions Judge of the district. Now the District and Sessions Judge of the district to which the person concerned may belong obviously is in touch with the local atmosphere which may possibly, I say possibly, prejudice his case. There is the danger of the District and Sessions Judge knowing something about his case before he gives an opinion on the requisition of the Local Government. Therefore it is far better that the Local Government may, if it thinks fit, be in a position to consult the District and Sessions Judge other than the district judge of the place to which the accused person may belong, than that the Local Government should by Statute be compelled to consult only the district judge of the district in which the accused person resides. I hope my Hon'ble friend, Mr. Chanda, will, on consideration of the point I have placed before him, withdraw his amendment in favour of the Hon'ble Mr. Sastri's amendment."

belong



[14TH MARCH, 1919.] [Mr. V. J. Patel; The President; Mr. Kamini Kumar Chanda; Mr. Srinivasa Sastri.]

**The Hon'ble Mr. V. J. Patel:**—"My Lord, as a reference has been made to my amendment by the Hon'ble Mr. Shafi . . . . ."

**His Excellency the President:**—"Wait a minute, Mr. Patel. I was wrong in allowing Mr. Shafi to refer to your amendment. I think it will be time when we come to your amendment. At the present moment we are on Mr. Chanda's amendment."

"Now, Mr. Chanda, you can go on."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, with <sup>8-1 P.M.</sup> all respect to my Hon'ble friend, Mr. Shafi, I find it difficult to accept his suggestion for this reason. While the Hon'ble the Home Member looks upon the right of the executive to assume powers of the judiciary as the frame-work of its machinery, I look upon it as a principle to see that the executive will in no way assume the powers and functions of the judiciary. With regard to the suggestion of my Hon'ble friend, Mr. Shafi, that if the matter is placed before the investigating authority in the first instance it would be to the disadvantage of the accused, as the investigating authority will have formed an opinion and that will prejudice the accused person, my answer is that it is not so. This is the practice which obtains in regard to complaints before Magistrates. The Magistrate after hearing the story of the complainant, if he thinks fit, issues a process against the accused, and this fact does not certainly prejudice the case of the accused, because it is only after hearing both sides that the Magistrate forms his judgment. For these reasons I am sorry I cannot accept the suggestion of my Hon'ble friend, Mr. Shafi."

**His Excellency the President:**—"The question is that the following amendment be made in the Bill :—"

'That in clause 21 (1) for the words 'by order in writing containing a declaration to that effect give all or any of the following directions, namely: that such persons' the following words be substituted :—

'Either itself or through any officer authorised in that behalf apply to the investigating authority hereinafter mentioned having jurisdiction in the area concerned for an order giving directions specified either in clause (a) or in clauses (b) to (e) or in any one of those clauses against any person, and such investigating authority after taking such application into consideration and such other or further particulars if any which it may call for may pass an order either calling upon such person to show cause within a certain time named by it why he should not carry out such directions or pass an order calling upon him provisionally to carry out such direction or directions and show cause why such order should not be made absolute.

(a) And in the same clause for the word 'shall' in sub-clause (a) the words 'to execute' be substituted and the word 'execute' be deleted.

(b) For the word 'shall' in sub-clauses (b) to (e) when that word occurs for the first time the word 'to' be substituted.

(c) In sub-clause (d) the words 'in the opinion of the Local Government' be deleted and the word 'reasonably' be inserted before the word 'calculated.'

For the words 'give all' the words 'give the directions in clause (a)' and for the words 'following directions' the words 'directions in clauses (b) to (e)' be substituted.'

The motion was put and negatived.

**The Hon'ble Mr. Srinivasa Sastri:**—"My Lord, I move the <sup>8-3 P.M.</sup> amendment that stands in my name—

'That in clause 21 (1) for the words 'may by order in writing containing a declaration to that effect' the following words be substituted :—

'Shall place all the materials in its possession relating to his case before a judicial officer not below the rank of a District and Sessions Judge and take his opinion thereon. After considering such opinion, the Local Government, if it is satisfied that such action is necessary, may, by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 20.'

[*Mr. Srinivasa Sastri; Sir William Vincent; [14TH MARCH, 1919.]*  
*The President; Mr. V. J. Patel; Rai Bahadur B. D. Shukul.*]

"I do not think it is necessary to read it. The Hon'ble Mr. Shaft in speaking to the former amendment has explained fully the purpose of my amendment, and as I understand the Hon'ble the Home Member is willing to accept its principle and has carefully put it in improved language, I think I need do nothing more than place it before the Council".

8-5 P.M.

**The Hon'ble Sir William Vincent:**—"My Lord, I am prepared to accept the substance of this amendment. I suggest an altered form so as to make the officer before whom the papers are laid a judge of somewhat higher status. The amendment, if the Hon'ble Member would accept the modified form, would run thus:—

'May place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to the High Court and take his opinion thereon.'

"That is, the officer must not only be a judge but one who has served as such for three years. I am unable to accept the exact term 'District and Sessions Judge' for the reason that the headquarters of the Local Governments of three Presidencies at least are situated in places where there are no District and Sessions Judges. I have therefore taken a judicial officer of three years' standing. I hope that will meet the Hon'ble Member."

**His Excellency the President:**—"Mr. Patel, do you wish to make any remarks?"

**The Hon'ble Mr. V. J. Patel:**—"My amendment is quite different, your Excellency."

The following motion was put and agreed to:—

"That in clause 21(1) for the words 'may by order in writing containing a declaration to that effect' the following words be substituted:—

'May place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to the High Court and take his opinion thereon. After considering such opinion, the Local Government, if it is satisfied that such action is necessary, may, by order in writing containing a declaration to the effect that such person is or has been actively concerned in such area in any movement of the nature referred to in section 20.'"

8-9 P.M.

**The Hon'ble Mr. V. J. Patel:**—"Your Excellency, I beg to move that in clause 21(1) after the words 'the Local Government may' the words 'with the previous approval of the District and Sessions Judge of the district' be added. As the previous amendment has been accepted by Government, I do not think it would be possible for Government, even if they are willing, to accept this amendment. The point I wanted to make really is this. If you are going to take the opinion of a judicial officer who is qualified to be appointed as a High Court Judge, I ask you whether you will not consent to be bound to accept that opinion? I say it is no use taking the opinion of a judicial officer of that standing if you are not prepared to accept that opinion. I therefore move the amendment and trust the Council will consider it."

**The Hon'ble Sir William Vincent:**—"My Lord, in view of what has already taken place over Mr. Sastri's amendment, it is obviously impossible that the Government should accept the present one of Mr. Patel's."

The motion was put and negatived.

8-9 P.M.

**The Hon'ble Rai Bahadur B. D. Shukul:**—"My Lord, I beg to move that in clause 21(1) after the words 'declaration to that effect' the following words be inserted:—

'Lay information before a Magistrate of the first class having jurisdiction in the area and the said Magistrate may on being satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security.'

[ 14TH MARCH, 1919. ]

[ *Rai Bahadur B. D. Shukul; Rao Bahadur B. N. Sarma.* ]

“ Clause 21, sub-clause (1) will then read thus :—

‘ (1) Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in such area in any movement of the nature referred to in section 20, the Local Government may lay information before a Magistrate of the first class having jurisdiction in the area and the said Magistrate may, if satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security.’

“ My Lord, so far as the first portion of my amendment is concerned, the principle involved in it has already been accepted by the Government. Now what I have asked for is only that if the Local Government finds that there are reasonable grounds to proceed against any person under this section, the matter should be referred to a 1st Class Magistrate and should be entirely left to him for disposal. My Lord, the principle that an inquiry under the orders of the Executive Government should merely supplement and not supplant the judicial inquiry has been thoroughly discussed, and I will not dwell on the point any further. If my suggestion is accepted, it will simplify the procedure and will be in strict accordance with the spirit of the law.”

The motion was put and negatived.

**The Hon'ble Rao Bahadur B. N. Sarma:**—“ My Lord, I beg 3-11 P.M. to move that in clause 21 (1) after the word ‘bond’ in sub-clause (a) the words ‘in such amounts as may be prescribed’ be inserted and sub-clauses (c) and (e) be deleted.

“ I ask specifically that the Local Government may prescribe the amounts in which the bond should be executed so that there may be no doubt on the point. I find on referring to clause 81 (1) that the rule-making power gives the Local Government power to prescribe the authorities before whom and the manner in which the bond under this Part shall be executed. I think there would be some difficulty as to the amounts in which bonds should be executed, and I think it would be better if the Local Government when it issues an *interim* order, asking an accused person to execute a bond, prescribe clearly the amount in which such bond should be executed. That is the first Part. Then, my Lord, I lay special emphasis upon the deletion of clause (c). The Government is to be empowered, in passing an *interim* order, to ask that a person ‘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.’

“ I have already alluded to the fact that Part II relates to a less serious state of circumstances where there is no large prevalence of crime connected with revolutionary or anarchical movements, and we are now dealing with *interim* orders. I would respectfully submit that it would be extremely inconvenient if the Government should pass any orders before the investigating authority of the place makes its recommendations. If a person is to be sent away, say from Madras to Assam under this *interim* order, it would be rather difficult for him to conduct his proceedings under clause 25 before the investigating authority. You may tell me such a thing is not likely to happen. If such a thing is not likely to happen, I hope you will concede that the power need not be given. I also submit that it is a very drastic power, and that it should not be employed at this stage or under this Part of the Act.

“ Such powers may be needed if there is a large prevalence of crime, but in providing for preventive measures, I hope the Government will not ask for power enabling them to deport or imprison a person, especially without making any provision whatsoever for that person maintaining himself or his family. These are some of the practical concrete difficulties I find in the legislature agreeing to this power being given under sub-clause (c).

[ *Rao Bahadur B. N. Sarma ; Sir William Vincent ; Mr. W. A. Ironside.* ] [ 14TH MARCH, 1919. ]

" Then, my Lord, I think under this Part the command to notify his residence and any change of residence, which would be attended with the penalty of imprisonment and fine if a breach thereof is committed, is amply sufficient, and a person need not be asked to report himself to an officer in charge of the police-station in the first instance.

" Well, I do not lay so much stress upon sub-clause (e), but I hope Government will be able to concede my request in respect of sub-clause (c) and also fix the amount of the bond, with or without sureties, which a person has to execute."

3-16 P.M.

**The Hon'ble Sir William Vincent** :—" My Lord, the drafting of the clause as to the furnishing of bonds I think follows exactly the drafting of the Code of Criminal Procedure. It seems to me, my Lord, unnecessary that the Local Government should prescribe by rule the amount of a bond which it is itself going to demand. There is very little difference between fixing it by rule or by order. Therefore, I suggest to the Hon'ble Member that the first modification which he proposes in the Bill would really make very little difference.

" The other points which he mentions are that he wishes to delete sub-clauses (c) and (e). Well, in embodying these sub-clauses in the Bill we followed exactly what the Rowlatt Committee recommended and we adopted what we know to have been a very effective if not a severe form of restraint.

" My Hon'ble friend is naturally anxious that the well-being of any person detained away from his home should be considered. We do provide for their support—I believe I am correct in this—if I am not correct I shall have to withdraw it, but I have every reason to think that I am correct—we also have Visiting Committees to see them and to make recommendations to the Local Government as to any changes that are necessary to secure the welfare of the persons interned. I do not think we can make this provision more lenient."

3-19 P.M.

**The Hon'ble Mr. W. A. Ironside** :—" May I just rise to make an explanation? The Hon'ble the Home Member has given a few details as to what is done on behalf of these young men, let me amplify this information. A little while ago the police called on me and asked me to give two of these young anarchists a fresh start in life; I agreed and together we hope to do this."

3-20 P.M.

**The Hon'ble Rao Bahadur B. N. Sarma** :—" My Lord, with reference to the first part of my amendment I request the Hon'ble the Home Member to reconsider the question.

" Section 112 of the Criminal Procedure Code directs that, when a Magistrate acts under this section, ' he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, etc.' It is of some importance as to whether the discretion is in the hands of Local Government or of some officer before whom the man may be directed to appear. In the first place, I submit the order is to be served on the accused person; the order will be the order of the Local Government, the officer has simply to carry it out. Therefore, the order would be incomplete unless the amount is inserted therein. That was the reason why I suggested that it might perhaps be made clear that the Local Government should look into it. It may not be done by rule because the amount is to be fixed in each case, and I want that the discretion should be in the hands of the Local Government which would ordinarily have regard to any reports which they might receive from the officers subordinate to it.

" Then, with regard to sub-clause (c), I took it that the Hon'ble the Home Member said that provision would be made by the Government for the subsistence of the persons who may be directed to reside in special localities where it might be difficult for them to carry on their customary professions. At any rate I so took it; but I am not able to see any specific provision in this Bill.

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And the Visiting Committees which are provided for under clause 30 are simply to report upon the welfare and treatment of persons under restraint under this Bill. Clause 30 says that the Local Government 'shall by rules prescribe the functions which these Committees shall exercise.' I do not think that these Committees are going to be given funds by the Local Government to administer them. It may be that that is contemplated, but I do not think that power is given here to the Local Government to entrust funds to these Committees for the purpose of looking after the welfare and treatment of persons under restraint. If that is to be the object . . .

**The Hon'ble Sir William Vincent** :—" May I rise to explain ? I never suggested anything of the kind."

**His Excellency the President** :—" Did the Hon'ble Member hear what the Hon'ble Sir William Vincent said ?"

**The Hon'ble Rao Bahadur B. N. Sarma** :—" My object is to compel Local Governments to provide the means whereby the Visiting Committees can look after the welfare and treatment of persons interned."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel** :—" May it please your Excellency, I 8.23 P.M. beg to move the following amendment :—

'That for sub-clause (d) of 21 (1) the following be substituted :—

'(d) shall abstain from any act so specified which, in the opinion of the Local Government, is likely to lead to the commission of scheduled offences.'

The clause at present reads thus :—

'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.'

" My Lord, I feel confident that this small amendment will be accepted by the Hon'ble the Home Member. It is contended that the intention of the Government in enacting this Part is to deal with anarchical or revolutionary movements which are likely to lead to the commission of scheduled offences. When a person is dealt with under clause 21 of this Part by the Local Government they should have power to pass any order which is consistent with the avowed object referred to in clauses 20 and 21. The proposed sub-clause says the man '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.'

" I desire by this amendment to make the intention of Government clear by restricting the sub-clause (d) to acts likely to lead to the commission of scheduled offences. I am sure my Hon'ble friend the Home Member will accept this amendment."

**The Hon'ble Sir William Vincent** :—" My Lord, I thought the Hon'ble Member was well aware what the position was in regard to this. May I refer him to the Report of the Committee where they elaborate the powers to be taken. Among the first group of powers he will find the power to require abstention from certain acts, such as engaging in journalism, distributing leaflets or attending meetings. Well, in the Bill as it was originally introduced, we followed the recommendation as closely as we could. The matter was discussed, if my memory serves me right, in the Select Committee when we decided, after careful consideration, to limit this power to acts which are calculated to disturb the public peace or to be prejudicial to the public safety. . . .

**The Hon'ble Rao Bahadur B. N. Sarma** :—" May I rise to a point of order, my Lord ? The discussions in Select Committee are sometimes

[*Rao Bahadur B. N. Sarma; Sir William Vincent; Mr. V. J. Patel.*] [14TH MARCH, 1919.]

utilised by way of argument to tell us that the whole question has been discussed in Select Committee while objection is taken at other times. But I take it that what happens in the Select Committee, unless it appears in the report of the Select Committee, must be treated as confidential?"

**The Hon'ble Sir William Vincent** :—" If I have erred against the rules, I can only express my regret, but I only want to draw attention to the changes in the Bill made in Select Committee. And the reason for my making the statement was that I was a little surprised by the Hon'ble Mr. Patel's suggestion that I was certain to accept this amendment. The position is this. If it is found that revolutionary movements are being promoted and such movements are likely to lead to the commission of scheduled offences, and that a particular person is actively engaged in these movements, the Government may think it necessary to prohibit him from specific acts—no general or vague order is allowed—likely to disturb the public peace or endanger the public safety. I submit to the Council that this is not an unreasonable power for the Local Government to have in the circumstances."

**The Hon'ble Mr. V. J. Patel** :—" Your Excellency, I did say I was confident the Hon'ble the Home Member would accept this amendment, because I hear it suggested so often that the intention of the Government in enacting this law is to deal with revolutionary and anarchical movements only. Therefore, I was inclined to think that the amendment would find favour with my Hon'ble friend the Home Member. If the clause is left as it stands, people will be justified in drawing their own inferences."

The motion was put and negatived.

8-30 P.M.

**The Hon'ble Rao Bahadur B. N. Sarma** :—" My Lord, I beg to move—

'That in clause 21 (2) for the words 'may also' the word 'shall' be substituted, and after the word 'effect' the word 'only' be inserted.'

"The clause will then run thus :—

'Any order under clauses (b) to (e) shall be made to take effect only upon default by the person concerned in complying with an order under clause (a).'

"What I want, my Lord, is that the accused person should be given a chance of giving security for his good conduct, and that the other clauses should be made to take effect only if he fails to execute a bond, with or without sureties, of such amount as may be prescribed. I think it is a very reasonable request that the man shall not be harassed by being asked to notify his residence, to go to a police-station and so on, if he can furnish security to the authorities that he will keep the peace and be of good behaviour."

8-30 P.M.

**The Hon'ble Sir William Vincent** :—" My Lord, I think the Hon'ble Member is somewhat in error in stating that the Bill provides for security being taken to keep the peace and be of good behaviour. If I recollect rightly, the undertaking in these cases is not to commit particular offences. The words relating to a bond for general good behaviour were specifically deleted by the Select Committee and the Hon'ble Member is in error in thinking that the bond can be required in those terms. I think he will agree also that taking a bond alone not to commit certain offences is an insufficient precaution in the case of a determined evil-minded person. As a matter of fact, we have now, I am glad to say, taken security either in the shape of personal bonds or in some cases with security as well, from many young men who have been reformed up to a certain point, and many of them are now working and earning their living under very much better conditions. But it is one of the mildest forms of restraint imposed. In certain cases, where men are of a more dangerous character, we have, either in addition or in substitution of

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that, to subject them to some of the other restrictions which are named in the clause, and which can also be imposed on these men under the Defence of India Rules. The particular restriction which he suggests is often the last minor restriction imposed before a man is altogether released. We take a personal bond from him for his good behaviour, and as soon as he has been of good behaviour for a short time, we remove that and let him go altogether."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"The only point is, inasmuch as you will be asking the person concerned to give a bond not to commit, or attempt or conspire to commit, or abet the commitment of, the offences described in the Schedule, that will be practically tantamount to asking him to keep the peace and be of good behaviour. There may be a few other offences not strictly falling within the section, but the main point is secured."

The motion was put and negatived.

The motion that clause 21 of the Bill as amended by the Select Committee, and as further amended, stand part of the Bill, was put and agreed to.

**His Excellency the President:**—"I must rule No. 96,\* Mr. Shukul's amendment, out of order. It is open to Mr. Shukul to take the negative on every one of these clauses which will be put separately."

\*That in Part II, clauses 22 to 31 be deleted.

**The Hon'ble Rai Bahadur B. D. Shukul:**—"I do not desire to move the amendment, my Lord."

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 22 stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 23 of the Bill, as amended by the Select Committee, stand as part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, with 8-35 p.m. regard to my next amendment—

'That in clause 23, the words 'a copy of' and the words 'by or under the general or special authority of the Local Government' be deleted, and after the word 'all' the word 'lawful' be inserted.'

The Council not having accepted my amendment as regards clause 21, the former part of this amendment falls to the ground, so it will have to be deleted, and I only move the last portion:—

'That after the word 'all' the word 'lawful' be inserted.'

"I do not know whether the Hon'ble the Home Member will accept it. The clause as it stands says 'all means necessary to enforce compliance with the same.'

"It might include, my Lord, a constable using a baton or *lathi* as soon as he is required to carry out the order; that could not be meant, and I think it is better to make it clear. Therefore, I move that the word 'lawful' be used with the word 'all', so that you may use all lawful means necessary to enforce compliance with the order."

[*Sir George Lowndes; Mr. Kamini Kumar Chanda; Mr. V. J. Patel; The President; Sir William Vincent.*] [14TH MARCH, 1919.]

8-36 P.M.

**The Hon'ble Sir George Lowndes** :—"My Lord, it might be convenient if Mr. Patel's amendment were taken along with this. I am prepared to agree to the insertion of the word 'reasonable' before 'necessary', which I think will really meet my Hon'ble friend."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"Yes."

**The Hon'ble Mr. V. J. Patel** :—"I move my amendment, my Lord, that in clause 23 for the words 'use all means necessary,' the words 'use all lawful means reasonably necessary' be substituted."

**The Hon'ble Sir George Lowndes** :—"I hope my Hon'ble friend understood that I cannot accept the word 'lawful'; but I am quite willing to accept the word 'reasonable' before 'necessary.'"

**His Excellency the President** :—"Do you withdraw your amendment, Mr. Chanda?"

**The Hon'ble Mr. Kamini Kumar Chanda** :—"Yes."

**His Excellency the President** :—"Are you willing to accept?"

**The Hon'ble Mr. V. J. Patel** :—"I am not willing to accept the amendment suggested."

The Hon'ble Mr. Patel's motion was put and negatived.

**The Hon'ble Sir George Lowndes** :—"I move, my Lord, that after the words 'all means' the word 'reasonably' be inserted."

The motion was put and agreed to.

The motion that clause 23 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—"I move that clause 24 do stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I beg to move, my Lord, that clause 24 be deleted."

**The Hon'ble Sir George Lowndes** :—"If this is amendment 99, I submit that it is out of order."

The motion that clause 24 stand part of the Bill was put and agreed to.



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**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 25 as amended by the Select Committee do stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I move this amendment to clause 25—

'That for clause 25 the following clause be substituted . . . . '

"I do not know, my Lord, if it is allowed in consequence of my amendment as regards clause 21 being rejected because this will stand only if that has been accepted. I think, however, this will, under the circumstances, stand."

**His Excellency the President:**—"Is this a corollary to Mr. Chanda's amendment on clause 21(1)?"

**The Hon'ble Sir George Lowndes:**—"I do not think it can stand, my Lord, if the other was not there."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I think it can go in with the clause as it stands; there is no harm; if you pass the order then this procedure will be adopted. I think it can go in; it is not out of order. I beg to move—

'That for clause 25 the following clause be substituted:—

'25. (1) On the day fixed for showing cause by the person in respect of whom an order under section 21 has been passed the investigating authority shall inquire into the matter and shall follow the procedure, as early as practicable, that is prescribed for trials in summons cases excepting that instead of convicting or acquitting the person proceeded against it shall record its conclusions as to whether it is established to its satisfaction that such person is or has been actively concerned in any movement of the nature referred to in section 20, and if so, what in its opinion would be a proper order to pass against him. The investigating authority shall submit their report to the Local Government and direct the said person to appear on a date fixed before such officer as the Local Government directs.

'(2) The Local Government on receipt of the report of the investigating authority shall after reciting its findings either discharge him if the finding is in his favour, or if the finding is against him, pass an order directing him to carry out the direction contained in clause (a) or any one of clauses (b) to (e) of section 21.

'(3) Any order under clauses (b) to (e) of section 21 may be made to take effect upon default by the person concerned:

'Provided that if the investigating authority is not satisfied that the person is or has been actively concerned in such area in any movement referred to in section 20 he shall be at once discharged.

'(4) The inquiry shall be held in public, provided that the investigating authority may direct that any portion of the proceedings be *in camera*.'

"My Lord, I do not wish to make any speech on this."

**The Hon'ble Sir William Vincent:**—"My Lord, I think that if I had not been somewhat familiar with the details of this Bill I should have had some difficulty in following exactly the meaning of this amendment. I think that any one who heard it as put forward now by the Hon'ble Member must have found it difficult to follow. But in any case as the amendment is really consequential to one which has been rejected by this Council, it is quite impossible to accept it. The very first words say 'on the day fixed for showing cause by the person'; well, no day has been fixed and the whole of this clause must necessarily go."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I do not know if the Hon'ble the Home Member is quite correct, because you ask him to show cause before the investigating authority. Well, the date is immaterial; you have called on him to show cause and I only prescribe the procedure that is to be adopted by the investigating authority when the inquiry

[*Mr. Kamini Kumar Chanda; The President; Rao Bahadur B. N. Sarma; Sir William Vincent.*] [14TH MARCH, 1919.]

is made; that is all I say; the other things are very immaterial. The day is very immaterial; the only thing is that this procedure should be adopted in place of the one which you have prescribed."

**His Excellency the President:**—"Don't you think you had better withdraw it? There is some considerable doubt about it."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I prefer to take my chance, my Lord."

The motion was put and negatived.

8-42 P.M.

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I beg to move my amendment which is as follows:—

'That in clause 25 (1) after the words 'as may be' the words 'and before the expiry of seven days from the making of the order' be inserted.'

"I move this amendment so that the man may know where he stands. I assume that the order should be passed within seven days. This is a small matter, but this along with others shows my anxiety that the investigation should be completed as soon as possible and that it may not be extended unnecessarily. Supposing there is a delay and the order is sent 24 or 25 days after it was made, there will have to be an extension of the period laid down, and it may in similar ways be extended indefinitely. This is a small matter but I leave it to the Government and hope it will be accepted."

**The Hon'ble Sir William Vincent:**—"Clause 21 of the Bill says 'When the Local Government makes an order under section 21 such Government shall as soon as may be' etc. I should have been glad if I could accept the proposal to place a specific limit of time such as is proposed, but the Hon'ble Member will no doubt appreciate the conditions and see that this reference may take a good deal of time. Local Governments have to get letters deciphered which is very difficult and troublesome; it is well known that the revolutionaries carry on their correspondence in cipher, besides which their statements have to be verified, their antecedents and other material has to be collected from different parts of India. The Hon'ble Member shakes his head . . . ."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I was merely referring to the order already passed."

**The Hon'ble Sir William Vincent:**—"We cannot always get the full information in seven days. We intend to do this as soon as may be, but we cannot guarantee that it will be done within seven days."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I beg to withdraw my amendment."

The motion was by leave withdrawn.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move my amendment which runs as follows:—

'That to clause 25 (1) the following provisos be added:—

'Provided that the investigating authority shall have the power either of its own motion or on application by the person proceeded against to direct the production of any person whose statement or information may be included in the grounds of action taken by Government as aforesaid; and on the appearance of such person he shall if required by the person proceeded against be put on oath and cross-examined:

'Provided further that if such person does not appear as directed the information or statement made by him will be excluded.'

**The Hon'ble Sir William Vincent:**—"I think it would simplify matters if I read to the Council a part of the report by Messrs. Chandavarkar

[14TH MARCH, 1919.] [Sir William Vincent; Mr. Kamini Kumar Chanda.]

and Beachcroft on the case of the internees that they examined. From that it will be seen that the course proposed by the Hon'ble Member is really impossible. We know that directly the name of an informer is known his life is forfeit. It will be seen from the Report that there are several cases of murder, assassination and attempts on their lives directly it was known that an informer had come to give Government assistance. Messrs. Chandavarkar and Beachcroft say on the subject 'the records before us conclusively prove that the revolutionary organisations are secret conspiracies which have spread into different parts of the province, entered homes, schools and colleges and have reduced their secrecy of operations almost to scientific methods. They have pledged their members to the closest secrecy of their movements on pain of instant death by murder in the event of disclosure; that is one of their rules and every attempt has been made to give effect to it.' The same Commissioners go on to describe the state of terrorism which is created by this state of affairs by quoting a statement of an actual internee as follows 'there are many members who are members against their will and seek some escape from the bonds of the Samiti. They see no prospect. If they disobey the Samiti they will be shot.' These are the men that the Hon'ble Member seeks to produce for cross-examination by one of the revolutionaries. I do not think that Members of this Council can possibly support that, unless they wish to sacrifice the lives of those who are willing to support the Government. It has been said these men are all spies and informers, they are not; some are men who are assisting the Government; others are young men who have been misled into crime by the revolutionaries. An indication of the methods brought to bear is given in the Rowlatt Committee's report which I quote. The extract is part of a letter from one revolutionary to another. It runs as follows:—

'You should first win over by sweet words the boy of your place about whose character you have written and keep him neutral and if he proves a particular source of harm, extreme measures should be adopted in his case so as to leave no clue.'

"I think words like that speak for themselves. They are grim evidence of desperate treachery and intent to murder. In the circumstances, I hope that the Hon'ble Member will not press this amendment."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I fully appreciate the difficulty of the Hon'ble the Home Member, but what about the converse case. Supposing you have an informer who is a liar and is drawing on his imagination. This was the case when Rakhai Naha the informer in the Midnapore bomb case tried to swear away the lives and liberties of a large number of innocent persons when proceedings were taken against 153 persons including the leading gentlemen of the town. They were kept in confinement for days and days, then what happened? As soon as the man was put into the witness-box he had to admit that the whole thing was a myth. Lord Sinha, who was the prosecutor, withdrew the proceedings against the accused and obtained sanction to prosecute Rakhai for perjury. So it is necessary to provide for cases of that kind."

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I 3-53 P.M. beg to move my amendment which runs as follows:—

'That in clause 25 (2) the words 'in camera' and the words 'at some stage of its proceedings' be deleted, and that the words 'personally or by pleader' be inserted after the words 'before it.'

"I submit that the accused should be permitted to have the assistance of a pleader, seeing that the proceedings against him affect his liberty. Many men will lose their heads if they have to go through the matter unaided by a lawyer. My Lord, I should like to place before the Council the remarks of Lord Morley in Volume II of his 'Recollections'. He says in it at page 257:

[ Mr. Kamini Kumar Chanda; Mr. G. S. Khaparde; The President. ] [14TH MARCH, 1919.]

' You say that great executive officers never like to trust the lawyers, I will tell you why it is, it is because they do not like or trust law'. In this connection there is one thing that strikes me, and it is this, that once a man ceases to be an official his words go for nothing.

" The Hon'ble the Home Member said these are the words of Sir Narayan Chandavarkar, but what about the same Ohandavarkar who wrote articles in the *Times of India*, simply because he is no longer an official, his words count for nothing. It seems to me, my Lord, that as soon as individuals cease to be officials their opinions have little value to the Government. I do not see any reason why an accused should be deprived of the help of a lawyer. The only point I have heard is that there are many confidential matters which are likely to leak out if lawyers are allowed to assist the accused. Why do you think so? Have you not tried bomb cases with the help of lawyers, and can you give any instance in which confidential matters have leaked out by the lawyers concerned by divulging the secrets of bomb-making process? Why do you assume it? Of course, you may place any restrictions you think necessary to guard against confidential matters going out. Why do you think on purely imaginary grounds that the lawyers concerned will help leaking out of confidential matters? I submit, my Lord, you should not deprive an accused of the services of a lawyer without whom he cannot defend himself, and I submit that the accused ought to be allowed the services of a lawyer."

**The Hon'ble Mr. G. S. Khaparde:**—" My Lord, I have an amendment almost to the same effect. It is No. 106. I shall move it, if your Excellency will permit me to do so."

**His Excellency the President:**—" Yes."

3-59 P.M.

**The Hon'ble Mr. G. S. Khaparde:**—" The amendment that stands in my name is this:—

' That in clause 25 (2) the words '*in camera*' be deleted, for the word 'some' the word 'all' be substituted, and after the words 'in question' the words 'and his legal adviser' be inserted'.

" My reason for proposing this amendment is that the section directs that the investigating authority shall hold an inquiry *in camera*. What I desire to achieve by this amendment is, some discretion should be left to the investigating authority, that is to say, if they think that there are no matters in the inquiry which need be kept secret or confidential, then there is nothing to be gained by holding the inquiry *in camera*. I would leave the discretion to the investigating authority whether they should hold the inquiry *in camera* or not. I suppose somebody on behalf of Government will tell the investigating authority what matters are likely to come before them, and if there are matters in an inquiry which really require to be kept confidential, I have no doubt they will comply with the instructions of Government. But in other cases nothing will be gained in holding the inquiry *in camera*.

" Another thing that I do not understand is if the inquiry can be called an investigation at all. Because in an investigation the person charged usually knows what is going on, and I think his presence will always be useful.

" Now with regard to the assistance of a legal adviser to an accused, I quite agree with Mr. Chanda that the person involved in a criminal case of this kind would require to be advised by a professional lawyer, by a solicitor or a pleader, and to deprive a man of the help of a lawyer in a matter of this kind would practically mean no justice at all, because most of these people would not understand what is going on. In these circumstances, I also put forward my amendment under the same heading as Mr. Chanda's so that I may not have to speak again on it."

[14TH MARCH, 1919.] [Mr. V. J. Patel; Mr. Kamini Kumar Chanda; Khan Bahadur Mian Muhammad Shafi.]

**The Hon'ble Mr. V. J. Patel** :—“ My Lord, I have an amend- 4 P.M.  
ment No. 105 which is similar to the first part of my Hon'ble friend Mr. Chanda's amendment, though I must say it is less ambitious than the one moved by my friend Mr. Khaparde. It reads thus : -

' That in clause 25 (2) for the words ' *in camera* ' the following words be substituted :—

' Which may be *in camera* if such authority for reasons to be recorded in writing so decides '.

“ Both my Hon'ble friends Mr. Chanda and Mr. Khaparde want to drop the words *in camera*. I say that I don't want these words to be dropped altogether. I would suggest that we should put in the words ' which may be *in camera* if such authority for reasons to be recorded in writing so decides '.”

**The Hon'ble Mr. Kamini Kumar Chanda** :—“ My Lord, I withdraw my amendment and accept this amendment in place of mine.”

**The Hon'ble Mr. V. J. Patel** :—“ The Hon'ble Mr. Shafi has an amendment No. 103, on the same lines as mine which suggests the insertion of the words ' which may in its discretion, be in whole or in part '. What I want really is that discretion must be left to the investigating authority to decide whether under certain circumstances the investigation should be held *in camera* or not. The clause as it stands leaves no discretion. It makes it imperative on the part of the investigating authority to hold every inquiry, every part of it, in fact all inquiries *in camera* and in no other way. That being so, I respectfully submit that if this inquiry, this investigation I should call it, is to have any significance, if it is to be really an inquiry of any usefulness, I submit some room should be left to the discretion of the person who presides over that inquiry.

“ Similarly, with regard to the question of a pleader. I am afraid I have got somewhere a similar amendment ; it may be a long way off. But the question really is, whether these safeguards are to be of any use to the person concerned or not. That is the main question which this Council has to decide. If you are not going to allow the accused person to take advantage in any substantial form of the safeguards, then by all means do not allow a pleader, let the investigation be *in camera*, and you can do what you like.”

**The Hon'ble Khan Bahadur Mian Muhammad Shafi** :— 4-4 P.M.  
“ My Lord, I am exceedingly sorry I was not in the Council Chamber when my amendment No. 103 was reached, but as the amendment No. 105 which stands in the name of my Hon'ble friend Mr. Patel is in effect the same as mine, with Your Excellency's permission I wish to say a few words in regard to my amendment. My amendment reads thus :—

' That in clause 25 (2) after the word ' inquiry ' the following words be inserted :—

' which may, in its discretion, be in whole or in part '.

“ My Lord, the object which I have in view in placing this amendment before the Council is to remove an avoidable and unnecessary suspicion as well as criticism against this Bill. I recognise that there may be cases in which it may be necessary to hold the inquiry *in camera*. But there may also be cases in which it will not be necessary for the investigating authority to hold the inquiry in secret in the manner contemplated. Therefore, it does not appear to me to be necessary that the Statute should lay down in imperative terms that every inquiry shall be held *in camera*. I think, if I may venture to suggest, it is advisable that discretion should be left to the investigating authority to hold the inquiry *in camera* if the circumstances and the necessities

[ *Khan Bahadur Mian Muhammad Shafi*; *Dr. Tej Bahadur Sapru*; *Rao Bahadur B. N. Sarma*; *Sir George Lowndes*. ] [14TH MARCH, 1919.]

of the case so require. And that it should be left open to the authority to hold the inquiry in open court if the case is of an ordinary kind in which an inquiry *in camera* is not necessary."

4-5 P.M.

**The Hon'ble Dr. Tej Bahadur Sapru** :—" My Lord, with regard to the question of the inquiry being held *in camera*, I wish to submit that either you have confidence in the investigating authority you yourself appoint or you have not. If you have confidence in the investigating authority you appoint you may depend upon it that if it considers that it is in the public interest necessary that an inquiry should be held *in camera* it will do so. Even at the present moment judges who are not under that statutory obligation can exercise that right whenever they think that any part of an inquiry requires to be conducted *in camera*. My Lord, it is of the very essence of inquiries that there should be publicity about them. But it may be urged that this is not a judicial inquiry. Well I recognise that it is not a judicial inquiry, I deplore that it is not a judicial inquiry, and that makes it all the more imperative that you should have nothing like a provision for secrecy in the Statute. You, in the first instance, dispense with the ordinary judicial form and then you make the law worse by practically directing the investigating authority that every part of the inquiry should be held *in camera*. My Lord, I should like some Members to imagine their position if they were called before a judge, howsoever patient and howsoever fair he might be, if they knew that in that room there would be no one else excepting themselves and the judge. I know, my Lord, from daily experience that even the most innocent men feel very nervous when they suddenly find themselves face to face with a judge. I can quite imagine, my Lord, a man finding himself in that position absolutely getting nervous, and many things may happen there, my Lord, for which publicity is the only cure. I think the amendments of my friends Mr. Patel and Mr. Shafi are so reasonable that there should be no objection to accepting them, more particularly when they ask that discretion should be given to the investigating authority to decide for itself whether the inquiry should be held *in camera* or not."

4-8 P.M.

**The Hon'ble Rao Bahadur B. N. Sarma** :—" My Lord; I have a similar amendment, namely No. 119 :—

'An enquiry under this section may, at the discretion of the investigating authority, be held in whole or in part *in camera*, and the provisions of section 11 shall, so far as may be, be applicable to such proceedings.'

Section 11 reads thus :—

'The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.'

"I submit that the provisions of section 11, together with the suggestion I have made, would amply meet the requirements, and I do not think it is necessary to enlarge upon the point."

4-9 P.M.

**The Hon'ble Sir George Lowndes** :—" My Lord, I have so much respect for the opinions of my Hon'ble friend Dr. Sapru that I am unable to let an opinion which he has just expressed go by unanswered. He said it is much worse for a person to appear privately before an inquiring authority than to appear before him in open court. I can only say that my whole experience in the practice of my profession is exactly the contrary. The usual practice is for judges to retire to their chambers to see persons who it is supposed would be nervous before them in court. It is for that reason that the practice is for the judge to have children brought to him in chambers when there is a case affecting children, lunatics brought to him when there

[14TH MARCH, 1919.] [Sir George Lowndes; Dr. Tej Bahadur Sapru; Sir William Vincent.]

is a question affecting the lunacy of a person, ladies brought when there is a question which it is not desired to discuss in the court. It is a very well known principle. It is much easier for nervous people to sit down in the private room of a judge and talk quietly to him than in an open court."

**The Hon'ble Dr. Tej Bahadur Sapru:**—"But not persons accused of heinous offences."

**The Hon'ble Sir William Vincent:**—"My Lord the amendment 4-10 P.M. with which I have to deal is whether the investigating authority should have power to decide whether the inquiry is to be held *in camera* or not. I can assure Hon'ble Members that I should be very glad to meet them on this matter if I thought it was possible to do so. I want them to consider what the position of Government is. If I cite again a quotation from Messrs. Beachcroft and Chandravarkar's report I may be held up to criticism because I have failed to cite a more recent opinion of Sir Narayan. I may say, however, that I quote his views on facts, not on policy. But taking the Rowlatt Report again you find the same arguments used there. I will read the following:—

'It is common knowledge that many assassinations, murders and bomb-throwing outrages have taken place and are still taking place, and that the victims have generally been persons assisting in Crown prosecutions; for instance inquiring officers and approvers.'

"That is a citation I think from a judgment.

"Then I may cite the case of a man called Murari Mohun Mitter whose son was an important witness in a case and who himself gave assistance to the police, and was very shortly afterwards murdered. I think I have told the Council on previous occasions also that much of the information given by these men is, by reason of the terror in which they are, given on the solemn undertaking that it shall not be made public. I admit of course that information given on that condition has not the same value as information which can be made public, but it is really the only way in which information of these revolutionary crimes can be obtained in the face of the circumstances to which I have alluded more than once before. Messrs. Chandravarkar and Beachcroft in their inquiry say in regard to procedure:—

'In these circumstances it is impossible to secure a fair trial by the procedure of the Evidence Act and Criminal Procedure Code which is appropriate only to normal conditions.

'The procedure to deal with revolutionary crime has to be practical in the sense of being appropriate to its special conditions so as to secure as fair a trial as is feasible under the exceptional situation. Our special procedure cannot therefore be regarded as violating the primary principle on which those laws are based.'

"The Government, having undertaken not to divulge many of these statements, it is obvious that the course which is now proposed would make it necessary for Government either not to produce the whole of its evidence before the tribunal or, in the alternative, commit a breach of faith.

"I want also the Council to remember this. I hope perhaps later on to accept an amendment as to the constitution of the investigating authority so as to place that body in a position entirely apart from the Government. It will have nothing whatever to do with the administration. A body like that cannot possibly know what the dangers of the situation are, what forces are at work under the surface, or the undertakings on which information has been given, and I submit that the modification, if I were to accept it in this form, might prevent the Government putting before a tribunal the whole of the information at its disposal, because we could not run the risk of that information being published. If therefore the investigating authority is to have the full information of Government before them, then the proceedings must be *in camera*."

[*Sir William Vincent; Mr. V. J. Patel; The President; Mr. Kamini Kumar Chanda.*] [14TH MARCH, 1919.]

"If the proceedings are not so held we are at once faced with the question of an open trial, which we really know to be hopeless."

**The Hon'ble Mr. V. J. Patel:**—"The second part remains unanswered."

**His Excellency the President:**—"I think Mr. Chanda you fathered Mr. Patel's amendment."

4-15 P.M.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I accepted his amendment in regard to the first part of my amendment."

"My Lord, I respectfully submit that the reply which the Hon'ble the Home Member has given is not complete. Now I say, why do you not repose trust in the investigating authority? The Hon'ble the Home Member has said there are matters which ought not to be divulged. Well, if that is so, and you state the case to the investigating authority, why do you assume that it would not exercise a proper discretion and withhold from the public such matters as ought not to be divulged. Why fetter the discretion of the investigating authority? That is my submission."

"With regard to the statements in the report of Sir Narayan Chandravarkar and Mr. Justice Beachcroft, I ask what about the converse proposition? What about the case of an informer who does not come before the investigating authority, who is not cross-examined, who is not placed on oath? How is the statement which he makes to be sifted? The Hon'ble the Home Member says that non-officials will be associated with the inquiry. How would that help the matter? How can anybody, official or non-official, find out by merely reading the statement of a man who is not before him, who is not cross-examined, who does not take an oath, whether he is speaking the truth or a falsehood?"

"Then I find the Hon'ble the Home Member has not said anything about the second part of my amendment regarding representation by a lawyer. Well, I will assume that silence amounts to consent, my Lord."

**His Excellency the President:**—"The question is that in clause 25 (2) for the words '*in camera*' the following words be substituted 'which may be *in camera* if such authority for reasons to be recorded in writing so decides,' and the words 'at some stage of its proceedings' be deleted and the words 'personally or by pleader' be inserted after the words 'before it.'"

**The Hon'ble Mr. V. J. Patel:**—"Will your Excellency put these two parts separately?"

**His Excellency the President:**—"I am putting Mr. Chanda's amendment. Mr. Chanda has accepted your part and I put it on to him."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My amendment is in three parts, may each part be put separately?"

**His Excellency the President:**—"I cannot make three out of it. I will put the whole of yours first."

The Hon'ble Mr. Chanda's amendment,\* was put and negatived.

**His Excellency the President:**—"I will put yours separately, Mr. Patel. I hope that satisfies you."

\* That in clause 25(2) the words '*in camera*' and the words 'at some stage of its proceedings' be deleted and the words 'personally or by pleader' be inserted after the words 'before it.'



[14TH MARCH, 1919,] [The President; Rao Bahadur B. N. Sarma;  
Mr. G. S. Khaparde.]

The Hon'ble Mr. Patel's amendment\* was then put and the Council divided as follows:—

*Ayes.—17.*

The Hon'ble Mr. S. N. Banerjee.  
 „ Raja of Mahmudabad.  
 „ Dr. T. B. Sapru.  
 „ Pandit Madan Mohan Malaviya.  
 „ Mr. S. Sastri.  
 „ „ B. N. Sarma.  
 „ Mir Asad Ali, Khan Bahadur.  
 „ Sir Dinshaw Wacha.  
 „ Mr. V. J. Patel.  
 „ Rai Sitanath Ray Bahadur.  
 „ Maharaja Sir M. C. Nandi.  
 „ Rai Krishna Sahay Bahadur.  
 „ Khan Bahadur Mian Muhammad Shafi.  
 „ Sardar Sunder Singh.  
 „ Mr. G. S. Khaparde.  
 „ Rai B. D. Shukul Bahadur.  
 „ Mr. K. K. Chanda.

*Noes.—35.*

The Hon'ble Sir Claude Hill.  
 „ „ George Lowndes.  
 „ „ Thomas Holland.  
 „ „ William Vincent.  
 „ „ James Meston.  
 „ „ Arthur Anderson.  
 „ „ Gangadhar Chitnavis.  
 „ Mr. W. A. Ironside.  
 „ Sir Verney Lovett.  
 „ Mr. H. F. Howard.  
 „ Sir James DuBoulay.  
 „ Mr. A. H. Lucy.  
 „ „ W. M. Hailey.  
 „ „ H. Sharp.  
 „ „ R. A. Mant.  
 „ Maj.-Genl. Sir Alfred Bingley.  
 „ Sir Godfrey Fell.  
 „ Mr. F. C. Rose.  
 „ „ C. H. Kesteven.  
 „ „ D. de S. Bray.  
 „ Lieut-Col. R. E. Holland.  
 „ Surg.-Genl. W. R. Edwards.  
 „ Mr. H. Moncrieff Smith.  
 „ „ C. A. Barron.  
 „ „ P. L. Moore.  
 „ „ T. Emerson.  
 „ „ E. H. C. Walsh.  
 „ „ C. A. Kincaid.  
 „ Sir John Donald.  
 „ Mr. P. J. Fagan.  
 „ „ J. T. Marten.  
 „ „ W. J. Reid.  
 „ „ W. F. Rice.”

The amendment was therefore negatived.

**The Hon'ble Rao Bahadur B. N. Sarma:**—“I think your 4-36 P.M. Lordship may get No. 119 also negatived:—

‘That at the end of clause 25 (2) the following be inserted:—

‘An inquiry under this section may, at the discretion of the investigating authority, be held in whole or in part *in camera* and the provisions of section 11 shall, so far as may be, be applicable to such proceedings.’

The motion was put and negatived.

**The Hon'ble Mr. G. S. Khaparde:**—My Lord, I withdraw my amendment.

‘That in clause 25 (2) the words ‘*in camera*’ be deleted, for the word ‘some’ the word ‘all’ be substituted, and after the words ‘in question’ the words ‘and his legal adviser’ be inserted.’

The amendment was by leave withdrawn.

\* That in clause 25(2) for the words ‘*in camera*’ the following words be substituted:—  
‘which may be *in camera* if such authority for reasons to be recorded in writing so decides.’

[*Rao Bahadur B. N. Sarma; Sir George Lowndes; Khan Bahadur Mian Muhammad Shafi; The President.*] [14TH MARCH, 1919.]

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I beg to move—

'That in clause 25(2) the words '*in camera*' be deleted and after the words 'against him' the words 'and the nature of the evidence in so far as it may be disclosed' be inserted, and after the words 'have to offer' the words 'the evidence he may tender' be inserted.'

The clause would read thus :—

'Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and the nature of the evidence in so far as it may be disclosed and shall hear any explanation he may have to offer and the evidence he may tender, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable.'

"What I ask is that the investigating authority shall tell the accused person not merely the nature of the charge against him, but also the nature of the evidence against him, in so far as it may be disclosed without peril to the State . . . ."

**The Hon'ble Sir George Lowndes:**—"The Hon'ble Member never said that."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I said it. The object is this. It is no use your simply telling him he spoke particular words in a particular place—that that is the charge. There must be also some sort of disclosure of the nature of the evidence, namely, he was seen and heard saying so, by such and such a person at such and such a place; so that he may have the opportunity of adducing evidence to show that he was or was not there. Not merely the nature of the charge, but the nature of the evidence should be disclosed to the accused person. It would be only fair that this should be done.

"And then I say that any explanation he may have to offer should be taken and also the evidence he may tender. It may be said that that may lengthen the trial unnecessarily. My answer is that even under the Criminal Procedure Code witnesses may be dispensed with if the object be considered by the authority to be merely for the purpose of securing delay or defeating the ends of justice; and I submit that in an inquiry of this sort the discretion would be more rigorously exercised against the accused person, and consequently there would be no harm whatsoever in providing that at the discretion of the authority the evidence tendered by the accused should be taken. If after taking such evidence, any further investigation appears to be necessary, the investigating authority may hold it. I therefore submit that the amendments that I seek to have the Council adopt are of an extremely reasonable character, and I hope the Government will be able to accept them."

4-23 P.M.

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, it will be seen that my Hon'ble friend's amendment consists really of two parts. In the second part of his amendment he proposes that the words 'the evidence he may tender' be inserted after the words 'have to offer'. Now, with regard to this part of his amendment, your Lordship will notice that there are other amendments—Nos. 109 to 112—which cover the same point. So if your Lordship will accept my suggestion that the two parts shall be put separately, then the Hon'ble Members who have proposed amendments Nos. 109, 110, 111 and 112, may now address the Council on their own amendments and the proceedings will be considerably abridged."

**His Excellency the President:**—"All right, Mr. Shafi."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"I have an amendment also, my Lord:

'That in sub-clause (2) of clause 25, after the word 'offer' the words 'and take any evidence he may have to adduce in his defence' be inserted.'

[14TH MARCH, 1919.] [Khan Bahadur Mian Mahammad Shafi; Mr. V. J. Patel.]

"I should like to add only a few words to what has fallen from the lips of my Hon'ble friend Mr. Sarma. Your Lordship has seen that in clause 26, sub-clause (2) the following procedure is laid down :

'The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the facts and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority'

this is the relevant portion.—

'Such authority shall in every case allow the person in question a reasonable opportunity of appearing before it at some stage in its proceedings and shall, if he so appears, explain to him the nature of the charge made against him and shall hear any explanation he may have to offer, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable.'

That is to say, the sub-clause, as it now stands, provides that the authority shall explain the charge to the person concerned and shall take down whatever explanation he has to offer and make any further investigation that the authority itself may think necessary. This does not give any right to the person concerned to produce evidence in his defence. Now as the investigating authority has all the materials which may be in the possession of the Government before it, that is to say, has read all the evidence which the Government have placed before the investigating authority, if the clause were to remain as it now stands it would result in this, that the inquiry would be practically *ex parte*, unless the investigating authority in its discretion think fit to direct further inquiry after the person concerned has made his explanation. That is not fair play. I submit that the person who is called upon to give an explanation ought to have an opportunity of adducing in his own defence such evidence as he may wish to produce. As has been pointed out by the Hon'ble Mr. Sarma, the Criminal Procedure Code already includes ample power, gives ample power, to the authority to exclude such evidence as they think is intended merely to waste their time and is not necessary to the case. It seems to me that in fairness to the person who is called upon to plead to the charge which has been brought against him he ought to be given an opportunity of adducing evidence."

**The Hon'ble Mr. V. J. Patel :—**"Please your Excellency, on this <sup>4-18 P.M.</sup> question I have got two amendments : one is No. 110 and the other is No. 112. No. 110 reads thus :—

'That in clause 25 (2) after the words 'he may have to offer' the words 'examine any witnesses he may produce' be inserted.'

My amendment No. 112 is—

'That in clause 25 (2) after the words 'relevant and reasonable' the following proviso be inserted :—

"Provided that the investigating authority shall, if the person in question applies to him for process to compel the attendance of any witness or the production of any document or thing, issue such process, unless for reasons to be recorded he deems it unnecessary to do so and for this purpose, such authority shall have all the powers conferred by the Code on a Court."

"The point, my Lord, is this. You can imagine cases in which it will not be possible for the person concerned to produce his witnesses, because under clause 21 he will be at the time when the investigation takes place, under some order of externment or internment, and therefore it will not be possible for him to go to his place or the place where the witnesses are and produce them before the investigating authority. If he produces them, it is all right. There are many cases in which he can so produce them, because it is not always that the Local Government may pass orders of externment or internment. They may be satisfied—although there is very little hope of this—by asking the man to execute a bond. But if there are other orders passed, it will not be possible for him to produce witnesses; and therefore I say that power should be given to the investigating authority to summon his witnesses if he applies for summonses.

[ *Mr. V. J. Patel; The President; Mr. Kamini Kumar Chanda; Rao Bahadur B. N. Sarma; Sir William Vincent; Khan Bahadur Mian Muhammad Shafi.* ] [14TH MARCH, 1919.]

"My Hon'ble friend, the Home Member remarked in discussing some amendment of my Hon'ble friend, Mr. Chanda, in regard to these witnesses that they would be threatened and this, that and the other. But this does not apply for the defence witnesses; it applies to the prosecution witnesses. Here we are concerned with the accused; and if evidence is offered he should be given an opportunity of calling the witnesses; and if those witnesses cannot be produced, the courts should be empowered to summon those witnesses and examine them. As the section stands at present the investigating authority has no power whatever to summon any witness".

**His Excellency the President:**—"Mr. Chanda, you have got an amendment on this?"

**The Hon'ble Mr. Kamini Kumar Chanda:**—"Yes, I beg to move—

'That in clause 25 (3) after the words 'have to offer' the words 'and shall summon such witnesses as he desires to call and examine them' be inserted.'

"I have nothing more to add."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"Your Lordship will be pleased to put these two separately; the first part relates to the nature of the evidence to be disclosed, and the second part relates to the taking of evidence. I would like the first part to be put first."

**The Hon'ble Sir William Vincent:**—"My Lord, may I explain . . . .?"

**The Hon'ble Mr. V. J. Patel:**—"The Hon'ble the Home Member wants to accept some amendment."

**The Hon'ble Sir William Vincent:**—"Mr. Patel with his usual ingenuity has hit the nail on the head. I am prepared to accept amendment No. 112 of the Hon'ble Member himself with some small changes in the form which the drafting department may recommend."

**His Excellency the President:**—"Will you tell me how much of Mr. Sarma's amendment that disposes of?"

**The Hon'ble Sir William Vincent:**—"I object to the use of the word 'witness' because the investigating authority, as has been pointed out, is not a Court of justice or a judicial body; and it seems to me that that word is inappropriate; but Sir George Lowndes has modified the amendment in a way that will, I hope, meet Mr. Sarma."

The Hon'ble Mr. Sarma's motion was put and negatived.

**His Excellency the President:**—"Are you satisfied, Mr. Shafi?"

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"Yes, my Lord."

**The Hon'ble Mr. V. J. Patel:**—"I do not want to press my amendment 112."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I do not want to press my amendment 109."

[14TH MARCH, 1919.] [Mr. V. J. Patel; Sir James DuBoulay; Sir George Lowndes; The President; Mr. Kamini Kumar Chanda.]

**The Hon'ble Mr. V. J. Patel:**—"This, your Excellency, is a very simple amendment: I beg to move—

'That in clause 25 (2) for the words 'a reasonable opportunity of appearing before it at some stage,' the words 'to appear before it at every stage' be substituted.'

"I want that this investigation should take place in the presence of the person concerned and not behind his back. That is all I want."

**The Hon'ble Sir James DuBoulay:**—"Government cannot accept that. The same difficulty occurs as has been referred to before so often. The names of people who give information and of witnesses who come there to . . . .

**The Hon'ble Mr. V. J. Patel:**—"Your Excellency, it is difficult to hear."

**The Hon'ble Sir James DuBoulay:**—"There must be times in the course of an inquiry when statements are being read by the investigating authorities or persons are being examined before them. It is essential for the protection of the persons who make these statements that their identity should not be given away: and at such times it is therefore impossible to allow the person concerned to be present."

The motion was put and negatived.

**The Hon'ble Sir George Lowndes:**—"My Lord, I suggest that Mr. Patel's amendment No. 112 might be put as it stands, on the understanding that we are to eliminate the word 'witness' and substitute some expression afterwards which will not suggest a judicial proceeding. I understood, my Lord, that your Excellency stated that there would be an adjournment."

**His Excellency the President:**—"There will be an adjournment for tea at 5 o'clock."

**The Hon'ble Sir George Lowndes:**—"That there will be an adjournment to enable us to put all these amendments into shape. If this amendment is accepted, it is understood that we shall redraft it on the lines I have referred to . . . .

**His Excellency the President:**—"There will be an interval somewhere between to-morrow morning and the next time we sit on this Bill during which the Legislative Department will be able to put these things into shape. I will put Mr. Patel's amendment (No. 112) as it stands on that understanding."

The motion was put and agreed to.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move that the two provisos to clause 25 (2) be deleted. The provisos are:—

'Provided that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual:

'Provided further that nothing in this sub-section shall be deemed to entitle the person in question to appear or to be represented before the investigating authority by pleader, nor shall the Local Government be so entitled.'

"My Lord, I move that these two provisos be deleted."

[*Sir William Vincent; Rao Bahadur B. N. Sarma; Sir James DuBoulay; Mr. Surendra Nath Banerjea; The President; Mr. V. J. Patel.*] [14TH MARCH, 1919.]

**The Hon'ble Sir William Vincent:**—"My Lord, I have just read the first proviso to this clause and all it enacts is that the investigating authority shall not disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual. I cannot think that the Hon'ble Member seriously contemplates that the investigating authority should disclose matters which are prejudicial to the public interest or which would really mean the murder of an unfortunate witness. I cannot believe that he really wants that."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I also move, my Lord, that the second proviso to clause 25(2) be deleted. I have not heard distinctly what the attitude of Government is with regard to the appointment of a pleader."

**The Hon'ble Sir James DuBoulay:**—"I am afraid that the attitude of Government is against Mr. Sarma."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I think these two Nos. 115 and 118 go out automatically since No. 104 was rejected."

**The Hon'ble Mr. Surendra Nath Banerjea:**—"My Lord, I beg to move . . . ."

**His Excellency the President:**—"No, no; you had your opportunity on amendment No. 104; this question was discussed then; we are only seeing what progress we have made. The question is that the two provisos to clause 25(2) be deleted."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move my amendment which runs as follows:—

'That in the first proviso to clause 25 (2) for the words 'shall not disclose' the words 'may not for the reasons to be recorded in writing disclose' be substituted.'

The proviso will then read as follows:—

'Provided that the investigating authority may not for the reasons to be recorded in writing disclose to the person whose case is before it any fact the communication of which might endanger the public safety or the safety of any individual.'

This will meet, I believe, the criticisms of the Hon'ble the Home Member in regard to Mr. Chanda's amendment which the Council has just rejected. I propose that the investigating authority refuse to disclose to the person concerned any fact which, in its opinion, is likely to endanger the safety of the public or any individual, but in doing so, the authority must record its reasons in writing."

**The Hon'ble Sir William H. Vincent:**—"My Lord, I submit there really is no reason to modify the wording of this clause. I have discussed the clause so frequently that I am ashamed of doing so again. It provides that the investigating authority shall not disclose to the person whose case is before it any fact which would endanger the public safety or the safety of any individual, and no benefit would be gained by making the suggested change in the wording. I think it is reasonable that the investigating authority should be under a distinct obligation not to communicate information of this kind to the person whose case is under investigation in the circumstances contemplated."

**The Hon'ble Mr. V. J. Patel:**—"It is for the Local Government who has to decide the facts to say whether there are any reasons why they

[14TH MARCH, 1919.] [Mr. V. J. Patel; Mr. G. S. Khaparde; The President; Mr. Kamini Kumar Chanda; Mr. C. A. Kincaid.]

refused to disclose certain facts which would be material to the defence of the accused. That is the main reason why I want the investigating authority to record the reasons for its order refusing to disclose any fact."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move my amendment which runs as follows—

'That in the second proviso to clause 25 (2) for the word 'entitle' the word 'debar' and for the word 'entitled' the word 'debarred' be substituted.'

I think it would be a great advantage if both parties were allowed to appear by pleader."

The motion was put and negatived.

**The Hon'ble Mr. G. S. Khaparde:**—"My Lord, the amendment which I wish to move reads thus—

'That in clause 25(3) the word 'not' be deleted.'

"We all heard yesterday what the Hon'ble the Law Member said, that the Evidence Act and the rules of evidence were instruments of discovering the truth, and anybody who neglects the laws of evidence and the rules of evidence really shuts his eyes to truth or debars himself from discovering it. If that is so, my Lord, I do not understand why the investigating authority should not be content with the law of evidence. Don't they want to know the truth? I believe they do. The appointment requires that they should go into the matter and find out the truth. So I propose that the word 'not' be deleted, and then the sub-section will run as follows: 'subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case; and in making the inquiry such authority shall be bound to observe the rules of the law of evidence,' and that is the reason why I have suggested this amendment."

**His Excellency the President:**—"You have got a similar amendment, Mr. Chanda?"

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I have nothing more to add to what the Hon'ble Mr. Khaparde has said, my Lord."

The motion was put and negatived.

**The Hon'ble Mr. C. A. Kincaid:**—"I have got to address the Council on this point, my Lord."

**His Excellency the President:**—"But we are not discussing Mr. Sastri's amendment now."

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I am afraid I am not in a position to go up to the standard of my Hon'ble friend Mr. Khaparde. My amendment is a moderate one. I will first read it according to the rules. I beg to move that—

'in clause 25(3) for the words 'shall not be bound to observe' the words 'shall, as far as possible' be substituted.

The clause will read thus:—

'Subject to the provisions of sub-section (2) the inquiry shall be conducted in such manner as the investigating authority considers best suited to elicit the facts of the case and in making the inquiry such authority shall, as far as possible, follow the rules of the law of evidence.'

"Now, if Hon'ble Members will turn their attention to the amendment that follows and which stands in the name of my Hon'ble friend Mr. Sastri,

[*Mr. V. J. Patel; The President; Mr. Srinivasa Sastri; Mr. C. A. Kincaid.*] [14TH MARCH, 1919.]

it also requires what I require, that in clause 25(3) for the words 'shall not' the words 'shall as far as possible' be substituted. We do not by these amendments, your Excellency, ask that the investigating authority shall under all circumstances be bound to follow the rules of evidence as if it were a court of law; but we say that it should be guided as far as possible by the rules of evidence. It should not be left entirely free to discard the rules of evidence altogether. That is our point, and I trust the Hon'ble the Home Member will at any rate consider this suggestion of ours."

**His Excellency the President:**—"Mr. Sastri, have you anything to say?"

**The Hon'ble Mr. Srinivasa Sastri:**—"I have nothing to add, my Lord."

4-55 P.M.

**The Hon'ble Mr. C. A. Kincaid:**—"My Lord, one is so accustomed to regard the laws of evidence with slavish admiration that it is with almost a feeling of dismay that one hears it said that the rules are generally based on common sense but are also sometimes divorced from common sense, that they sometimes have their origin in true principles and in other times have their origin in historical incidents that belong to so remote a past as to be now forgotten; that they are not immutable laws which never vary but that they change in different countries and in the same countries at different times. Yet this is the proposition which I wish to prove by one or two illustrations. Yesterday, my Lord, I referred to the case of parties giving evidence on their own behalf in civil and criminal cases. The old objection to this practice was based on a fear of the sin of perjury. This no doubt is a sound principle of religion, but it has nothing to do with the principles of evidence. I shall not, however, labour this point as I went into it yesterday at considerable length. My next illustration is a case where an accused person makes a confession to a policeman. In England such a confession is admissible. There was a time in India when such a confession was admissible also. Now it is inadmissible. The reason why it is inadmissible was that it was found that confessions were so often extorted by police torture, that the Legislature thought it advisable to make all confessions to a policeman, unless made in the presence of a Magistrate, inadmissible. Yet, my Lord, many of these excluded confessions are true and voluntary, and to admit a true and voluntary confession is a sound principle of evidence. Thus the Evidence Act as it stands violates instead of observes in this particular the true principles of evidence. I shall prove this by a simple example taken from the ordinary affairs of life. Supposing any one of us had a watch stolen and complained to the police. Suppose that after a police inquiry the policeman brought up a servant and the servant in the owner's presence and in the policeman's presence admitted the theft of the watch. Would the owner say, 'No, this cannot be true, because this confession is made in the presence of a policeman and in the absence of a Magistrate.' Surely not. He would say to the servant 'you stole my watch, did you, scoundrel?' where is it?' Thus showing that in spite of the Evidence Act, he fully accepted the confession of the servant.

"I next come to the case of an accomplice's evidence. This is very remarkable, because under section 183 of the Evidence Act a conviction can be based upon the unsupported testimony of an accomplice. Nevertheless, High Court after High Court has disregarded this section and has preferred to follow illustration B of section 114. This lays down that the Court may presume the evidence of an accomplice as unworthy of credit unless supported in material particulars. I do not wish in any way to quarrel with the Judges of the High Court over this, but I would say with all respect and deference that they are really following an old tradition of English law which has little or nothing to do with the principles of evidence. I have heard it said, and I believe correctly, although I cannot speak positively as I have made no independent research, that this practice of rejecting the unsupported testimony of an accomplice is



[14TH MARCH, 1919.] [Mr. C. A. Kinnaird.]

based upon the old treason trials of England. A man convicted of treason was sentenced to be hanged, drawn and quartered, an extremely lingering and painful death. The result was that Judges, except in times of great political excitement, used to do their utmost to get the accused off. They first ruled that no man should be convicted of treason except upon the testimony of two eye-witnesses. As these two eye-witnesses were generally accomplices, the Judges next ruled that the unsupported testimony of an accomplice was unworthy of credit unless supported in material particulars. They thus attained their object by getting off a large number of accused persons. From treason trials the practice spread to other trials, and thus we have now as part of law of the land this practice which is based not upon the true principles of evidence, but on the cruelty of the ancient English law. To make my meaning clear, I give another instance drawn from the affairs of daily life. Supposing one Smith came up to any one of us and said 'Brown and I have killed your son.' Would the father then say to himself, 'Smith no doubt killed my son but not Brown,' for the only thing against Brown is the unsupported testimony of Smith. Surely not. The first thing the father would do would be to go off to the nearest police-station and charge both Smith and Brown with murder.

"My next illustration is the case of hearsay evidence. Here at least it may be thought that we are on solid rock and that whatever else is right or wrong, every statement made in a court must be first-hand testimony. To revert once more to the Pickwick trial, when Mr. Samuel Weller was giving his evidence he let fall the remark 'out with it, as the policeman said to the little boy when he had swallowed a farthing.' Instantly Mr. Justice Stareleigh woke up and said, 'you must not tell us what the policeman said or anybody else said, because that would not be evidence.' My Lord, it might well be thought that a rule of evidence, the breach of which would rouse even Mr. Justice Stareleigh from his slumbers must contain a truth so tremendous that it would be accepted by the whole civilized world. It may, therefore, come by a slight surprise to many members of this Council to hear that neither France, Spain, Italy nor Belgium exclude by their laws hearsay evidence in trials. But it may be said 'Oh, these are no doubt civilized nations. Italy is the mother of arts and music. France is the home of pure reasoning and scientific thought, but for the true principles of jurisprudence we must go to Britain.' Well, my Lord, I would ask the members of this Council to come with me to Britain and search there the true principles of jurisprudence. The Island of Great Britain includes two kingdoms, and I have often heard it said by gentlemen born in the north of the Tweed that the true secret of England's greatness is her good fortune in being allied to her sister kingdom which is far the greater and far more splendid historically of the two. My Lord, it is not for me, a mere Irishman, to decide between the conflicting claims of these two great and famous monarchies. But I think, I can say, without fear of contradiction, that the Scotch Courts hold as high a reputation as any courts in Europe, and that the intellects of the Judges who preside over them and of the advocates who practise in them are as clear and as penetrating as any judges or any advocates anywhere else. It will, therefore, be a surprise to some members of this Council to learn that in Scottish courts hearsay evidence is not excluded. Now what is the reason? The reason, my Lord, has nothing whatever to do with the true principles of evidence. The jury system of England goes so far back that there was a time when juries were so ignorant and so uneducated that judges despaired of making them understand the difference in the value of first-hand and second-hand evidence. They therefore cut the gordian knot by excluding second-hand evidence altogether. This was no doubt convenient, but it was not in consonance with true principles. I will again support my argument by an instance drawn from the common affairs of life. Supposing the son of any one of us was bathing and Smith came up to one of us and said 'Brown tells me that your son has been drowned.' Would not we be stricken with grief; would not we rush off to the seashore in the hope either of saving our son or at any rate recovering his body? And yet, my Lord, in a court of justice Smith's evidence on the subject would be absolutely excluded unless and until Brown went into the witness-box and related what he had himself seen . . . .

[The President; Mr. C. A. Kincaid; Dr. Tej Bahadur Sapru.] [14TH MARCH, 1919.]

**His Excellency the President:**—"I am very loth to stop you, Mr. Kincaid. We all know it is a very interesting subject. But will you now come to the amendment?"

**The Hon'ble Mr. C. A. Kincaid:**—"My Lord, I thought I was speaking to the amendment."

**His Excellency the President:**—"I know it is a most interesting subject. It is now 5 o'clock. Will you come to the amendment?"

**The Hon'ble Mr. C. A. Kincaid:**—"Very well, my Lord, if that is your Lordship's view I shall bring my speech to a close, as quickly as possible.

"I do not want to decry the rules of the law of evidence at all. They have proved excellent in practice, and in the ordinary law Courts I would not change them for the world. All I want to impress on the Council is that they are merely one method, and often a rough and ready method of finding out the truth. They have nothing holy or sacred in them. They do not claim a divine origin like the Bible, the Koran or the Vedas to quote my Hon'ble friend Mr. Sarma. But it may be said that it is true that the rules of the law of evidence have their faults, but still they have been universally adopted in tribunals and it is a sound judicial rule *stare decisis*. There is no doubt something in that, and if every tribunal had adopted the rules of evidence, I would admit there was a very great deal in it. But under section 1 of the Evidence Act the rules of the law of evidence do not apply to arbitration tribunals. Now, my Lord, the men who preside over arbitration courts are not lawyers, they are not men trained in sifting evidence, they are just ordinary laymen. Yet the law pays such respect to their decisions that it will not allow the courts to interfere with them; it will not allow the parties any right of appeal. I think from this it is clear that the Legislature admits that there are other ways of arriving at the truth than by a slavish adherence to the rules of the law of evidence."

5-4 P.M.

**The Hon'ble Dr. Tej Bahadur Sapru:**—"My Lord, it is somewhat an irony of fate . . . ."

**His Excellency the President:**—"Will you be long, Dr. Sapru?"

**The Hon'ble Dr. Tej Bahadur Sapru:**—"No, my Lord, I will take only 5 or 6 minutes.

"It is somewhat an irony of fate that we, Indian lawyers, should feel proud of British jurisprudence, while true born Englishmen should have to find fault with their own. When I heard Mr. Kincaid finding fault with English jurisprudence and referring to French jurisprudence, Italian jurisprudence and Russian jurisprudence,—probably he did not refer to Russian jurisprudence, I was wondering whether Mr. Kincaid would not after his retirement go to Parliament and play the rôle of Bentham and ask English Judges and juries to revise and to throw away all their inherited rules of evidence and accept his own ideal of the law of evidence. I am old fashioned enough to think that the rules of evidence which have been framed by English lawyers are based on accumulated human experience, and that if there is occasion for the observance of those rules in ordinary cases in India, there is the still greater occasion for the use of these rules in cases of this character where frankly and avowedly you are not adopting judicial form.

"My Lord, I will content myself by reading to your Lordship a passage from a book which probably represents more or less either the ideas or the wishes of the Hon'ble Mr. Kincaid on this matter. A learned legal writer (Mr. Carter) says:—

"A method of trial, where witnesses in our sense are rarely if ever called, may do its work well enough in a small community where everybody knows what everybody else is doing; but these primitive conditions did not last for ever, and when they changed, the position of an accused person must have been, according to modern notions, extremely harsh and difficult. He was not permitted to call witnesses. Queen Mary is said to have directed the judges to

[ 14TH MARCH, 1919. ] [ *Dr. Tej Bahadur Sapru ; Mr. V. J. Patel.* ]

allow prisoners to call witnesses in felony ; but this was regarded as an indulgence, the ruling being that witnesses were not to be heard against the Crown, even in felony, and if such witnesses were called, they were not sworn. Before the great Civil War the following were the features in which a criminal trial differed from a criminal trial of to-day :—

- (1) The prisoner was confined more or less secretly and could not prepare his defence. He was examined and his examination taken down and used against him.
- (2) He had no notice of the evidence which was going to be produced against him.
- (3) He had no counsel either before or at trial.
- (4) There were no rules of evidence as we understand them. The witnesses were not necessarily confronted with the prisoner, nor were originals of documents produced, the confessions of accomplices were not only admitted, but were regarded as specially cogent.
- (5) The prisoner was not allowed to call witnesses on his own behalf; had he been permitted, he could not have done so with effect, for he could not find out what evidence they would give, or procure their attendance. In later times they were not examined on oath even if they were called.

After the Civil War some improvements were made. In 1695 persons indicted for high treason or misprison of treason were to have a copy of the indictment five days before trial and to have counsel and witnesses upon oath.

“ If all the arguments of Mr. Kincaid are to prevail, we must be prepared in the year 1919 to go back to the times before the great Civil War.”

**The Hon'ble Mr. V. J. Patel** :—“ Your Excellency, in this discussion one is likely to lose sight of the main amendment that is for the consideration of the Council, and it is that I do not want this Council to say that the investigating authority shall in all cases be bound to follow the rules of evidence ; all I want is that they shall pay attention to the rules of evidence.”

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

*Ayes—16.*

The Hon'ble Sir Gangadhar Chitnavis.  
 " " Mr. S. N. Banerjee.  
 " " Raja of Mahmudabad.  
 " " Dr. T. B. Sapru.  
 " " Pandit Madan Mohan Malaviya.  
 " " Mr. S. Sastri.  
 " " Mr. B. N. Sarma.  
 " " Mr. V. J. Patel.  
 " " Mr. M. A. Jinnah.  
 " " Sir Fazulbhoj Currimbhoy.  
 " " Maharaja Sir M. C. Nandi.  
 " " Khan Bahadur Mian Muhammad Shafi.  
 " " Sardar Sundar Singh.  
 " " Mr. G. S. Khaparde.  
 " " Bai B. D. Shukul Bahadur.  
 " " Mr. K. K. Chanda.

*Noes—34.*

His Excellency the Commander-in-Chief.  
 The Hon'ble Sir Claude Hill.  
 " " Sir Sankaran Nair.  
 " " Sir George Lowndes.  
 " " Sir Thomas Holland.  
 " " Sir William Vincent.  
 " " Sir James Meston.  
 " " Sir Arthur Anderson.  
 " " Sir Verney Lovett.  
 " " Mr. H. P. Howard.  
 " " Sir James DuBoulay.  
 " " Mr. A. H. Ley.  
 " " Mr. W. M. Hailloy.  
 " " Mr. H. Sharp.  
 " " Mr. B. A. Mant.  
 " " Major-General Sir Alfred Bingley.  
 " " Sir Godfrey Fell.  
 " " Mr. F. C. Rose.  
 " " Mr. C. H. Kesteven.  
 " " Mr. D. de S. Bray.  
 " " Lieutenant-Colonel R. E. Holland.  
 " " Surgeon-General W. R. Edwards.  
 " " Mr. G. B. Clarke.  
 " " Mr. H. Moncrieff Smith.  
 " " 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.”

The amendment was therefore negatived.

[The Council adjourned till 5-40 P.M.]

[ *Mr. G. S. Khaparde*; *Sir William Vincent*; [14TH MARCH, 1919.]  
*Mr. V. J. Patel*; *Mr. Kamini Kumar Chanda*. ]

5-40 P.M.

**The Hon'ble Mr. G. S. Khaparde** :—“The amendment which I wish to move, your Excellency, reads as follows :—

‘That in clause 25(5) for the words ‘may if it thinks fit’ the word ‘shall’ be substituted.’

Clause 25(5) at present runs :—

‘On the completion of the inquiry, the investigating authority shall report in writing to the Local Government the conclusions at which it has arrived, and may, if it thinks fit, adduce reasons in support thereof.’

“For the words ‘may, if it thinks fit’, I would propose to substitute the word ‘shall.’

“This, I take it, will not do any injury to any one, because this report will be intended for the Local Government and the Local Government would like, I believe, to have all such reasons as the investigating authority may think fit to put down. So I wish to substitute the word ‘shall’ for the words ‘may, if it thinks fit’.”

**The Hon'ble Sir William Vincent** :—“I am prepared to accept this amendment on behalf of the Government.”

The motion was put and agreed to.

5-42 P.M.

**The Hon'ble Mr. V. J. Patel** :—“May it please your Excellency, I beg to move that to clause 25 (5) the following be added :—

‘In such conclusions the investigating authority shall state clearly whether or not, in its opinion, the person is or has been actively concerned in any anarchical or revolutionary movement as alleged by the Local Government.’

“On a reference to clause 21 read with clause 25 your Excellency will find that the Local Government has to make an order against the person on the ground that the man is concerned with any movement referred to in section 20. The investigating authority should, I submit, on that information clearly find whether the person concerned is or is not concerned in the movement referred to in section 20 as alleged by the Local Government. I do not for a moment suggest that the Local Government is bound to accept that finding. All that I want is that the investigating authority should be required to state clearly its finding as to this particular allegation.”

5-44 P.M.

**The Hon'ble Sir William Vincent** :—“My Lord, we believe the object which the Hon'ble Member has in view is already met by the words of the clause as drafted, but if it will satisfy his wishes I am quite prepared to accept the amendment in the following modified form. Perhaps the Hon'ble Member will compare it.

‘That to sub-clause 5 of clause 25 the following be added :—

‘In reporting such conclusions the investigating authority shall state whether or not, in its opinion, the person in question is, or has been, actively concerned in any movement of the nature referred to in section 20.’

**The Hon'ble Mr. V. J. Patel** :—“My Lord, this is all right; it meets the requirements of my amendment.”

The amendment in the modified form was put and agreed to.

5-46 P.M.

**The Hon'ble Mr. Kamini Kumar Chanda** :—“I think, My Lord, this disposes of my amendment\* No. 126.”

\* That to clause 25(5) the following provision be added :—

‘Provided that the investigating authority shall first record its finding as to whether it is satisfied that the person in question is or has been actively concerned in such area in any movement of the nature referred to in section 20, and in case it is not so satisfied the person shall be at once discharged.’

[ *The President; Mr. Kamini Kumar Chanda; Rao Bahadur B. N. Sarma; Sir James DuBoulay; Sir William Vincent.* ] [14TH MARCH, 1919.]

**His Excellency the President:**—"You do not wish to press your amendment."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"No, my Lord."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"In view of the acceptance by Government of amendment No. 112, I beg to withdraw my next amendment.\*"

The amendments were by leave withdrawn.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move--

'That in clause 25(C) for the word 'may' the word 'shall' be substituted.'

**His Excellency the President:**—"The word 'may' occurs three times in that sub-clause. Which one do you mean?"

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I mean the 'may' in the last line and on such a recommendation, the Local Government may extend the duration of the order accordingly'.

"I would propose that instead of the 'may' there the word 'shall' be substituted."

**The Hon'ble Sir James DuBoulay:**—"There is some difficulty in understanding which of the various 'mays' Mr. Chanda refers to".

**His Excellency the President:**—"The Hon'ble Member means the 'may' in the second last line."

**The Hon'ble Sir James DuBoulay:**—"It seems to me that this would prevent the Local Government from letting a man go, though the investigating authority had not completed its inquiries or come to any conclusion, the Local Government had independently made up its mind that there were not sufficient grounds for taking action against the person concerned.

"We are therefore not prepared to accept this amendment."

The motion was put and negatived.

The motion that clause 25 as amended by the Select Committee and as further amended stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 26 as amended by the Select Committee stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move the following amendment:— 5-46 P.M.

'That in clause 26(1) for the words 'may discharge' the words 'if the report shows that such authority is not satisfied that the person is or has been actively concerned in such area in any movement of the nature referred to in section 20 shall discharge' and for the words 'or may make' the words 'and in other cases may make' be substituted.'

"The sub-clause will then read like this:—

"On receipt of the report of the investigating authority, the Local Government, if the report shows that such authority is not satisfied that the person is or has been actively concerned in such area in any movement of the nature referred to in section 20, shall discharge the order made under section 21, and in other cases may make any order which is authorised by that section."

\* That in clause 25(6) the word 'if' be deleted and for the words 'has not completed' the words 'shall complete' be substituted and the words 'from such authority' to the end of the sub-clause be deleted.

[14TH MARCH, 1919.] [Sir William Vincent; Mr. Kamini Kumar Chanda; Mr. G. S. Khaparde; Rao Bahadur B. N. Sarma; Mr. V. J. Patel.]

**The Hon'ble Sir William Vincent** :—"My Lord, I have attempted to explain to this Council more than once that the investigating authority is not a judicial body. The effect of the Hon'ble Member's amendment would be to make the decision or the opinion of the investigating authority a mandate to the Government. Well, that is exactly what is not contemplated. I can assure the Council that in 99 cases out of 100 the opinion of the investigating authority is accepted, and if Hon'ble Members have taken the trouble to withdraw from the table a copy of a statement which I laid thereon showing the action taken on reports by advisory committees recently, they will see that it entirely bears out what I say. But there are exceptional cases in which Government does not accept the views of the Committee. There may be and have been such cases, but apart from this the matter is really one of principle. The responsibility for releasing these men or keeping them under restriction is the Executive Government's."

5-49 P.M.

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I do not quite appreciate the object of this arrangement. Why then have this authority at all? If the finding of the authority is to have no weight, you might as well not have this authority."

The motion was put and negatived.

**The Hon'ble Mr. G. S. Khaparde** :—"My Lord, I withdraw my amendment—

"That in clause 26 (I) for the word 'may' the word 'shall' be substituted and after the words 'section 21' the words 'if the investigating authority has so recommended' be inserted and for the word 'or' the words 'and in other cases' be substituted."

The amendment was by leave withdrawn.

**The Hon'ble Rao Bahadur B. N. Sarma** :—"My Lord, I withdraw my amendment—

"That in clause 26 (I) for the words from 'or may make' to the word 'section' the words 'and shall do so, if the investigating authority reports favourably to the persons accused' be substituted."

The amendment was by leave withdrawn.

**The Hon'ble Mr. V. J. Patel** :—"My Lord, I withdraw my amendment—

"That in clause 26 (I) after the words 'is authorized by that section' the words 'and justified by the report' be inserted."

The amendment was by leave withdrawn.

**The Hon'ble Mr. G. S. Khaparde** :—"I beg to move—

"That in proviso (a) to clause 26 (I) after the words 'that authority' the words 'and its reasons therefor' be inserted."

"This is a very small amendment. If the proviso remains as it is, the investigating authority might only give their conclusions but not the reasons for those conclusions, and I make it necessary that they should state the reasons for their conclusions, and that is all."

**The Hon'ble Sir William Vincent** :—"My Lord, the Hon'ble Member described his amendment as a small one, and I have heard him describe other amendments in the same words. The effect of it, however, will be to make it incumbent on the investigating authority to disclose to the person whose case is under investigation the whole of the information given against him. Well, I have been at some pains on various occasions this afternoon to explain to the Council what that means. It clearly involves

[14TH MARCH, 1919.] [Sir William Vincent; Rao Bahadur B. N. Sarma; Mr. Kamini Kumar Chanda.]

exposing persons who have given information to Government to the danger of immediate assassination. I am a little surprised that my friend the Hon'ble Mr. Khaparde should seek to place persons who have assisted Government in that dangerous position. I am afraid that I must oppose this amendment."

The amendment was by leave withdrawn.

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I beg 6-53 P.M. to move:—

"That in clause 26 (2) for the words 'on which it was made' the words 'of the order made under section 21' be substituted."

"The clause would read thus—

"No order made under sub-section (1) shall continue in force for more than one year from the date of the order made under section 21."

"It is a matter of some importance because if the order is to be in force for one year from the date on which . . . . .

**The Hon'ble Sir William Vincent:**—"May I interrupt—merely to save time—to inform the Hon'ble Member that I am prepared to accept the amendment?"

The motion was put and agreed to.

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I beg to move—

"That to clause 26 (2) the following be added:—

"The Local Government shall pass its order on the report within a week from the receipt thereof and the interim order shall remain in force till then."

"The first part was intended to curtail as far as possible the period during which an interim order should have been in force against the accused; but in view of the modification of clause 2, which was accepted by the Government, I do not press this part.

"But I submit the second part may well be accepted, because I think the recommendation of the investigating authority to extend the period of the order passed under section 21 would ordinarily be confined to the date on which they may make their recommendation. Supposing one month expires and the period provided for in clause (6) expires, it would take some time for the Government to pass their orders on the report. There is no provision as far as I can see—I speak subject to correction—there is no provision for the extension of the order. I therefore say that the interim order shall remain in force till then. But it is really immaterial whether the Government accept or not."

**The Hon'ble Sir William Vincent:**—"My Lord, the Government have no objection to this amendment, but I hope the Hon'ble Member sees the effect of his proposal: it will allow the Government to keep an order in force indefinitely, and I am not sure that this is what he intends."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I will not 5-54 P.M. press the amendment, my Lord. It would have been necessary if my other amendment had not been accepted."

The amendment was by leave withdrawn.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to move—

"That in clause 26 (3) after the words 'again make' the words 'a reference to the investigating authority and the same procedure as laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed' be inserted and the rest of sub-clause be deleted."

[*Mr. Kamini Kumar Chanda; Sir William Vincent; The President; Mr. G. S. Khaparde; Rao Bahadur B. N. Sarma; Khan Bahadur Mian Muhammad Shafi.*] [14TH MARCH, 1919.]

"The clause would then read—

"On the expiry of an order made under sub-section (1), the Local Government may, if it is satisfied that such a course is necessary in the interests of the public safety, again make a reference to the investigating authority and the same procedure as is laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed."

**The Hon'ble Sir William Vincent:**—"My Lord, I am afraid I am not prepared to accept this amendment as it stands, but I hope to be able to meet to a great extent what the Hon'ble Member seeks in connection with an amendment to be moved by the Hon'ble Mr. Shafi later."

**His Excellency the President:**—"Do you accept this arrangement, Mr. Chanda?"

**The Hon'ble Mr. Kamini Kumar Chanda:**—"Yes, my Lord."  
The amendment was by leave withdrawn.

**The Hon'ble Mr. G. S. Khaparde:**—"My Lord, I will await the result of the amendment to be moved by the Hon'ble Mr. Shafi (No. 139) before moving mine."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I will do the same, my Lord."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, I beg to move—

"That in clause 26, sub-clause (4) be deleted and the following be inserted as a further proviso to sub-clause (3):—

"Provided, further, that before an order is made under this sub-section, a copy thereof shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for inquiry and report, and the investigating authority, after inquiry conducted in accordance with section 25, shall report thereon, and the Local Government shall consider the report of such authority."

"As I understood the Hon'ble the Home Member to say that he was prepared to accept this amendment, I need not take up the time of the Council in discussing the reasons for which I move the amendment."

5-56 P.M.

**The Hon'ble Sir William Vincent:**—"I am prepared to accept the amendment, but there is a small change in the wording and perhaps, as other Hon'ble Members are interested in this matter, I might read it out:—

"Provided that before an order is made under this sub-section, a copy of the order which it is proposed to make shall be furnished to the person concerned, who may submit to the Local Government a representation in regard to such order. Any such representation shall be forwarded by the Local Government to the investigating authority for enquiry and report, and the investigating authority, after inquiry conducted in accordance with section 25, shall report thereon, and the Local Government shall consider the report of such authority."

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"I am satisfied."

The motion as amended was put and agreed to.

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, this  
\* To be moved if the amendment proposed in clause 26 (1) be not accepted. is the amendment \* that to clause 26 (3) the following proviso be added:—

"Provided that when an order was passed under section 26 (1) which is not supported by the conclusion of the investigating authority under section 25, an order shall be passed under this clause only after reference to the investigating authority and on the strength of its conclusions."



[14TH MARCH, 1919.] [Rao Bahadur B. N. Sarma; The President; Mr. Kamini Kumar Chanda; Mr. G. S. Khaparde; Sir William Vincent.]

"It is also referred to in amendment No. 140 which runs as follows:—

'That to clause 26 (4) the following be added:—'and pass orders in accordance with its conclusions.'

"I do not wish to speak on these; I merely ask your Lordship to put them. I do not wish to withdraw them. I wish to put the last portion of amendment No. 138; that the Government are not going to allow the investigating authority's conclusions to be final. I do not want to say anything about that."

The motion was put and negatived.

**His Excellency the President**:—"May I inquire if Mr. Chanda and Mr. Khaparde wish to put their amendments Nos. 136\* and 137†?"

**The Hon'ble Mr. Kamini Kumar Chanda**:—"No, my Lord."

**The Hon'ble Mr. G. S. Khaparde**:—"No, my Lord."

**His Excellency the President**:—"Amendment No. 140 automatically drops following the fate of No. 138. The question is that clause 26, as amended by the Select Committee and as further amended, stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent**:—"My Lord, I move that clause 27, as amended by the Select Committee, stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda**:—"I wish to move a small amendment to this, my Lord, that in clause 27 after the words 'punishable with' the word 'simple' be inserted. I say, my Lord, that disobedience to an order under this Part should be punishable with simple imprisonment in accordance with section 188 of the Indian Penal Code which says: 'Whoever knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month.' Of course, there is another clause of the same section which says 'and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months or with fine . . . . .'"

6 P.M.

"My submission, my Lord, is that in accordance with the earlier part of the same section the sentence should be simple imprisonment."

**The Hon'ble Sir William Vincent**:—"My Lord, the punishment under section 188, Indian Penal Code, where disobedience to the order promulgated causes or tends to cause danger to human health, life or safety or causes or is likely to cause a riot or affray, is imprisonment of either description for six months, and I submit that a person who disobeys an order under the law, which is directly connected with a movement against the public safety, certainly deserves no more consideration."

\* That in clause 26 (2) after the words "again make" the words "a reference to the investigating authority and the same procedure as is laid down in the foregoing sub-clauses of this section shall *mutatis mutandis* be observed" be inserted and the rest of sub-clause be deleted.

† That in clause 26 (3) after the words "again make" the words "on a fresh reference to the investigating authority" be inserted.

[ *Mr. Kamini Kumar Chanda* ; *Mr. V. J. Patel* ; [ 14TH MARCH, 1919. ]  
*Sir William Vincent* ; *Rao Bahadur B. N. Sarma*. ]

**The Hon'ble Mr. Kamini Kumar Chanda** :—" But in some cases under section 188 of the Indian Penal Code the punishment is simple."

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel** :—" My Lord, I beg to move—

" That in clause 27, for the word ' six months ' the words ' three months ' and for the words ' one thousand rupees ' the words ' five hundred rupees ' be substituted.

" I am sure my Hon'ble friend, the Home Member, is aware that there is some feeling on the subject, and I trust the Government will consider this favourably."

6-3 P.M.

**The Hon'ble Sir William Vincent** :—" My Lord, I am willing to accept the Hon'ble Member's amendment in so far as it relates to the amount of fine, because as far as I know there have been no cases in which fines exceeding five hundred rupees have been imposed. If it would meet the Hon'ble Member in any way to have the amendment framed in the following words, I am quite prepared to accept it :—

" That in clause 27 for the words ' one thousand rupees ' the words ' five hundred rupees ' be substituted."

6-5 P.M.

**The Hon'ble Mr. V. J. Patel** :—" My Lord, it is all right so far as it goes ; I have no objection, it may go in."

The amended motion was put and agreed to.

The motion that clause 27, as amended by the Select Committee and as further amended, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—" My Lord, I move that clause 28 do stand part of the Bill."

6-6 P.M.

**The Hon'ble Rao Bahadur B. N. Sarma** :—" I move, my Lord, that in clause 28 after the words ' District Magistrate ' the words ' or Sessions Judge ' be inserted. This clause deals with the forfeiture of security bonds, and I submit that, inasmuch as the question is one of some importance power may be conferred upon Sessions Judges also because after all the choice of the Sessions Judge lies with the Local Government. I only enlarge the scope and the sphere from which the choice should be made, and I hope the Government will be able to accept it."

**The Hon'ble Sir William Vincent** :—" My Lord, I am afraid I must oppose this amendment. It is clearly not in accordance with ordinary practice. The enforcement of bonds is a matter for the District Magistrate rather than for the Sessions Judge. The bond here is imposed or taken on the motion of an executive authority and the enforcement and realisation of it should be entrusted to a Magistrate."

The motion was put and negatived.

The motion that clause 28 stand part of the Bill was put and agreed to.

6-8 P.M.

**The Hon'ble Sir William Vincent** :—" My Lord, I move that clause 29, as amended by the Select Committee, do stand part of the Bill."

**The Hon'ble Mr. V. J. Patel** :—" My Lord, I beg to move that in clause 29 for the words ' Local Government ' wherever these words occur in the said clause, the words ' Chief Justice ' be substituted. To put in two words, the amendment means that the power to appoint the investigating authority should be vested in the Chief Justice and not in the Local Government. The reason is this, my Lord, that it is the Local Government who makes the first order, the interim order ; it is the Local Government

[14TH MARCH, 1919.] [Mr. V. J. Patel; Sir William Vincent; Mr. Surendra Nath Banerjea.]

who lays information before the investigating authority; it is the Local Government under the clause as it stands who appoints the investigating authority; it is the Local Government who has to receive the report of the investigating authority and it is the Local Government, finally, that is to decide the fate of the man. I therefore submit that so far as the investigating authority is concerned, it must feel that it is to some extent independent of the Local Government. For these reasons I move this amendment. I trust the Hon'ble Member will accept it."

**The Hon'ble Sir William Vincent** :—" My Lord, I regret that I <sup>6-10 p.m.</sup> cannot think of accepting this amendment. The action is in this case taken by the executive Government and the responsibility is that of the executive Government. There is no reason why the Chief Justice should be placed in the somewhat awkward position which the Hon'ble Member proposes. The procedure proposed under the Bill for the investigating authority is not judicial; that is a point which we have attempted to make clear from time to time; indeed, I doubt whether the Chief Justice would be in a position to appoint the investigating authority. From my experience I believe also that Chief Justices would be the first to object to the proposal which the Hon'ble Member makes, which would have the effect of mixing them up with executive proceedings of this character."

**The Hon'ble Mr. V. J. Patel** :—" I am sorry, my Lord."

The motion was put and negatived.

**The Hon'ble Mr. Surendra Nath Banerjea** :—" I beg to <sup>6-11 p.m.</sup> move, my Lord—

'That in clause 29 (2) for the words 'one shall be a person' the words 'two shall be persons' and for the words 'a person' the words 'an Indian' be substituted.'

" My Lord, the amendment is somewhat cryptic. The section refers to the constitution of the investigating authority; it says that the investigating authority shall consist of three persons; the status and character of two persons named in the clause are mentioned, *i.e.*, to say one shall be a judicial officer not below the rank of a Sessions Judge, and the other a non-official; but who the third is to be is not defined. I want to make the personnel of the investigating authority definite, and I suggest that two of the members of the investigating authority shall be officers not below the rank of District and Sessions Judges and the third shall be a non-official Indian. My Lord, we have some experience of these boards in Bengal, and, I believe, the suggestion that I have made is a suggestion that is generally followed in the constitution of these boards.

" I remember the work of one board. A dacoity took place not very far off from the place where I lived and the president was a District Judge. He was a High Court Judge for some time. There were two other members, and one was a retired High Court Judge. The Hon'ble the Home Member probably knows him, Dewan Bahadur Hari Nath Rai. The other member was a non-official. I know another investigating board and the constitution was upon the same line. These tribunals gave satisfaction in the performance of their duties. Inasmuch as you have that experience I want to embody it in the Bill. Having regard to the facts I have mentioned I hope my Hon'ble friend will see his way to accept this small amendment; it does not in any way interfere with the scope of the Bill."

**The Hon'ble Mr. V. J. Patel** :—" My Lord, I am sorry that I have to oppose this amendment. I know that the Hon'ble the Home Member will try to accept it."

**The Hon'ble Sir William Vincent** :—" I can assure Mr. Patel that I will not force it on the Council."

[ *Mr. V. J. Patel; Sir William Vincent; Mr. Surendra Nath Banerjea; Mr. G. S. Khaparde; Rao Bahadur B. N. Sarma.* ] [14TH MARCH, 1919.]

**The Hon'ble Mr. V. J. Patel:**—"That is my view. I am not in favour of an Indian being on the investigating board, because we Indians do not hold ourselves responsible for the passing of this measure. I think no Indian should serve on these investigation boards."

6-13 P.M. **The Hon'ble Sir William Vincent:**—"I was very pleased to hear from the Hon'ble Mr. Banerjea that the investigating authorities or advisory committees that he mentioned do give such satisfaction. It was the more gratifying to me because some of the remarks which have been made from time to time in this Council indicated that they were of no use. We have now cogent evidence from a non-official member of this Council as to the value of their work. I am quite prepared to accept the amendment of the Hon'ble Member providing that the members of the authority shall be judicial officers. I would ask the Hon'ble Member not to insist on a statutory condition that one member should be an Indian as it is inadvisable to make these racial distinctions in a Statute. I will ask the Hon'ble Member, if he will take it from me, that we will issue instructions to Local Governments that one Indian shall certainly be on the boards."

**The Hon'ble Mr. Surendra Nath Banerjea:**—"I accept that."

The motion\* was put and agreed to.

**The Hon'ble Mr. V. J. Patel:**—"I beg to withdraw the amendment—

'That in clause 29 (2) for the words 'one shall be a person having held' the words 'two shall be persons having held' be substituted.'"

The amendment was by leave withdrawn.

**The Hon'ble Mr. G. S. Khaparde:**—"I beg to withdraw the amendment—

'That in clause 29 (2) for the words 'and one shall' to the end of the sub-clause the words 'the remaining two shall be practising pleaders of not less than 10 years' standing' and not in the service of the Crown of India' be substituted.'"

The amendment was by leave withdrawn.

6-15 P.M. **The Hon'ble Rao Bahadur B. N. Sarma:**—"I beg to move the following amendment:—

'That in clause 29 (2) for the words from 'and one' to the word 'India' the words 'the remaining two being elected by the non-official members of the Legislative Council from among the elected members' be substituted.'

"I want one of the members of the investigating authority to be a judicial officer and that he should be associated with the members of the local Council elected by it. My object is that this may inspire confidence in the public, that if the administrative machinery to be devised by the Government should consist partly of elected members of the Council, who may be chosen from among a panel or otherwise selected, it would inspire confidence in the public. The elected men would be responsible to the voters and public safety would be promoted."

6-17 P.M. **The Hon'ble Sir William Vincent:**—"I think the Government would be in some difficulty in this matter if they accepted this amendment. We have heard Mr. Patel say that he was quite unwilling that any member of the investigating authority should be an Indian. In what position would the Government be left in the matter? I do not think also that the Hon'ble Mr. Sarma

\*That in clause 29 (2) for the words 'one shall be a person' the words 'two shall be persons' be substituted.

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can have thought of the burden he was placing on the panel of members selected from the Provincial Council. I suggest it would be unwise for the Council to impose on non-official members a burden of this kind without consulting them."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I have not said that the gentlemen selected should be Indians, they may be."

**The Hon'ble Sir William Vincent:**—"They have to be elected members."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"They may be Europeans?"

**The Hon'ble Sir William Vincent:**—"Am I to understand that the Hon'ble Member intends to select members like Mr. Hogg or Mr. Ironside?"

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I am certain that <sup>6-19 P.M.</sup> if Mr. Hogg or Mr. Ironside worked on the Provincial Council, there would not be very much difference in many essential points between them and their Indian colleagues. I have not suggested that the members who are to sit should be Indians, so there ought not to be any difficulty. As regards the second point raised by the Hon'ble the Home Member as to the burden that would be thrown on non-official members, if they are to be responsible men, if they choose to represent their country, they should take over this burden and to suppress revolutionary and anarchical movements, should help the Government by their presence on these bodies and by their co-operation. I think non-officials should be glad if the Government imposed this burden on them?"

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel:**—"I beg to withdraw my amendment—

'That in clause 29 (2) for the words 'one shall be a person not in the service of the Crown in India' the words 'two shall be pleaders being non-officials and practising for not less than ten years' be substituted.'

The amendment was by leave withdrawn.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I beg to move <sup>6-20 P.M.</sup> the following amendment:—

'That in clause 29 (2) for the word 'one' the word 'two' be substituted and after the words 'in India' in the same sub-clause the words 'selected from a panel of six persons nominated by the Provincial Legislative Council' be inserted.'

The motion was put and negatived.

**The Hon'ble Mr. V. J. Patel:**—"I beg to withdraw my amendment—

'That in clause 29 (2) for the words 'one shall be a person not in the service of the Crown in India' the words 'one shall be a pleader being a pleader and practising for not less than ten years' be substituted.'

The amendment was by leave withdrawn.

The motion that clause 29, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

[ *Sir William Vincent; Mr. Kamini Kumar Chanda; Mr. V. J. Patel; Pandit Madan Mohan Malaviya.* ] [14TH MARCH, 1919.]

6-21 P.M.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 30, as amended by the Select Committee, do stand part of the Bill."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, the amendment that I wish to move reads thus:—

'That in clause 30 (1) after the words 'thinks fit' the words 'from a panel of twelve persons nominated by the Legislative Council' be inserted.'

"My Lord, this stands on a different footing, and I hope this will appeal to the Hon'ble the Home Member."

6-23 P.M.

**The Hon'ble Sir William Vincent:**—"My Lord, I really do not think that the Hon'ble Member ever expected that we would adopt this amendment, and I believe that a panel such as he proposes would be most unsuitable in every way. Visiting Committees will be appointed for different centres to report upon the welfare of persons under restraint. There may be, I hope there will not be, unless conditions become bad, but there might be four or five different committees in one province in different parts because the members of the Visiting Committees should live near the places of internment so as to be able to look after the welfare of the individuals whom they are to visit, and it might be quite impossible to get suitable people living in the vicinity from the panel chosen by the Legislative Council. Even if it was in accordance with the Government idea of the constitutional position that the Legislative Council should take an authoritative part in a purely executive matter of this kind, a panel of 12 would not be sufficient . . . ."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"In that case you might increase the number. Make it 30."

**The Hon'ble Sir William Vincent:**—"I have taken the amendment as it is put forward."

The motion was put and negatived.

The motion that clause 30, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent:**—"My Lord, I move that clause 31, as amended by the Select Committee, do stand part of the Bill."

The motion was put and agreed to.

6-24 P.M.

**The Hon'ble Mr. V. J. Patel:**—"May it please your Excellency, I beg to move that Part III be deleted.

"Your Excellency, about the provisions of this Bill, the less said the better. After hearing, my Lord, I am bound to say that after three days' hard work I have now fully realised, considering the determined attitude of Government not to yield an inch of ground on any essential particular, that it is hopeless to expect anything in the direction asked for by this amendment. I therefore formally move the amendment and leave it to the good sense of this Council."

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I have nothing more to add to what my Hon'ble friend Mr. Patel has said. I have taken a vow not to speak any more to-night."

6-25 P.M.

**The Hon'ble Pandit Madan Mohan Malaviya:**—"My Lord, I support the amendment which has been moved by the Hon'ble Mr. Patel."

[14TH MARCH, 1919.] [Pandit Madan Mohan Malaviya.]

My Lord, I would like, if I may, once more to try to point out to the Government that there is no necessity for enacting such a piece of legislation as is provided for in Part III, and secondly, that it is not right that it should be so enacted. My Lord, this Part proposes to substitute executive for judicial authority in dealing with cases which are contemplated to be dealt with under it. Section 33 says that the Governor General in Council is to make a declaration, if he is satisfied of the fact, that in the whole or any part of British India anarchical or revolutionary movements are being promoted and that scheduled offences in connection with such movements are prevalent to such an extent as to endanger the public safety, by a notification in the *Gazette of India*, and that, thereupon, the provisions of this Part shall come into force in the area specified. Subsequent to that if, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may make in respect of such person any order authorised by section 21, and may further by order in writing direct—

- (a) the arrest of any such person without warrant;
- (b) the confinement of any such person in such place and under such conditions and restrictions as it may specify.

“Now, my Lord, presumably the Local Government will have obtained some information; it will be in a position to say that it has reasonable grounds for believing that a particular person has been or is concerned in any such offence as is mentioned here. Presumably that information will have come to the Local Government through the Police and its other executive officers, but not as the result of a judicial investigation. It is proposed that having obtained that information, the Local Government should have power to pass an order of the nature mentioned in section 21, or any of the other orders which are mentioned in the section. Under the ordinary procedure which is provided for in the existing Criminal Procedure Code, it is open to the Local Government to send such a case to a Magistrate for investigation. My friend, the Hon'ble Mr. Patel, drew attention to it in dealing with Part II of this Bill. Section 108 lays down that—

‘Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, disseminates or attempts to disseminate, or in any wise abets the dissemination of—

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, or,
- (b) any matter the publication of which is punishable under section 153-A, then such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.’

“Section 110 gives power to a Presidency Magistrate, District Magistrate and Sub-Divisional Magistrate, who, on receiving information that any person is so desperate and dangerous as to render his being enlarged without security hazardous to the community. I submit, my Lord, that this provision would cover a case such as the one contemplated in sections 32 and 33. It is the Local Government which would send the case to a Magistrate to deal with. But it is proposed in the Bill that the Local Government should itself pass an order. Is there any justification shown for it? If the Local Government has obtained some information which it is willing to place later on before an investigating authority, what on earth can be the objection to the Local Government placing the same information before a Magistrate in the service of the Government for judicial investigation? Has the Government lost confidence in its Magistrates? Is there any justification for suggesting or implying that the Government has any reason to suspect the honesty, the integrity or the ability of the Magistrates who are serving the Government at present? If there is not, will anybody tell me why the investigation of a matter of the character

[ *Pandit Madan Mohan Malaviya.* ] [ 14TH MARCH, 1919. ]

we are discussing should be taken out of the jurisdiction of the Magistrate, and entrusted to an investigating authority which it is proposed to constitute? If the matter goes before a Magistrate, the man has got all the constitutional safeguards of liberty in having the charge or accusation which may be urged against him properly, judicially tried. He has the opportunity of knowing who his assailant or accuser is. He has the opportunity of knowing what that man has said against him, and he will have the opportunity of putting his evidence to test by cross-examination by the help of a trained lawyer. If the Magistrate should pass an order against him, he would have the opportunity of taking the matter to a High Court and getting the verdict of that Court upon it. I submit, therefore, that there is no justification shown why any case which may arise under section 33 should not be left to be dealt with the ordinary regular courts.

“ My Lord, I want to make it clear that none of us for a moment wishes that men who commit crimes shall not be dealt with in the most effective way possible. As I have said repeatedly, these crimes injure my own countrymen most, and I am anxious that none of them should injure themselves or others by indulging in them. I am anxious and my friends are anxious that every reasonable step should be taken to check and eradicate anarchical and revolutionary activities and crimes, but we are also anxious that, in making that attempt, preventable injustice shall be duly guarded against. That is the whole reason of our anxiety for asking that judicial procedure and form should not be replaced by executive authority and action. If the Bill is not passed, it does not mean that the Government will be powerless to deal with such crimes. There is provision in the existing law to enable them to do so. And if it were shown, if it was proved by what has happened in actual cases that these provisions are insufficient, that a proper sufficient effort had been made by strengthening and improving the police, by appointing men who could be trusted to sift evidence and produce only evidence which was true, there might be reason for strengthening the police, improving the judiciary and taking such other steps as might be necessary to strengthen the judiciary. But because in some cases the attempt to bind over or to secure persons who might have been suspected of being implicated in crime or criminal movements has failed, I submit that does not afford any justification for putting aside the regular procedure of courts and substituting executive authority for them. My Lord, there have been cases of failure of justice in the past in the regular courts. But I have not heard it suggested that because there were failures of justice in some cases, therefore the ordinary courts should give place to unjudicial, executive bodies and that they should be left to deal with cases. It is necessary to realise the effect of the procedure that is now proposed. It will be this that the Local Government, on receiving information against a man, may by a mere executive order deprive him of his liberty. My Lord, as my friend the Hon'ble Mr. Jinnah has pointed out, as other Hon'ble Members have pointed out, we do value liberty. We oppose the Bill not because any of us is afraid that these provisions of the law may touch a Member of this Council, though one should not be too sure that they would not. We oppose it because we have concern for those who may fall victims to the exigencies of this procedure. The existence of extra-judicial regulations; of repressive, drastic legislation, has sometimes led to the employment of such provisions to the injustice of individuals, and we are afraid that, if the proposed Part III of the Bill becomes law, it may lead in many cases to irremediable injustice. It is therefore that we are offering our stoutest resistance to the passage of this legislation.

“ My Lord, it has been said by some that the impression created in some quarters by our opposition to this Bill would be that we are not sufficiently alive to our duty to our fellowmen to secure peace, order and good government. I cannot believe that such a charge will be advanced by any one who has a knowledge of facts. I hope that our persistent efforts in this Council and other Legislative Councils for years have shown that we have been labouring earnestly, strenuously, prayerfully to promote the welfare of our fellowmen, and it is only that earnest



[14TH MARCH, 1919.] [Pandit Madan Mohan Malaviya; Mr. M. A. Jinnah.]

desire to secure their welfare, to secure them from injustice, which leads us to offer this opposition. On the other hand, my Lord, there have been many instances in which Local Governments have erred. That is also a circumstance which we cannot forget, cannot get over. The rules made under the Defence of India Act gave power to Local Governments to adopt certain measures as emergency measures. Those powers have been abused in more than one instance, by more than one Local Government. And we fear that if the powers now proposed are given to Local Governments for three years in times of peace, there is a danger of their being exercised to the injury of individuals. For these reasons I would once more ask the Government to consider the existing provisions of the law and to be content with these provisions and to drop Part III of the Bill which is now before the Council. I venture to repeat that I feel sure that, if that is done, there will be no injury to any public interest. The apprehension that revolutionary and anarchical crimes may be revived is an apprehension against which there are many reasons and circumstances to be taken into account. If they should be revived in any measure, then it will be the time for the Government to consider and enact some special legislation, if it is shown that the existing legislation is insufficient. My Lord, to pass in advance, in apprehension of danger which may never arise, a piece of legislation which subverts the existing system of justice, which takes away powers which are at present exercised by the judiciary, and puts them in the hands of the executive, is an anomalous, dangerous and an unwise procedure. I earnestly wish and hope that the Government will yet see the wisdom of abandoning it."

**The Hon'ble Mr. M. A. Jinnah** :—" My Lord, I will only quote 6-40 P.M.  
the words of a very great authority before I say anything more. In a very famous case, which is known as Daniel's case, one of the greatest jurists and lawyers laid down three propositions :

'The first proposition is that no man can be imprisoned upon the will and pleasure of any, but a bondman or a villein.

'The second proposition. If a freeman of England might be imprisoned at the will and pleasure of the King, or by his command, he were in worse case even than a villein.

'The third proposition. A freeman imprisoned without cause is civilly dead.'

" My Lord, the provisions of Part III of this Bill will bring about this result. First, the selection of the victim will be left to the plenary discretion of the bureaucracy ; secondly, my Lord, it means the negation of public safety and defence ; and thirdly, my Lord, I say that it is poison to the commonwealth.

" My Lord, to quote the words of Lord Shaw in that famous judgment to which I have referred, this is what he says—

' In the exercise of power that the Government have the plainest teachings of history and the dictates of justice demand that, on the one hand, Government power, and, on the other hand, individual rights, these two, shall face each other as party and party.'

He does not say it is said it will not be so. Here, in the provisions of this Bill, the Government, as a party, shall act at its own command ; the subject, as a party, shall submit and shall not be heard. The Government is at once to be party, judge and executioner. That, my Lord, seems to be Part III of this Bill.

" My Lord, I will not take up the time of this Council any more. I say, my Lord, that Part III is the blackest part of this black Bill. And, my Lord, I speak with this passion, with this earnestness, with this feeling, because, if it ever finds its place on the Statute-book, it will tarnish the fair name of India and Great Britain. I love India, but, my Lord, I do not love Great Britain the less, because it has been the home of my training and education."

[ *Sir James DuBoulay* ; *Dr. Tej Bahadur Sapru*. ] [14TH MARCH, 1919.]

6-45 P.M.

**The Hon'ble Sir James DuBoulay** :—“ My Lord, I rise to oppose this amendment. I do not think that I need traverse the same ground that was traversed this morning. We all agreed that these are not pleasant measures to have to introduce. It is only the necessity of the case that makes us introduce them.

“ When the Hon'ble Pandit Madan Mohan Malaviya said that we had weapons in our hands that we can use, referring us to Chapter VIII of the Criminal Procedure Code, he ignored all that has been said here to-day about the impossibility of bringing evidence into court, the impossibility of following the usual forms of criminal procedure. The first thing that has to be done under that Chapter, when a Magistrate begins his inquiry, is to follow the rules for either summons cases or warrant cases. The witnesses have to come into court to be examined and cross-examined, and all those unavoidable features which we have introduced into the present Bill for the protection of witnesses would go by the board if we confined ourselves to Chapter VIII. He said that if the provisions of the ordinary law have been sufficient in the past, they ought to be sufficient now. We know that they have not been sufficient in the past. We know that if it had not been for the weapon that was placed in our hands by the Defence of India Act, we should have been in a state of chaos in Bengal. We were casting about for some means by which to meet the situation. The Defence of India Act was the weapon which enabled us to meet it, and that is the weapon which in a modified form we are asking you to allow us to continue to use.

“ Again, he suggested that the police might have been strengthened. But they have been strengthened. I think anyone here who represents Bengal must know how the budget of the Bengal Province has gone up year by year, and what tremendous increases there have been to every branch of the police in Bengal.

“ I cannot believe that the Hon'ble Pandit means that this Government ought to improve the High Court of Calcutta. I do not know what he meant by ‘improving’ the courts. The fact of the matter is that this Part III is merely an amplification of Part II. The principle is the same as in Part II. We have only a later stage of revolutionary developments here. In Part III we have the effects of revolutionary propaganda in operation and we have these scheduled offences prevalent. The more lenient measures that were sufficient when the movement was only threatening to result in these scheduled offences are no longer sufficient, and it is necessary to take the more drastic measures provided in Part III.”

6-47 P.M.

**The Hon'ble Dr. Tej Bahadur Sapru** :—“ My Lord, so many cases have gone up to the Calcutta High Court in which these terrorists and people of that class have figured, that I do not doubt that it would be possible for Members of the Government to point to any remarks that might have been made in the judgments of the High Court, to the effect that the present law was not fully adequate to the occasion. It is not as if the repressive legislation which has been passed hitherto has not yet come up for discussion in the High Courts. It may be that probably the Hon'ble the Law Member or the Hon'ble the Home Member knows of such remarks ; but so far as I recollect, whatever other defects in the present law the High Courts may have pointed out, I do not think they have in so many words said that they feel themselves incompetent to deal with the situation which has arisen in Bengal merely because the law is inadequate or insufficient. It has been assumed during the course of the argument on the official side that the Council, as well as the country, are agreed that the present law is insufficient, and that therefore it is in the highest interests of the State necessary that such extraordinary powers—unknown to English law—I only hope I shall not be corrected because I take pride in English law—and unknown to Indian law, should be put into force. As my friend,

[14TH MARCH, 1919.] [Dr. Tej Bahadur Sapru; Mr. V. J. Patel.]

the Hon'ble Mr. Jinnah, has already pointed out, the provisions of this Part are far more drastic than those of any other Part, because by proceeding under this Part, what do you do? You simply say to the man, 'Well, we the Government are satisfied that you have been concerned in some very objectionable and dangerous movement, and we are not going to give you a chance of testing the information that is in our possession, as you would have been entitled to do if we had placed you before a court of law.' My Lord, I submit that among the many things which are really extraordinary about this Bill, there is nothing more extraordinary than the provision of clause 33. Let us remember what it says. It says:—

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

- (a) the arrest of any such person without warrant;
- (b) the confinement of any such person in such place and under such conditions and restrictions as it may specify :

Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894;'

and then it goes on to say some other things.

"Now, my Lord, when the law is set in motion, the only thing that has got to be done is that the Local Government has to say that it is satisfied about the complicity of the man. The moment it says that the man is taken under arrest and put into confinement, and then, and then only has he got any remedy. But what is the remedy? The remedy is that which is laid down in section 36, which says:—

'Where an order (other than an order for arrest or search) has been made under section 33, the provisions of sections 22 to 26 shall apply in the same way as if the order were an order made under section 21, save that, on receipt of the report of the investigating authority, the Local Government may, subject to the conditions prescribed by section 26, make any order which is authorised by section 33, and sections 22 to 26 and 28 to 31, shall be deemed to be included in this Part.'

The same procedure will apply to his case. Are we really persuaded that the procedure provided by Part II is one which will enable a person in that situation really and effectively to test the information on which the Government has taken such a serious step as to deprive him of his liberty and to put him into confinement? My Lord, I think this fairly beats the record of many things which are to be found in this Bill, and I venture to think, my Lord, that it is bound to create, as indeed it has already created, the utmost dissatisfaction and discontent in the country. What will be said is this, that a Government which finds itself unable to cope with the situation, although it has got such extensive and ample powers in the law, seeks shelter behind a law which is no law or—to use an expression which was once used by Sir Rash Behari Ghose—a 'lawless law.' My Lord, I therefore submit, I ask you to think not twice but thrice before you accept this Part III. It is a very serious matter, and it is going to give rise to great trouble—far greater trouble than you have had in the past, and I certainly do not want to see my country plunged into any trouble at this juncture. I must respectfully but firmly protest against the provisions of this Part III; and as my Hon'ble friend, Mr. Patel, has said he fully anticipates that this Part will be passed, my Lord, I must say that I cannot possibly support this Bill but must oppose it and every Part of it."

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I have already given my reasons why I do not wish to make any speech on this amendment. I confess, however, I am surprised at the optimism of some of my non-official friends here. I thought they had already realised what I have realised now." 6-54 P.M.

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

<i>Ayes—19.</i>	<i>Noes—36.</i>
The Hon'ble Sir Gangadhar Chitnavis.	His Excellency the Commander-in-Chief.
" " Babu S. N. Banerjee.	The Hon'ble Sir Claude Hill.
" " Raja of Mahmudabad.	" " " Sankaran Nair.
" " Dr. T. B. Sapru.	" " " George Lowndes.
" " Pandit Madan Mohan Malaviya.	" " " Thomas Holland.
" " Mr. S. Sastri.	" " " William Vincent.
" " " B. N. Sarma.	" " " James Meaton.
" " Mir Asad Ali, Khan Bahadur.	" " " Arthur Anderson.
" " Sir Dinshaw Wacha.	" " Mr. W. A. Ironside.
" " Mr. V. J. Patel.	" " Sir Verney Lovett.
" " Mr. M. A. Jinnah.	" " Mr. H. F. Howard.
" " Sir Fazulbhoy Currimbhoy.	" " Sir James DuBoulay.
" " Rai Sitanath Ray Bahadur.	" " Mr. A. H. Ley.
" " Sir M. C. Nandi.	" " " W. M. Hailey.
" " Rai Krishna Sahay Bahadur.	" " " H. Sharp.
" " Khan Bahadur Mian Muhammad Shafi.	" " " R. A. Mant.
" " Mr. G. S. Khaparde.	" " Major-General Sir Alfred Bingley.
" " Rai Bahadur B. D. Shukul.	" " Sir Godfrey Fell.
" " Mr. K. K. Chanda.	" " Mr. F. C. Rose.
	" " " C. H. Kesteven.
	" " " D. deS. Bray.
	" " Lieutenant-Colonel R. E. Holland.
	" " Surgeon-General W. B. Edwards.
	" " Mr. G. R. Clarke.
	" " " H. Moncrieff Smith.
	" " " C. A. Barron.
	" " " P. L. Moore.
	" " " M. N. Hogg.
	" " " T. Emerson.
	" " " E. H. C. Walsh.
	" " " C. A. Kincaid.
	" " Sir John Donald.
	" " Mr. P. J. Fagan.
	" " " J. T. Marten.
	" " " W. J. Reid.
	" " " W. F. Rice.

The amendment was therefore negatived.

**His Excellency the President** :—" That will cover Mr. Chanda's amendment\* to the same effect. And, Mr. Shukul, it covers yours† also."

**The Hon'ble Rai Bahadur B. D. Shukul** :—" I would rather keep quiet, my Lord."

\* No. 153-A. That Part III be deleted.

† No. 154. That Part III be deleted with the exception of the proviso to clause 23 (1) (b) which is to stand as a separate clause.

[ 14TH MARCH, 1919. ] [ *Sir William Vincent; Mr. G. S. Khaparde; Mr. V. J. Patel; Mr. Kamini Kumar Chanda; The President; Rao Bahadur B. N. Sarma.* ]

**The Hon'ble Sir William Vincent** :—" My Lord, I move that clause 32, as amended by the Select Committee, do stand part of the Bill."

**The Hon'ble Mr. G. S. Khaparde** :—" The subject matter of this amendment, 7 P.M.

'That in clause 32 after the words 'he may' the words 'with the concurrence of the Indian Legislative Council' be inserted,'

was discussed, your Excellency, in connection with Part II, so I do not propose to go over the same ground. I will only ask your Excellency to put the amendment."

**The Hon'ble Sir William Vincent** :—" My Lord, for reasons that I have explained at some length before I cannot accept this amendment."

The motion was put and negatived

**The Hon'ble Mr. V. J. Patel** :—" My Lord, I beg to withdraw the amendment which stands in my name, namely,—

'That in clause 32 after the words 'he may' the words 'with the concurrence of the Indian Legislative Council' be substituted.' "

The amendment was by leave withdrawn.

**The Hon'ble Mr. Kamini Kumar Chanda** :—" My Lord, the amendment which stands in my name is as follows :—

'That in clause 32 for the words 'in Council' the words 'with the consent of the Indian Legislative Council' be substituted.'

"I would rather put it, my Lord."

**His Excellency the President** :—" Would you like me to put it?"

**The Hon'ble Mr. Kamini Kumar Chanda** :—" Yes, my Lord."

The motion was put and negatived.

**The Hon'ble Rai Bahadur B. N. Sarma** :—" I beg to move the amendment which stands against my name :— 7-1 P.M.

"That to clause 32 the following provisos be added :—

'Provided that no action shall be taken by the Governor General in Council, without giving the Indian Legislative Council or the Legislative Council of the province in respect of which such a notification is proposed to be made an opportunity of expressing its opinion by a resolution passed on the subject :

'Provided further that such notification shall at any time after the expiry of one year from the date thereof be withdrawn on the recommendation of the Indian Legislative Council or the Legislative Council of the province in respect of which it may have been made by a resolution passed by three-fifths of the members of either of the said Councils.' "

The motion was put and negatived.

The motion that clause 32, as amended by the Select Committee, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—" My Lord, I beg to move that clause 33, as amended by the Select Committee, do stand part of the Bill."

**The Hon'ble Mr. V. J. Patel** :—" My Lord, I beg to move that in clause 33 (1) after the words 'has been or is' the word 'actively' and after the words 'in any scheduled offence' the words 'connected with any anarchical 7-2 P.M.

[ *Mr. V. J. Patel; Sir William Vincent; The President.* ] [ 14TH MARCH, 1919. ]

or revolutionary movement' be inserted. The clause as proposed to be amended will read thus:—

'Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is actively concerned in such area in any scheduled offence connected with any anarchical or revolutionary movement . . . etc., etc.'

"The amendment really consists of two parts. With regard to the first part, I invite the attention of this Council to clause 21 which has already been passed. There it is stated 'where, in the opinion of the Local Government, there are reasonable grounds for believing that any person is or has been actively concerned in any movement of the nature referred to in section 20'. Well in this clause the word 'actively' does not occur. I should not have moved this amendment if the word 'actively' was not to be found in clause 21: but anyone who compares the provisions of section 21 with section 33 can justly contend that section 33 is really wider in its scope than section 21. Therefore it is that I propose that the word 'actively' should be inserted in clause 33 also.

"With regard to the second part of my amendment, I desire that the persons to be dealt with by the Local Government under clause 33 should be persons who, in the opinion of the Local Government, have been or are concerned in any area in any scheduled offence connected with anarchical or revolutionary movements. This is merely to make the intention of the Government clear and nothing more."

7-5 P.M.

**The Hon'ble Sir William Vincent:**—"My Lord, I think that the last part of the amendment which the Hon'ble Member proposes will be met by an amendment of the Schedule itself by inserting therein the words which the Hon'ble Member seeks to insert here. I am afraid, however, that I cannot accept the suggestion as to the insertion of the word 'actively' before 'concerned,' as the word would be misleading. A man may not be actively concerned in a movement; but the drafting department consider—and if I may say so, with all deference, I entirely agree with them—that it is unwise and unreasonable to put in the word 'actively' before 'concerned' when we are speaking of an offence. If by any chance it could be held to exclude a person who had instigated and not otherwise taken any active part in an offence, it would be open to objection. Suppose there is a conspiracy and a man is instigating it; he ought certainly to come within this Part, and there is no necessity whatever to insert the word 'actively'. I prefer to take the wording as it is at present."

**The Hon'ble Mr. V. J. Patel:**—"I have nothing more to say, my Lord."

**His Excellency the President:**—"Do you wish the other part to be put?"

**The Hon'ble Sir William Vincent:**—"I am going to oppose this amendment *in toto*; I want any amendment that is made to be put in the Schedule."

The motion was put and negatived.

7-8 P.M.

**The Hon'ble Mr. V. J. Patel:**—"I beg permission to withdraw the next amendment, namely,—

'That in clause 33(1) after the words 'the Local Government may' the words 'with the previous approval of the District and Sessions Judge of the District' be inserted.'

The amendment was by leave withdrawn.

[14TH MARCH, 1919.] [Mr. Srinivasa Sastri; Sir William Vincent; Mr. G. S. Khaparde; Mr. Kamini Kumar Chanda; Mr. V. J. Patel.]

**The Hon'ble Mr. Srinivasa Sastri:**—"I beg to move:—

'That in clause 33 (1) after the word 'Government' where that word occurs for the second time the following be inserted:—

'shall place all the materials in its possession relating to his case before a judicial officer not below the rank of a District and Sessions Judge and take his opinion thereon. After considering such opinion the Local Government, if it is satisfied that such action is necessary,'

"This amendment, my Lord, is on all fours with an amendment to section 21 which I moved sometime ago, which has been accepted with a slight change by the Government; and I hope this will also be similarly treated."

**The Hon'ble Sir William Vincent:**—"I am quite prepared, my Lord, to accept this amendment in the modified form which I suggested last time on the motion to amend clause 21.

"The amendment will run as follows:—

' . . . . may place all materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. After considering such opinion the Local Government may if it is satisfied that such action is necessary . . . . '

**The Hon'ble Mr. Srinivasa Sastri:**—"I accept that, my Lord." 7-8 p.m.

The motion as amended was put and agreed to.

**The Hon'ble Mr. G. S. Khaparde:**—"My Lord, I move—

'That in clause 33 (1) for the words 'may make' the following words be substituted:—

'Shall lay information before a Magistrate of the 1st class having jurisdiction in the area and the said Magistrate may on being satisfied of the truth of the information by following the procedure laid down in the Criminal Procedure Code for demanding security make'

It has been discussed before. It may be merely put."

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I merely put this amendment, my Lord:—

'That in clause 33 (1) for the words 'may make' the words 'apply itself or through any officer to the investigating authority having jurisdiction in the matter' be substituted, after the word 'person' the word 'for' be inserted, and for the words 'further by order in writing direct' the words 'further apply for an order directing' be substituted.'

The motion was put and negatived.

**The Hon'ble Mr. Kamini Kumar Chanda:**—"My Lord, I beg to withdraw the next two amendments standing in my name, namely,—

'That in sub-clause (a) of clause 33 (1) the words 'without warrant' be deleted and

'That in sub-clause (c) of clause 33 (1) for the words 'in the opinion of the Local Government has' the words 'prima facie appears to have' be substituted.'

The amendments were by leave withdrawn.

**The Hon'ble Mr. V. J. Patel:**—"I beg to move my amendment—

'That in sub-clause (c) of clause 33 (1) for the words 'prejudicial to the public safety' the words 'connected with any anarchical or revolutionary movement' be substituted.'

**The Hon'ble Sir William Vincent:**—"I am prepared to accept the amendment."

**The Hon'ble Mr. V. J. Patel:**—"I am glad, your Excellency"

The motion was put and agreed to.

[*Mr. V. J. Patel; Sir George Lowndes; Mr. Kamini Kumar Chanda; Sir William Vincent; Rao Bahadur B. N. Sarma.*] [14TH MARCH, 1919.]

7-11 P.M.

**The Hon'ble Mr. V. J. Patel** :—"I beg to move my amendment—  
'That in clause 33 (3) for the words 'use all means necessary' the words 'use all lawful means reasonably necessary' be substituted.'

I understand from what took place in connection with a similar amendment to Part II that Government will consider this amendment favourably."

**The Hon'ble Sir George Lowndes** :—"I accept the amendment."  
The motion was put and agreed to.

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I beg to withdraw my amendments—

'That in clause 33 (3) the word 'lawful' be inserted after the word 'all,' and

'That after clause 33 (3) the following proviso be inserted :—

'Provided that the investigating authority when ordering the arrest of any person may provide for bail and when the arrested person is produced before it may then admit him to bail and'

The amendments were by leave withdrawn.

The motion that clause 33, as amended by the Select Committee and as further amended, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—"My Lord, I move that clause 34, as amended, by the Select Committee, and clauses 35 and 36 stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent** :—"My Lord, I move that clause 37 do stand part of the Bill."

7-14 P.M.

**The Hon'ble Mr. V. J. Patel** :—"I beg to propose my amendment—

'That in clause 37 after the words 'with fine' the words 'which may extend to one thousand rupees' be inserted.'

**The Hon'ble Sir William Vincent** :—"I am prepared to accept this amendment."

The motion was put and agreed to.

**The Hon'ble Rao Bahadur B. N. Sarma** :—"I beg to withdraw my amendment—

'That in clause 37 after the word 'fine' the words 'amounting to one thousand rupees' be inserted.'

The amendment was by leave withdrawn.

**The Hon'ble Mr. Kamini Kumar Chanda** :—"I beg to withdraw my amendment—

'That after clause 37 the following new clause be inserted :—

'37-A. When the investigating authority finds that there was no probable or reasonable cause for applying for the arrest of any person or having any place searched, it may after giving notice to and hearing the prosecution, direct that any compensation be paid to the person and such compensation shall be paid by Government :

'Provided that the receipt of such compensation by any person shall not be a bar to his right of bringing any suit for damages against any one for false and malicious prosecution which he might possess : but compensation must be taken into account in passing any decree in such suit.'

The amendment was by leave withdrawn.

The motion that clause 37, as amended, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—"My Lord, I move that clause 38, as amended by the Select Committee, stand part of the Bill."



[ 14TH MARCH, 1919. ] [ *Mr. V. J. Patel; Mr. G. S. Khaparde; Sir William Vincent.* ]

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I move—

7-15 P.M. 1

'That for sub-clause (1) of clause 38 the following be substituted:—

'38 (1) On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 3 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 3 is in force, and the provisions of Part I shall apply to every such person accordingly, and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, shall be deemed to be a person resident in an area in which a notification under section 32 is in force, and the provisions of Part III shall apply to every such person accordingly:

'Provided that within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, and if such an order is so made, it shall be deemed to be an order made under section 26 (3) as made applicable by section 36, and the provisions of that Part regarding such an order shall apply accordingly.'

"My Lord, my amendment is rather lengthy, but I shall explain the position in two sentences. This is a very important amendment and I hope the Council will consider it very carefully. As clause 38 stands at present, it is proposed that persons already under executive control under the Defence of India Act or the Bengal Prisons Regulations of 1818 shall be deemed to be persons resident in areas in which the notifications under section 32 are in force, and the provisions of Part III shall apply to such persons. They are under executive control—some for 2, some for 3, and some for 4 years. These people, I submit, should now be dealt with under Part I and not under Part III. I restrict my amendment to cases under the Defence of India Act. I know that for 100 years the Government have had the power to deprive a man of his liberty under the Regulation of 1818. I do not wish to touch that power at all, but I appeal to the Council to consider the case of those persons who have been interned under the Defence of India Act passed by this Council, and for which this Council is responsible. I say with all the emphasis that I can command, that it is high time that if Government think that these persons are concerned in any offence, anarchical or revolutionary, and now as you are enacting special tribunals without a jury without commitment proceedings, with special rules of evidence without appeal, let these people have the chance of a trial—whatever the form of that trial may be—under Part I. I do not at all touch by my amendment the case of persons in executive control under the old Regulation of 1818. My Hon'ble friend Mr. Banerjee will take care of such cases and some day move a Resolution on the subject. I am at present concerned with the case of those under executive control under an Act passed by this Council. I trust the Council will accept this amendment."

**The Hon'ble Mr. G. S. Khaparde:**—"The amendment which stands in my name reads thus—

7-20 P.M.

'That in the proviso to clause 38 (1) for the words 'may make' to the end of the proviso the words 'shall either release such person or commence proceedings under Part I' be substituted.'

I do not propose to make a speech about this amendment. My only point is that these people have been under restraint for three and four years and have been kept in various places. Now it is time that we should either try and sentence them or release them altogether. There is no use hanging on in this nondescript condition of being neither judged nor sentenced. That is all my reason for proposing this amendment standing in my name."

**The Hon'ble Sir William Vincent:**—"My Lord, the view of the framers of the Report in regard to this question was as follows:—

7-21 P.M.

'There are, however, a limited class of persons, namely, those who have been involved in the troubles which have been described who constitute a danger not contingent but actual. Special and immediate provision is required for their case.'

[ *Sir William Vincent ; Mr. V. J. Patel.* ] [ 14TH MARCH, 1919. ]

"The authors go on to discuss individual cases such as Rash Behari Basu . . . . ."

**The Hon'ble Mr. V. J. Patel :—**"What page?"

**The Hon'ble Sir William Vincent :—**"Paragraph 196.

"Finally they say:—

'Assuming, however, that it is not desired to continue to deal with these men under the Regulation, we ought to suggest an alternative.'

"They conclude thus:—

'Lastly, it may be that a few of those now merely interned and some of the convicts who will be released may require some control. At any rate, it is to be deprecated that the persons interned should have the assurance that on the expiry of the Defence of India Act they will at once and all at the same moment be immune from all restriction. They should be liberated gradually.

'It seems to us that the simplest device is to provide that in respect of acts committed before the Defence of India Act expires (or an earlier date if preferred) and danger apprehended by reason of such acts in the future, it should be lawful to proceed against any person under any of the provisions which we have outlined without any modification. In other words the new law is to be deemed to be operative for that purpose immediately.'

"The Hon'ble Mr. Kharade now suggests that they should be released at once or put on trial. From figures which have been furnished to the Council and from information given by Mr. Banerjea, I think it is apparent that a great many of these men have been released. It is only a few of the more dangerous characters that are still under restraint. In fact that was an argument that was used just now against the Government, for it was said that so few of these men are still under restraint that you really have no trouble in Bengal. I use the argument for a slightly different purpose, namely, to show that the Government have treated these men with every consideration, and that there is no probability that Government will seek to maintain restraints on any man if these restrictions can be removed without danger to the body politic. The power must, however, be retained in the public interest. The effect of the amendment would however be to make Part I, which is the punitive part of the Bill, apply to persons upon whom restrictions have been placed by the Defence of India Act. But if we had evidence to prosecute these people before a court of law, if the witnesses were ready to come forward, if they had not been terrorised by methods to which I have frequently adverted in this Council, we should have prosecuted them long ago under the Defence of India Act; and to suggest that when the Defence of India Act expires we should prosecute them under Part I of this Act is a proposal of no practical value. An examination of the amendment which has been put forward by the Hon'ble Member did lead me to a very careful consideration of the provision that is made in regard to these men, and it does appear that the application of Part III to these persons interned under the Defence of India Act is further than we need go. If the Hon'ble Member—I merely throw it out as a suggestion—if the Hon'ble Member likes to substitute in the amendment for the words 'section 3,' 'section 20' and for the words 'Part I' the words 'Part II,' I should be quite prepared to accept the modification, and this, although not giving him what he requires, would be making the law distinctly more lenient in respect of these persons. This proposal would also be, I think, fairer to the persons now interned, although the Bill as it stands reproduces what was contemplated by the framers of the Report. I do not know if I have made myself quite plain to the Hon'ble Member, but I will read it if necessary."

7-26 P.M.

**The Hon'ble Mr. V. J. Patel :—**"I have understood it. Your Excellency, I must say that I feel very keenly on this question. The Hon'ble the Home Member has read to this Council the relevant portion of the Report of the Rowlatt Committee to show that the Committee holds that

[14TH MARCH, 1919.] [Mr. P. J. Patel; Sir William Vincent; Mr. G. S. Khaparde; The President.]

those persons should be dealt with under the provisions of Part III. He suggests that the proposed provisions of clause 38 are justified by the recommendations of the Rowlatt Committee. My reading is otherwise. I shall read to the Council only two or three lines from the Report :

' It seems to us that the simplest device is to provide that in respect of acts committed before the Defence of India Act expires (or an earlier date if preferred) and danger apprehended by reason of such acts in the future, it should be lawful to proceed against any person under any of the provisions which we have outlined without modification. In other words, the new law is to be deemed to be operative for that purpose immediately.'

" What the Committee clearly says is that they are to be dealt with under the new law . . . . .

**The Hon'ble Sir William Vincent** :—" May I interrupt the Hon'ble Member for one minute? May I ask the Hon'ble Member to read the preceding paragraph? I think I did read it."

**The Hon'ble Mr. V. J. Patel** :—" Lastly, it may be that a few of those now merely interned and some of the convicts who will be released may require some control. At any rate, it is to be deprecated that the persons interned should have the assurance that on the expiry of the Defence of India Act they will at once and all at the same moment be immune from all restriction. They should be liberated gradually.'

" My Lord, I do not at all suggest that they should be liberated. I say put them on trial under Part I. I do not say that they should be liberated all at once. The scheme of the Rowlatt Committee's Report in regard to these legislative proposals is this. They first suggest punitive measures. Then they go on to suggest preventive measures, and, finally, under the heading ' Provision for existing danger,' they suggest the treatment of existing offenders. So it is entirely a separate Part and it clearly says that ' the new law is to be deemed to be operative for that purpose immediately.' So there is nothing to show that the Committee suggests that Part III should be made applicable to them. We can apply Part I, Part II or III. However, I stand to lose what little is offered if I were to refuse it, and therefore I accept the suggestion."

**The Hon'ble Mr. G. S. Khaparde** :—" If your Excellency will permit me, I should like to add a word, because my amendment comes under this." 7-30 P.M.

**His Excellency the President** :—" You accepted what Sir William Vincent said?"

**The Hon'ble Mr. G. S. Khaparde** :—" Yes, I accept it, but there is something else I wish to say, and that is that after four years we cannot collect the evidence which is needed. With this observation I accept it."

**His Excellency the President** :—" The amendment will then read :—

' That for sub-clause (1) of clause 38 the following be substituted :—

' 38 (1). On the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, every person in respect of whom an order under rule 8 of the Defence of India (Consolidation) Rules, 1915, was in force immediately before the expiration of that Act and who has in the opinion of the Local Government been concerned in any scheduled offence, shall be deemed to be a person resident in an area in which a notification under section 20 is in force and the provisions of Part II shall apply to every such person accordingly, and every person who is on such expiration in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1918, shall be deemed to be a person resident in an area in which a notification under section 32 is in force, and the provisions of Part III shall apply to every such person accordingly :

[ *The President; Sir William Vincent; Mr. V. J. Patel; Mr. G. S. Khaparde; Sir George Lowndes.* ] [14TH MARCH, 1919.]

' Provided that within one month from the expiration of the Defence of India (Criminal Law Amendment) Act, 1915, the Local Government may make any order of restraint which is authorised by Part III in respect of any person who is in confinement in accordance with the provisions of the Bengal State Prisoners Regulation, 1818, and if such an order is so made, it shall be deemed to be an order made under section 28 (3) as made applicable by section 36, and the provisions of that Part regarding such an order shall apply accordingly.' "

The motion was put and agreed to.

The motion that clause 38 of the Bill, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—" I move that clause 39 do stand part of the Bill."

7-32 P.M.

**The Hon'ble Mr. V. J. Patel** :—" I beg to move that in clause 39 for the words ' when a notification issued under section 3 or section 20 or section 32 is cancelled ' the following words be substituted :—

' The Governor General in Council may, of his own accord and shall, on the recommendation of the Indian Legislative Council, cancel any notification issued under section 3, or section 20 or section 32 and '

I know that the amendment stands no chance and I do not wish to waste the time of the Council by making any speech."

**The Hon'ble Sir William Vincent** :—" Here again the Hon'ble Member seeks to vest the Legislative Council with authority which is in my judgment properly vested in the executive Government, and which is necessary for the discharge of the responsibility of the Government of India to the Secretary of State, and I am afraid I must for that reason refuse to accept this amendment."

The motion was put and negatived.

The motion that clause 39 stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—" My Lord, I move that clause 40, as amended by the Select Committee, stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent** :—" I beg to move that clause 41 stand part of the Bill."

7-34 P.M.

**The Hon'ble Mr. G. S. Khaparde** :—" My Lord, section 41 is a section about which I spoke a good deal when this Bill was introduced, and I said it was beyond our competence to pass it, especially that portion of it which says no civil suit shall lie, so I do not propose to go over the same ground now, but one part of it has been ruled against by the Privy Council. Then on the next question I wish to argue under it. I should like to have your Excellency's ruling before I do so. The amendment reads thus :—

' That for clause 41 the following clause be substituted :—

' In all trials, inquiries and investigations under this Act, the question whether the person charged and the offence alleged is or is not connected with an anarchical or revolutionary movement shall be a question of fact to be determined by the Court or the investigating authority, as the case may be.'

" This is a point which was argued before and, I believe, it has been also argued to-day, and so far as the opinions of this Hon'ble Council were taken, they have been against it. If your Excellency thinks it is open to me to argue it, I shall say a few words, otherwise I shall leave it."

7-36 P.M.

**The Hon'ble Sir George Lowndes** :—" I submit, my Lord, that any discussion of this amendment must be out of order ; the question has been

[14TH MARCH, 1919.] [ *Sir George Lowndes; The President; Mr. G. S. Khaparde; Sir William Vincent; Mr. V. J. Patel.* ]

decided by the Council already. We had exactly the same amendments with regard to each particular and we have now the same question over again in general terms."

**His Excellency the President:**—"I think you felt rather doubtful about it, Mr. Khaparde; I agree with you, it is out of order."

**The Hon'ble Mr. G. S. Khaparde:**—"But the first part of it remains, the civil suit which has been directly ruled against by the Privy Council."

**His Excellency the President:**—"But there is no amendment on that."

**The Hon'ble Sir William Vincent:**—"My Lord, that is amendment No. 179; I think there is some confusion in the mind of the Hon'ble Member; that is coming on later."

**His Excellency the President:**—"That is Mr. Ohanda's amendment."

**The Hon'ble Mr. V. J. Patel:**—"I beg to move that in clause 41 7-38 P.M. after the words 'in any Court' the following words be inserted:—

'But the High Court shall have power to revise any order passed under section 26 or section 36 on the application by or on behalf of the person aggrieved made within 15 days of the date of the said order.'

"My Lord, we have now enacted and made the provisions of Chapters II and III, we have rejected suggestions regarding the rules of evidence, regarding the right of the accused to be represented by a pleader and even the right of the accused to appear personally. We have rejected the suggestion that the Local Government should have no power to appoint the investigating authority. Substantially therefore the provisions regarding the investigating authority remain as they are. The report of the investigating authority, the finding of the investigating authority, is also not to be binding on Government. The amendment proposed is intended to give to persons dealt with either under Part II or Part III, not in respect of interim orders but when the orders are made final, either under section 26 or 36 to move the High Court in revision. This is the last chance I submit should be given to these persons and I trust the Council will support me."

**The Hon'ble Sir William Vincent:**—"This amendment strikes at the root of the Bill and would revive a matter which has been decided by the Council more than once. I have repeatedly tried, and at times I have thought I had succeeded in making it clear that the responsibility for these orders rests with the executive and not with the judiciary. Our view on the question may be right or it may be wrong, but it was at least clear. I wish to point out further that if we sent a case in which restrictions had been imposed under the preventive sections up to the High Court, this procedure would necessarily involve the publication of the whole of the information received and the change of the procedure from executive to judicial. I believe also myself that the judicial authorities would be the first to object to being called upon to decide questions after an investigation of this character. 7-40 P.M.

"I must certainly oppose this amendment."

**The Hon'ble Mr. V. J. Patel:**—"I now clearly understand the position of Government."

The motion was put and negatived.

[*Mr. Kamini Kumar Chanda; Mr. G. S. Khaparde; Sir George Lowndes; The President; Sir William Vincent, Mr. V. J. Patel.*] [14TH MARCH, 1919.]

**The Hon'ble Mr. Kamini Kumar Chanda** :—" My Lord, I beg to move—

'That in clause 41 the words 'suit or' and the words 'or other legal proceedings' be deleted.'

"The clause will then stand thus :—

'No order under this Act shall be called in question in any Court and no prosecution shall lie against any person for anything which is in good faith done or intended to be done under this Act.'

"I can quite understand that if a man does anything in good faith he ought not to be prosecuted, but if by mistake he does injury to me, I do not see why he should be protected in case I wish to bring a suit against him for damages."

**The Hon'ble Mr. G. S. Khaparde** rose.

**The Hon'ble Sir George Lowndes** :—" Might I intervene for one moment. I would earnestly ask my Hon'ble friend at this late hour not to raise a purely legal argument on the Moment case, which I know he is burning to do. I am quite prepared of course to meet my Hon'ble friend and argue it at length with him, but it would be useless to do so now."

7-42 P.M.,

**The Hon'ble Mr. G. S. Khaparde** :—" I do not want to argue that matter. I only wish to bring it up now so that your Excellency may rule upon it; and your Excellency will have this consideration that this is a matter upon which the Privy Council has decided. In the Loreburn Committee's Report which I have already read out to the Council they say: 'After the passing of that Act, the Government of India have gone on framing Acts directly contrary to that ruling. Something like 30 Acts have been passed since.' The question is whether it is desirable to have a thirty-first one. That is the question which I would wish to put."

**His Excellency the President** :—" I do not propose to rule on the subject: I propose to put it to the Council."

The Hon'ble Mr. Chanda's motion was put and negatived.

The motion that clause 41 stand part of the Bill was put and agreed to.

**The Hon'ble Sir William Vincent** :—" I move that clause 42 stand part of the Bill."

The motion was put and agreed to.

**The Hon'ble Sir William Vincent** :—" My Lord, I move that the Schedule, as amended by the Select Committee, do stand part of the Bill."

7-45 P.M.

**The Hon'ble Mr. V. J. Patel** :—" May it please your Excellency, I beg to move—

'That for clause (1) of the Schedule the following be substituted :—

'(1) Any offence under the following sections of the Indian Penal Code, namely :— sections 121, 121-A, 122, 123, 124, 131 and 132.'

This is one amendment on which I feel certain I shall be able to convince the Government."

**The Hon'ble Sir William Vincent** :—" I will save the Hon'ble Member the trouble of convincing me; the very sight of the amendment has done it. I am quite prepared to accept it."

[14TH MARCH, 1919.] [Mr. V. J. Patel; Sir George Lowndes; Mr. Kamini Kumar Chanda; Sir William Vincent.]

**The Hon'ble Mr. V. J. Patel:**—"I am very glad, my Lord."

The motion was put and agreed to.

**The Hon'ble Mr. V. J. Patel:**—"My Lord, I beg to move—

'That in clause (2) of the Schedule for the words 'in the opinion of the Government' the words 'in the opinion of the Court or the investigating authority concerned' be substituted.'

I understand some change is going to be proposed by Government in connection with this clause, and I should like to hear from the Hon'ble the Home Member what that change would be."

**The Hon'ble Sir George Lowndes:**—"My Lord, no change is <sup>7.46 p.m.</sup> proposed under this amendment, but I propose to accept *sub modo* the next amendment of the Hon'ble Mr. Sarma. Perhaps it might be convenient if I state what I am prepared to accept. I am prepared to insert the words Mr. Sarma wants, namely, 'anarchical or revolutionary' in the Schedule instead of the words 'endangering the safety of the State.' . . .

**The Hon'ble Mr. Kamini Kumar Chanda:**—"I rise to a point of order; the Hon'ble Mr. Sarma's amendment is not before the Council now."

**The Hon'ble Sir George Lowndes:**—"I know that, but I am only informing the Hon'ble Mr. Patel at his particular request what change I am prepared to make."

**The Hon'ble Mr. V. J. Patel:**—"It does not help me in the least, your Excellency. I beg to move:—

'That in clause (2) of the Schedule for the words 'in the opinion of the Government' the words 'in the opinion of the Court or the investigating authority concerned' be substituted.'

'My point, your Excellency, is this. Let the Local Government, if it is satisfied that the person is concerned in any movement of a revolutionary character, take action either under Chapter II or under Chapter III. Let the Local Government lay the information before the investigating authority or the Chief Justice. But what I want is that once the Court or the investigating authority is seized of the case, then it should be for the Court or the authority to say whether in its opinion the man is guilty of the offence, and also that it is connected with a revolutionary or anarchical movement.'

**The Hon'ble Sir William Vincent:**—"My Lord, the Hon'ble <sup>7.48 p.m.</sup> Member is moving under a very thin disguise really an amendment which has already been negatived by this Council. But if I may address the Council for two minutes I think I can show that his present proposal is utterly impossible. Take, for instance, Part I. Part I says 'If the Governor General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences are prevalent, etc.' At that time there will be no Court or investigating authority appointed at all, and if you are to wait until that authority is appointed before you can say what a scheduled offence is, Part I could never be introduced; and the same applies to Parts II and III. So that if you substitute in the Schedule the words 'Court or investigating authority' for the words 'Local Government,' you render the whole Act impossible of application."

**The Hon'ble Mr. V. J. Patel:**—"I do not think it is necessary for me to meet the argument for it will serve no useful purpose."

[*Sir William Vincent; Rao Bahadur B. N. Sarma; Sir George Lowndes; Mr. G. S. Khaparde; Khan Bahadur Mian Muhammad Shafi.*] [14TH MARCH, 1919.]

**The Hon'ble Sir William Vincent:**—"I should be glad to know if it is possible to meet the point I made, my Lord."

The motion was put and negatived.

7-50 P.M.

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, I beg to move—

'That in clause (2) of the Schedule after the words 'with any' the words 'anarchical or revolutionary' be inserted.'

Then the clause would stand—

'(2) Any of the following offences, if, in the opinion of Government, such offence is connected with any anarchical or revolutionary movement endangering the safety of the State:—

**The Hon'ble Sir George Lowndes:**—"My Lord, I am quite willing to accept the insertion of the words 'any anarchical or revolutionary movement,' and I hope that will be sufficient for my Hon'ble friend without keeping in the words 'endangering the safety of the State.' It is perfectly obvious, if I may say so, that an anarchical or revolutionary movement must endanger the safety of the State; it is really implied in the words 'anarchical or revolutionary movement.' Therefore the words 'endangering the safety of the State' should surely go out."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"My Lord, we have not described what is a revolutionary movement and, if there is no harm in keeping in the words 'endangering the safety of the State,' I should be much obliged."

**The Hon'ble Sir George Lowndes:**—"I will withdraw my offer if the Hon'ble Member does not wish to accept it."

**The Hon'ble Rao Bahadur B. N. Sarma:**—"I will have the Hon'ble Member's amendment,—that the words 'endangering the safety of the State' may go out and the words 'anarchical or revolutionary' be inserted in the clause."

The amended motion was put and agreed to.

7-51 P.M.

**The Hon'ble Mr. G. S. Khaparde:**—"My Lord, my amendment is as follows:—

'That in clause 2 (a) of the Schedule the figures and letter '124-A' be deleted.'

"My idea in putting forward this amendment is that the offence of sedition stands on a totally different basis from the other offences included in Chapter 6 of the Indian Penal Code. At this late hour of the evening I do not propose to go into an analysis of all the offences included there, but the whole thing admits of being put into a few words. This section 124-A, really in English law at one time, formed part of the law of sedition, libel, slander and defamation. Since then it has become latterly a part of the law of treason, and it has become a little more complicated in that way. But, however, that may be, it is one of those offences that are neither anarchical nor revolutionary. Sedition means that a man in speaking speaks a little too much and sometimes a word escapes him; or in writing he writes one sentence more. And therefore, I am anxious that these people, these speakers and writers, might not be brought under the provisions of this Act. This is my object in proposing this amendment."

7-53 P.M.

**The Hon'ble Khan Bahadur Mian Muhammad Shafi:**—"My Lord, may I be permitted to point out that the offence under section 124-A does not come within the purview of this section unless it is connected



[14TH MARCH, 1919.] [*Khun Bahadur Mian Muhammad Shafi; Rao Bahadur B. N. Sarma; Mr. V. J. Patel; Mr. Kamini Kumar Chanda.*]

with an anarchical or revolutionary movement. The Schedule says—

‘Any of the following offences, if, in the opinion of Government, such offence is connected with an anarchical or revolutionary movement.’

So that an ordinary article or speech or writing of the kind my Hon’ble friend is referring to will not come within the purview of this sub-clause unless it is connected with an anarchical or revolutionary movement.”

**The Hon’ble Rao Bahadur B. N. Sarma** :—“May I point out that there is not much safety, because it is only the opinion of the Local Government which determines the existence of the connection and not the finding of the judges?”

**The Hon’ble Mr. V. J. Patel** :—“My Lord, I rise to give my cordial support to this very important amendment placed for the consideration of this Council, at this late hour, by my Hon’ble friend Mr. Khaparde. The question is really very, very serious. If this Council will see the next amendment which stands in my name, it says :—

‘That in clause 2 (a) of the Schedule the figures and letters ‘124-A, 153-A,’ be deleted.’

“My Hon’ble friend Mr. Khaparde wants the deletion of one section, 124-A. I want the deletion of two sections, 124-A and 153-A. My reasons are these. This is again a matter, a most essential matter, in which the Government goes beyond the recommendations of the Rowlatt Committee. As I pointed out when discussing Part I, there are already provisions in the Criminal Law Amendment Act similar to the provisions in Part I; perhaps it was for the insertion of these two sections that Government intended to undertake this legislation. It is very difficult to understand why Government should go out of its way to insert these two sections, for which the Rowlatt Committee makes no recommendation. My Lord, section 124-A, if included in this Schedule, will kill all political agitation in the country; and I respectfully submit that no case whatsoever has been made out by Government to include those two sections, in doing which you go beyond the recommendations of the Rowlatt Committee. I invite the attention of this Council to page 147 of the Rowlatt Committee’s Report, paragraph 186, last but one sub-paragraph :—

‘The cases to be tried subject to the provisions above sketched out will be such as are ordered to be so tried by Government, the power to make such orders being limited to certain classes of offences to be named in a Schedule. This was the scheme of the Criminal Law Amendment Act, 1908, the Schedule to which might be adopted.’

And what is that Schedule, I pray? My Lord, if you will turn to the Schedule attached to the Criminal Law Amendment Act, you will find that those are the very sections which do not find a place there—the only two sections—and I am surprised at their inclusion in this Schedule. I do not for a moment suggest that your Excellency’s Government have the remotest idea of killing constitutional political agitation in the country; but the effect of the insertion of these two sections—I warn my non-official colleagues—will be what I say, namely, the killing of political agitation in this country. I do not wish to attribute any motives, but I submit that unless there is a clear and satisfactory explanation on the part of Government for going beyond the recommendations of the Rowlatt Committee, I am absolutely certain people will put the construction which I have suggested.”

**The Hon’ble Mr. Kamini Kumar Chanda** :—“My Lord, I have a similar amendment\* in my name and I associate myself with the eloquent remarks of the Hon’ble Mr. Patel.”

\* That in clause 2 (a) of Schedule the figures and letters “124-A” and “153-A” be deleted.

[ *Sir Verney Lovett*; *Sir William Vincent*; [14TH MARCH, 1919.]  
*Mr. V. J. Patel*; *Pandit Madan Mohan Malaviya*. ]

**The Hon'ble Sir Verney Lovett**:—" My Lord, the last sentence of the clause to which the Hon'ble Mr. Patel referred runs thus :

'This was the scheme of the Criminal Law Amendment Act, 1908, the Schedule to which might be adopted.'

" We did not say 'should be adopted,' we said 'might be adopted.' We threw it out as a suggestion. That is all I have to say, my Lord."

**The Hon'ble Sir William Vincent**:—" My Lord, there has been what I can only describe as an amazing mis-statement of the intentions of Government in enacting Part I of this Bill. It is suggested that the Government deliberately propose to enact Part I of the Bill in order to introduce these two sections. . . .

**The Hon'ble Mr. V. J. Patel**:—" I beg pardon. I rise to a point of order. I never said the Government deliberately inserted them. I have all along said that it is likely to be interpreted as such unless there is a satisfactory explanation. . . .

**The Hon'ble Sir William Vincent**:—" My recollection is, as I said, that the insinuation of the Hon'ble Member was what I have said, namely, that the Government did this deliberately. . . .

**The Hon'ble Mr. V. J. Patel**:—" I am sorry for the recollection of the Hon'ble Member."

7-59 P.M.

**The Hon'ble Sir William Vincent**:—" If I am wrong, I can only regret it; but I have a clear recollection of the same thing being said in connection with Part I. At any rate, whether I am right or wrong in that, as apparently there is room for misapprehension on the point, let me assure the Council that there is no ground at all for any such apprehension. I tried to explain very fully the reasons which led us to make Part I of the Bill, and I think it is generally admitted that we depart there very considerably from the Act of 1908 in many matters.

" I had also hoped we had taken every step to reassure the public and the members of this Council that this Bill will not and cannot be used for the suppression of political agitation. It certainly shall never be so used with the consent of any of the members of the Government of India. I do not believe it can possibly be so used; but the real question before the Council is, whether sections 124-A and 153-A should remain in the Schedule, when offences under these sections are directly connected or when connected with a revolutionary or anarchical movement whether an offender under these sections is entitled to any more consideration than an offender under the other sections which are mentioned in the Schedule. Section 124-A deals with a person who brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards His Majesty or the Government; and section 153-A deals with offences promoting ill-feeling between different races; but the offences only come within the purview of this Schedule when they are connected with a revolutionary or anarchical movement and I can myself see no reason for excluding either of these sections from the Schedule."

8-2 P.M.

**The Hon'ble Pandit Madan Mohan Malaviya**:—" My Lord, neither the Hon'ble Sir Verney Lovett nor the Home Member have answered the objection which has been raised by the Hon'ble Mr. Patel to the inclusion of sections 124-A and 153-A in the Schedule. My Lord, as more than one official member has referred to the proceedings of the Select Committee, I hope I also may be permitted to refer to them to this extent, that it was I who suggested the exclusion of these two sections from the first part of the Schedule as it stood in the Bill as it was introduced, namely, offences against the State. . . .

[14TH MARCH, 1919.] [Mr. V. J. Patel; Pandit Madan Mohan Malaviya; Sir William Vincent.]

**The Hon'ble Mr. V. J. Patel :—**" I also suggested it."

**The Hon'ble Pandit Madan Mohan Malaviya :—**" Yes, I do not want to claim credit for myself alone; I was going to point to something else, and it was that that suggestion was not adopted, but the two offences were included after some consideration by the Government in the second part of the Schedule.

**The Hon'ble Sir William Vincent :—**" May I correct my Hon'ble friend? Section 153-A was always in the second Part of the Schedule though section 124-A was in the first Part."

**The Hon'ble Pandit Madan Mohan Malaviya :—**" Yes, I thank the Hon'ble Member. Now, the position with regard to these two sections is very clear. All that the Hon'ble Sir Verney Lovett has said is that the Rowlatt Committee has suggested that the Schedule to the Act of 1908 might be adopted. He has not told us that there is anything in the Rowlatt Committee's Report which would support the inclusion of the two sections under consideration in the Schedule. The Hon'ble the Home Member has said that if an offence which falls under section 124-A or 153-A is in the opinion of the Local Government connected with revolutionary or anarchical movements it should be triable under Part I. Now, my Lord, the whole trouble arises from the fact that the question whether an offence under section 124-A or 153-A is or is not connected with a revolutionary or anarchical movement is to be determined not judicially but merely by the opinion of the executive Government. It is a very serious matter to deprive an individual of the constitutional safeguards of life and liberty by the judgment of an executive Government, and I therefore very strongly support the amendment of Mr. Patel that these two sections should be excluded from the Schedule. My Lord, the result will not be that persons who may be guilty of these offences in connection with revolutionary movements will go unpunished. The law can get hold of them if they have been directly or indirectly connected with revolutionary or anarchical movements. If, on the other hand, the Government has not evidence enough which it can put before a judicial court to establish a connection of the offence under trial the absence of such evidence, the want of sufficient evidence, should not be made good by the opinion of the executive Government arrived at upon evidence which is not sufficient to be put before a law court. For these reasons, my Lord, I strongly support the proposal, and though it seems hopeless to expect it, it is to be very much wished that the Government will see their way to adopt at least this amendment. This will remove a great deal of apprehension which has been aroused in the minds of the people. My Lord, in this country as in other countries the determination of the question of whether a speech or writing is seditious is one of the most difficult matters which comes before the courts. And situated as we are in this country there are special reasons to apprehend that when an executive officer of Government considers a particular individual particularly objectionable, any speech made by him, any article written by him in an area to which the Act has been extended, may be regarded, in the opinion of the executive Government, to be connected with any revolutionary or anarchical crime that may happen to exist in any part of the province. Criticisms of the policy and measures of Government, criticisms of the vagaries of administrative officers, criticisms of the defects of the administration are abundant, unfortunately too abundant; and owing to the fact that the governing class belong to another country, to another race, there is always the danger of a man being charged, without the slightest justification in fact, with exciting feelings, against Government, when he is criticising the measures of the administration with the sole desire of having the administration improved. If there is strong virile criticism of the defects of Government in any province at a time when in some parts of it, a few misguided individuals might be indulging in ideas of anarchical or revolutionary movements, the individual who has been criticising the measures of Government with the honestest of motives, with absolutely no idea of

[ *Pandit Madan Mohan Malaviya ; Mr. Srinivasa Sastri ; Mr. V. J. Patel.* ] [14TH MARCH, 1919.]

suggesting either the subversion or overthrow of Government, with the sole desire of making an unholy system of administration, satisfactory, that individual will run the risk of being hauled up by the opinion of an executive Government, of being tried by a tribunal under Part I and of being deprived of the safeguards which the constitution has hitherto provided.

“There is also another class of cases which may fall under section 153-A. Owing to the great ignorance which prevails among the vast section of the people, there are differences easily excited among Hindus and Muhammadans, and other classes of His Majesty's subjects living in this country. There may be some unfortunate individuals who may have started the trouble, and that trouble may have no connection with any revolutionary or anarchical movement. But if at the same time there should happen to be in the part of the province in which this activity may be going on some writing or speaking in connection with these unfortunate religious disputes, the result will be disastrous to those individuals who may have been writing about these matters without the remotest intention of encouraging revolutionary or anarchical movements. For these reasons, my Lord, the inclusion of these two sections in the Schedule is particularly dangerous, and it is much to be wished that Government may yet see their way to exclude the two sections from the Schedule.”

8-10 P.M.

**The Hon'ble Mr. Srinivasa Sastri:**—“My Lord, I beg to support this amendment and to say just one word why I support it. Throughout this discussion whenever non-official criticism has been sharp it has been said by the spokesmen of the Government that this distasteful business has been undertaken by them because the whole of this troublesome question was referred to great experts, and they were bound to accept more or less the opinion of this expert body and act on their advice.

“In support of this every important section and paragraph of the Rowlatt Committee have been quoted, and whenever a certain provision was stigmatised as being very stringent it was put to us that it did not go beyond the recommendations of the Rowlatt Committee. Every anxiety was shown hitherto to make it clear to us that even the widest powers taken will fall within the limits laid down by the Rowlatt Committee. Why in regard to these two sections they have gone beyond the recommendations of the Rowlatt Committee they have not made clear although directly asked. The only thing that I have heard, and that is a very inadequate explanation, is that ‘might’ is very different from ‘should’. That is nothing whatever. It does not touch the matter. I should like some light on this point. Sections 124-A and 153-A are sections which to all political workers are matters of constant dread. I say frankly in the course of these proceedings that Government if it wants to establish absolutely beyond all doubt that this Act will not apply, either by themselves, their successors or their subordinates, to offences under sections 124-A or 153-A with which political workers are constantly concerned, if they want to make that point clear it can only be by the exclusion of these two sections. At this late hour I have not the slightest desire to detain the Council at length, but I wish to associate myself heartily with the observations that have fallen from my Indian colleague that there is a great apprehension in the public mind that this Bill, when it becomes law, will have the effect of stifling public life or at any rate of creating stagnation therein. I believe that much of the agitation which your Excellency's Government is witnessing is prompted by that apprehension and the Government is bound to take note of it. It may be that it is exaggerated because what is unknown, what is to come is likely to be magnified in the largest proportions, but all the same there is this apprehension and it has found expression in this Council Chamber. It has found emphatic expression outside the Council and I beg your Excellency's Government to take cognisance of this apprehension and to remove it by not including these two sections in the Schedule of the Bill.”

8-13 P.M.

**The Hon'ble Mr. V. J. Patel:**—“I have nothing more to add, your Excellency.”

[ 14TH MARCH, 1919. ] [ *The President ; Mr. G. S. Khaparde.* ]

**His Excellency the President:**—"I will take Mr. Patel's amendment first. Would it not be convenient to put one amendment instead of three?"

**The Hon'ble Mr. G. S. Khaparde:**—"I have no objection."

The Hon'ble Mr. Patel's motion was put and the Council divided as follows:—

<i>Ayes—19.</i>	<i>Noes—34.</i>
The Hon'ble Sir Gaugadhar Chitnavis.	His Excellency the Commander-in-Chief.
„ Mr. S. N. Banerjee.	The Hon'ble Sir Claude Hill.
„ Raja of Mahmudabad.	„ Sir Sankaran Nair.
„ Dr. Tej Bahadur Sapru.	„ Sir George Lowndes.
„ Pandit M. M. Malaviya.	„ Sir Thomas Holland.
„ Mr. S. Sastri.	„ Sir William Vincent.
„ Mr. B. N. Sarma.	„ Sir James Meston.
„ Mir Asad Ali, Khan Bahadur.	„ Sir Arthur Anderson.
„ Sir Dinshaw Wacha.	„ Sir Verney Lovett.
„ Mr. V. J. Patel.	„ Mr. H. F. Howard.
„ Mr. M. A. Jinnah.	„ Sir James DuBonlay.
„ Sir Fazulbhoy Currimbhoy.	„ Mr. A. H. Ley.
„ Maharaja Sir M. C. Nandi.	„ Mr. W. M. Hailey.
„ Rai Krishna Sahay Bahadur.	„ Mr. H. Sharp.
„ Khan Bahadur Allahando Shah.	„ Mr. R. A. Mant.
„ Khen Bahadur Mian Muhammad Shafi.	„ Major-Genl. Sir Alfred Bingley.
„ Mr. G. S. Khaparde.	„ Sir Godfrey Fell.
„ Rai B. D. Shukul Bahadur.	„ Mr. F. C. Rosa.
„ Mr. K. K. Chanda.	„ Mr. C. H. Kesteven.
	„ Mr. D. de S. Bray.
	„ Lieut.-Colonel R. E. Holland.
	„ Surgeon Genl. W. B. Edwards.
	„ Mr. G. B. Clarke.
	„ Mr. H. Moncrieff Smith.
	„ 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. T. J. Marten.
	„ Mr. W. J. Reid.
	„ Mr. W. F. Rice.

The amendment was therefore negatived.

The motion that the Schedule of the Bill, as amended by the Select Committee, and as further amended, stand part of the Bill was put and agreed to.

The Council then adjourned to Tuesday, the 18th March, 1919, at 11 A.M.

DELHI :  
The 27th March, 1919. }

H. M. SMITH  
*Offg. Secretary to the Government of India,*  
*Legislative Department.*