C O N T E N T S.

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REPORT

Submitted to the BRAZILIAN GOVERNMENT

BY

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4th July, 1931.

Appendices to the Report.

APPENDIX I.

(Copies of the Questionnaire in Pushtu and Urdu not printed.)

Questionnaire issued by the Frontier Regulations Enquiry Committee.

NOTE 1.—It is not necessary that every question should be answered by you. Those as to which you have no knowledge or have no opinion to offer may be left unanswered.

NOTE 2.—You may make observations as to any matter not referred to in the questionnaire but within the scope of the inquiry.

GENERAL.

1. What are the peculiar conditions prevailing in the North-West Frontier Province which, in your opinion, necessitate special laws, civil and criminal ?

Regulation III of 1901 (Frontier Crimes).

NOTE.—The letters " F. C. R." wherever they occur denote the Frontier Crimes Regulation III of 1901.

2. Assuming F. C. R. in its present or modified form is retained, will you recommend any particular areas or classes of inhabitants to be exempted from the aforesaid regulation or particular provisions thereof ? If so, please specify such areas and classes of inhabitants as, in your opinion, should be so exempted.

3. What are Pathan and Biluch usages as regards convening of *jirgas* in respect of—

(*a*) selection of the " Elders " ?

(*b*) their number ?

(*c*) matters within their cognizance ?

(*d*) their powers in awarding sentence or passing other orders ?

(*e*) the method of enforcing such sentence or orders ?

Is there any and, if so, what difference between Pathan and Biluch usages in the matters hereinbefore referred to ?

4. Do you think whipping is an appropriate sentence in the North-West Frontier Province in cases of offences under sections 304, 307, 324, 325, 326, 382, 392 to 399, 427, 429, 435, 436 and 448 to 460, I. P. C., in addition to a substantive sentence or otherwise ?

5. Do you think the scope of sections 8 and 9 is too wide ?

Should sections 8 and 9 be so amended as to be limited to particular classes of cases ?

Are you in favour of the aforesaid sections being repealed ? If so, what alternative and effective mode of preventing apprehended murder or serious offences, or of settlement of disputes between parties one of whom belongs to a frontier tribe, as the case may be, do you suggest ?

6. In what cases, if any, in your opinion, " it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any of several persons so accused, should be tried by a Court " ?

Please give reasons in support of your opinion.

7. Whether, in your opinion, Chapter III should be (1) repealed, or (2) appropriately amended ?

If you favour repeal, please suggest an alternative, with due regard to local conditions.

If you favour amendment, please state the nature of the amendment you would make.

8. Do the construction of a new *hujra* or *chauk* and a use of a building as a *hujra* or *chauk*, lead, in certain cases, to a breach of the peace ? If so, do you think the provisions of section 33 require modification in any respect ? If so, in what respect ?

9. Do blood feuds occasionally arise and lead to a series of murders or serious crimes ? If so, do you think the security provisions contained in sections 41 to 46 are necessary, or unduly severe, requiring amendment ?

Please suggest an alternative remedy if you favour repeal or radical amendment of the aforesaid sections.

10. Will you allow appeal in certain cases ? If so, in what cases ?

11. Are you in favour of revisional jurisdiction being given to the Court of the Judicial Commissioner instead of the Commissioner ?

12. Are you in favour of representation, by legal practitioner, of a person accused or proceeded against at any stage and if so what ?

13. Do you favour an express provision being made that the Council of Elders should (1) maintain a record of their proceedings, including the names of witnesses, the substance of information given by each, (2) afford to the accused or the person proceeded against, an opportunity of putting questions, (3) invariably visit the scene of occurrence, and (4) give a brief statement of reasons in support of their findings ?

14. If your answer to the preceding questions or any of them be in the negative, please give reasons and suggest any reasonable means by which the Deputy Commissioner can determine, before sentencing the accused or passing an order to his prejudice, as to whether it is safe to act upon the verdict of the Council of Elders.

15. What is the state of public opinion as regards F. C. R. ?

Is there any class of inhabitants who is, in your opinion, satisfied with the administration under the Regulation ?

What is your own feeling in the matter ?

16. Please mention cases in which, in your opinion, improper use has been made of the provisions of F. C. R.

17. Please mention cases in which, in your opinion, failure of justice has occurred in consequence of the application of the provisions of F. C. R,

In particular, please mention cases in which, in your opinion, improper use was made or failure of justice resulted from the application of the following provisions :—

(*a*) The Elders constituting the *jirga* being selected by the Deputy Commissioner for proceedings under sections 8, 11, 40 or 41.

(*b*) Civil and Criminal references to the Council of Elders, under Chapter III.

(*c*) Blockade of hostile or unfriendly tribe, under section 21.

(*d*) Liability of a community to punishment or forfeiture under sections 22, 23, 25 and 26 for connivance at the commission of an offence or at the escape of a person suspected or suppression of evidence.

(*e*) Liability of a person carrying arms in suspicious circumstances, under section 29.

(*f*) Prohibition against erection of new villages, buildings *hujras*, *chauks*, etc., or removal thereof, under sections 31 to 34.

(*g*) Liability to provide *naubati chowkidars*, under section 35.

(*h*) Power to order residence beyond North-West Frontier Province, under section 36.

(*i*) Authority to arrest, under sections 38 and 39.

(*j*) Power to order security or surveillance, under sections 40 to 46.

(*k*) Recovery of fines from relatives of persons liable, under section 56.

18. Have you any observations to make regarding the use of political *hawalats* in cases arising under F. C. R. ?

Regulation IV of 1901 (Murderous Outrages Regulation).

19. Are the provisions of the general criminal law inadequate for dealing with cases of murderous outrages of the kind to which Regulation IV of 1901 applies ?

If so, are you in favour of (*a*) retention of Regulation IV of 1901 or (*b*) amendment thereof ? In case you favour amendment, in what respects would you modify its provisions ?

20. In particular, do you favour any alteration in the provisions of Regulation IV of 1901 in respect of—

(*a*) Definition of " fanatic ".

(*b*) Sentence.

(*c*) Summary procedure including record of evidence and judgment.

(*d*) Court having jurisdiction to try.

(*e*) Right of appeal.

(*f*) Representation by legal practitioner.

21. What is the state of public opinion as regards this regulation ?

Are you aware of any instances in which the provisions of this regulation were improperly used or failure of justice resulted from an application thereof ? If so, please give particulars.

Regulation IV of 1922 (Security Regulation).

Regulation IV of 1931 (Safety Regulation).

22. How far is it in the public interest or otherwise expedient, having regard to the conditions prevailing in the North-West Frontier Province, to retain or re-enact, as the case may be, the provisions of the abovenoted regulations.

23. In what respects, if any, would you modify the provisions of these regulations ?

24. Are you aware of any instances in which the aforesaid regulations were used improperly or an application thereof created widespread resentment or inflicted hardship.

Regulation VII of 1901 (Law and Justice).

25. Do you favour amendment of any part of the regulation noted above ? If so, in what respect ?

26. Have you any observations to make in reference to sections 20 to 24.

APPENDIX II.

Statistics.

TABLE No. I.

Cases of murder in the Punjab before separation, showing cis (present Punjab) and trans (present North-West Frontier Province)-Indus figures separately, and Peshawar District.

Year.	Cis-Indus now Punjab.	Trans-Indus now North-West Frontier Province.	Total.	Peshawar District.
1861	145	108	253	..
1862	120	95	215	..
1863	110	70	180	..
1864	146	117	263	..
1865	153	136	289	..
1866	127	141	268	..
1867	137	152	289	..
1868	168	164	332	..
1869	176	164	340	..
1870	160	166	326	..
1871	154	164	318	93
1872	173	185	358	102
1873	162	153	315	77
1874	138	148	286	..
1875	142	139	281	..
1876	157	127	284	..
1877	147	138	285	..
1878	192	134	326	..
1879	158	181	339	..
1880	167	184	351	60
1881	175	151	326	56
1882	189	162	351	69
1883	171	175	346	75
1884	222	179	401	81
1885	236	229	465	99
1886	258	224	482	107
1887	297	261	558	103
1888	303	217	520	87
1889	292	172	464	55
1890	274	194	468	61
1891	304	175	479	52
1892	302	168	470	70
1893	310	170	480	66

TABLE No. II.

North-West Frontier Province cases of murder, 1901-1929.

Year.	Districts.					Total.
	Peshawar.	Kohat.	Bannu.	D. I. Khan.	Hazara.	
1901	114	35	39	10	16	214
1902	82	43	36	11	20	192
1903	90	40	22	9	19	180
1904	72	37	23	5	15	152
1905	93	48	29	7	19	196
1906	96	40	22	11	15	124
1907	114	48	19	10	16	207
1908	107	37	23	8	18	193
1909	127	67	50	25	28	297
1910	155	54	67	16	18	310
1911	149	105	65	11	27	357
1912	170	66	49	19	19	323
1913	162	67	45	15	32	322
1914	160	68	53	20	15	316
1915	145	87	66	61	35	394
1916	186	68	89	41	32	416
1917	210	43	85	35	27	400
1918	186	49	71	24	23	353
1919	222	71	81	68	32	474
1920	283	146	143	49	23	644
1921	322	122	164	49	62	719
1922	376	89	164	68	36	733
1923	347	70	97	46	24	584
1924	320	57	74	51	33	535
1925	301	73	66	40	34	514
1926	311	72	85	29	35	532
1927	258	88	115	25	28	514
1928	307	73	80	22	36	578
1929	263	97	81	15	34	490

TABLE No. III.

Districts of the Punjab returning greatest number of murders.

Year.	Districts.						
	Lahore.	Jhelum.	Amritsar.	Rawal-pindi.	Attock.	Ferozepore.	Dera Ghazi Khan.
1910	30	28	27	27	35	22	22
1912	42	32	27	37	40	34	20
1913	44	55	51	52	37	32	44
1914	37	32	42	36	24	24	29
1915	44	30	26	30	22	34	26
1916	58	28	26	23	38	30	23
1917	54	23	25	24	33	35	24
1922	53	...	41	39	60	63	...
1923	...	38	...	...	...	...	...
1924	55	41	...	...	62	55	50
1925	68	41	42	...	...	64	40
1926	56	...	45	45	...	51	35
1927	69	...	...	45	...	50	...
1928	62	...	...	37	55	60	41
1929	66	33	34	...	49	58	32

Abstracted from Punjab Police Administration Reports, which give the figures of those districts only which return the greatest number of murders.

TABLE No. IV.

Motive for murder North-West Frontier Province.

(by cases for the whole province.)

Year.	Plunder.	Relation between sexes.	Blood feuds.	Land disputes.	Other causes.	Total.
1901	..	..	..	..	..	..
1902	..	..	..	..	..	..
1903	29	55	9	..	87	180
1904	27	62	4	2	57	152
1905	23	74	15	15	69	196
1906	21	99	14	14	56	184
1907	20	85	..	9	89	207
1908	35	73	25	8	52	193
1909	69	106	42	22	58	297
1910	59	120	37	9	85	310
1911	31	158	67	23	78	357
1912	39	158	38	10	78	323
1913	46	131	46	31	68	322
1914	47	121	53	25	70	316
1915	77	135	81	25	76	394
1916	85	111	96	33	91	416
1917	62	117	59	41	121	400
1918	39	131	41	40	102	353
1919	96	149	58	36	135	474
1920	104	147	101	33	259	644
1921	121	183	210	27	178	719
1922	61	172	261	63	176	733
1923	74	202	143	54	111	584
1924	49	202	108	61	136	556 (persons).
1925	34	186	92	59	160	531 (persons).
1926	26	172	114	43	177	532
1927	17	173	114	43	167	514
1928	14	180	119	47	158	518
1929	8	169	106	61	146	490

TABLE No. V.

Motive for murder Punjab.

Year.	Plunder.	Rel. sexes.	Blood feuds.	Land disputes.	Other causes.
1901	62	184	..	..	..
1902	..	..	..	..	..
1903	..	..	..	..	..
1904	..	..	..	..	..
1905	..	..	..	..	..
1906	..	..	..	..	..
1907	..	..	..	..	..
1908	..	..	..	..	..
1909	..	..	..	..	..
1910	30	174	8	25	172
1911	..	..	..	..	..
1912	33	209	19	47	208
1913	47	262	28	66	222
1914	24	222	30	40	222
1915	41	204	29	35	203
1916	31	230	30	48	185
1917	14	195	32	53	217
1918	34	190	27	40	217
1919	24	211	19	41	214
1920	27	244	29	28	222
1921	..	..	..	..	..
1922	64	236	77	59	..
1923	50	264	60	66	..
1924	50	251	53	53	..
1925	65	219	78	55	..
1926	50	235	73	70	..
1927	25	249	43	57	..
1928	24	263	69	56	..
1929	28	268	67	28	..

TABLE No. VI.

Dacoities, North-West Frontier Province (1901—1929).

Year.	Districts.					Total.		
	Hazara.	Peshawar.	Kohat.	Bannu.	Dera Ismail Khan.			
1901	4	25	25	14	14	82		
1902	2	14	30	10	5	60		
1903	7	15	23	8	2	55		
1904	5	15	12	..	2	34		
1905	..	27	19	1	..	47		
1906	..	17	10	1	..	28		
1907	..	25	5	2	..	32		
1908	..	42	10	5	8	65		
1909	..	15	13	9	29	66		
1910	2	36	19	24	20	101		
1911	10	33	28	17	8	101		
1912	12	22	19	9	18	79		
1913	9	28	6	8	5	53		
1914	4	19	14	12	13	62		
1915	2	38	12	31	114	197	191	
1916	4	95	22	53	110	284	216	
1917	2	39	13	42	54	150	91	*
1918	..	38	9	15	30	92	49	
1919	4	105	22	20	162	313	147	
1920	5	121	81	123	108	438	320	
1921	8	74	66	116	96	360	251	
1922	8	78	42	88	99	315	120	
1923	3	89	28	9	65	194	73	
1924	3	22	28	7	21	81	40	
1925	4	22	23	9	15	73	29	†
1926	..	29	32	3	10	74	15	
1927	4	33	11	3	5	56	19	
1928	4	24	6	5	11	43	17	
1929	7	28	43	6	..	84	15	

*Due to Mohmands, Mahsuds and Wazirs raiding.

†By trans-border offenders.

TABLE No. VII.

Rioting and robbery, North-West Frontier Province.

Year.	Rioting.						Robbery.
	Districts.						
	Hazara.	Peshawar.	Kohat.	Bannu.	D. I. Khan.	Total.	
1901	..	..	..	..	..	..	154
1902	..	..	..	..	..	..	132
1903	..	..	..	..	..	..	105
1904	..	..	..	..	..	..	98
1905	..	..	..	..	..	..	94
1906	..	..	..	..	..	..	77
1907	..	..	..	..	..	..	..
1908	..	..	..	..	..	..	..
1909	..	..	..	..	..	..	..
1910	..	..	..	..	..	..	..
1911	..	..	..	..	..	..	..
1912	..	..	..	..	..	..	..
1913	..	..	..	..	..	..	..
1914	..	..	..	..	..	56	..
1915	..	..	..	..	..	62	87
1916	..	..	..	..	..	..	79
1917	..	..	..	..	..	..	64
1918	..	..	..	..	..	56	112
1919	26	..	..	..	..	74	143
1920	..	..	..	..	..	92	150
1921	..	..	..	..	..	64	256
1922	25	19	11	6	4	65	274
1923	14	22	9	9	2	56	217
1924	15	9	9	18	2	53	157
1925	13	24	8	9	5	59	148
1926	14	22	6	8	5	55	40
1927	16	26	3	8	5	58	101
1928	16	11	6	11	3	47	108
1929	28	16	9	15	2	70	115

TABLE No. VIII.

Cattle theft, North-West Frontier Province.

Year.	Districts.					Total.
	Hazara.	Peshawar.	Kohat.	Bannu.	Dera Ismail Khan.	
1901	..	..	..	..	..	..
1902	..	..	..	..	..	..
1903	..	..	..	..	..	..
1904	..	..	..	..	..	..
1905	..	..	..	..	..	..
1906	..	..	..	..	..	..
1907	..	..	..	..	..	..
1908	..	..	..	..	..	21
1909	..	..	..	..	..	..
1910	..	..	..	..	..	..
1911	..	..	..	..	..	..
1912	..	..	..	..	..	..
1913	..	..	..	..	..	..
1914	..	..	..	..	..	..
1915	..	..	..	..	..	..
1916	..	..	..	..	..	120
1917	..	..	..	..	..	82
1918	..	..	..	..	..	92
1919	..	..	..	..	..	77
1920	..	..	..	..	..	180
1921	..	..	..	..	..	104
1922	..	..	..	..	..	105
1923	..	..	..	..	..	112
1924	..	..	..	..	..	92
1925	..	..	..	..	..	97
1926	..	..	..	..	Nearly $\frac{1}{2}$ of total.	84
1927	4	21	6	14	35	80
1928	2	15	11	16	36	80
1929	8	30	15	17	24	94

TABLE No. IX.

Cases of murder, dacoity, robbery, rioting and cattle-theft, Punjab (1901—1929).

Year.	Murders.	Dacoity.	Robbery.	Rioting.	Cattle theft.
1901	469	68	291	468	6,388
1902	433	66	360	556	3,069
1903	440	58	336	536	2,872
1904	..	..	..	..	..
1905	396	28	220	395	2,170
1906	369	37	179	360	2,997
1907	364	24	167	344	1,946
1908	435	75	202	393	2,245
1909	421	36	179	292	2,274
1910	409	48	191	404	2,305
1911	476	100	248	434	2,391
1912	510	115	291	525	2,674
1913	685	111	316	480	2,622
1914	538	49	307	487	2,596
1915	512	264	301	457	2,425
1916	524	83	232	493	1,933
1917	511	53	167	389	1,657
1918	508	41	161	378	1,611
1919	509	130	250	453	1,761
1920	580	80	247	468	2,130
1921	697	167	420	680	2,301
1922	705	349	485	760	2,418
1923	748	333	439	757	2,182
1924	653	211	434	960	2,191
1925	627	160	460	822	2,157
1926	600	147	433	660	2,346
1927	665	149	459	797	2,951
1928	667	128	413	827	2,751
1929	679	99	434	813	2,666

TABLE No. XI.

Cases of murders per 10,000 population, North-West Frontier Province and Punjab.

Year.	North-West Frontier Province.	Punjab.
1901	0·88	0·19
1902	0·79	0·18
1903	0·74	0·18
1904	0·62	..
1905	0·81	0·17
1906	0·76	·16
1907	0·85	·15
1908	0·79	·18
1909	1·22	·18
1910	1·28	·17
1911	1·47	·20
1912	1·29	·22
1913	1·29	·26
1914	1·26	·23
1915	1·62	·22
1916	1·67	·22
1917	1·65	·22
1918	1·46	·21
1919	1·96	·20
1920	2·66	·23
1921	2·93	·29
1922	3·03	·29
1923	2·41	·32
1924	2·21	·28
1925	2·12	·28
1926	2·24	·25
1927	2·12	·28
1928	2·23	·28
1929	2·02	·29

TABLE No. XII.

Case of dacoity per 10,000.

Year.	North West Frontier Province.	Punjab.
1901	·34	·028
1902	·25	·028
1903	·22	·024
1904	·14	?
1905	·15	·012
1906	·11	·016
1907	·13	·010
1908	·27	·032
1909	·27	·016
1910	·42	·030
1911	·42	·042
1912	·32	·049
1913	·23	·047
1914	·25	·046
1915	·81	·112
1916	1·81	·035
1917	·62	·022
1918	·38	·017
1919	1·25	·055
1920	1·81	·034
1921	1·49	·070
1922	1·30	·148
1923	·80	·140
1924	·33	·089
1925	·30	·068
1926	·30	·062
1927	·22	·063
1928	·18	·054
1929	·35	·042

TABLE No. XIII.

Cases of robbery per 10,000.

Year.	North-West Frontier Province.	Punjab.
1901	·63	·12
1902	·54	·15
1903	·43	·14
1904	·40	..
1905	·38	·09
1906	·31	·07
1907	..	·07
1908	..	·08
1909	..	·07
1910	..	·08
1911	..	·10
1912	..	·12
1913	..	·13
1914	..	·13
1915	·35	·12
1916	·32	·09
1917	·27	·07
1918	·46	·06
1919	·50	·10
1920	·61	·10
1921	1·0	·17
1922	1·13	·20
1923	·89	·18
1924	·64	·14
1925	·61	·19
1926	·45	·18
1927	·41	·19
1928	·44	·13
1929	·47	·18

TABLE No. XIV.

Cases of rioting per 10,000.

Year.	North-West Frontier Province.	Punjab.
1901	..	·19
1902	..	·23
1903	..	·22
1904	..	..
1905	..	·16
1906	..	·15
1907	..	·14
1908	..	·16
1909	..	·13
1910	..	·17
1911	..	·18
1912	..	·22
1913	..	·20
1914	·23	·20
1915	·25	·19
1916	..	·20
1917	..	·16
1918	·23	·16
1919	·30	·19
1920	·38	·19
1921	·26	·28
1922	·26	·32
1923	·23	·22
1924	·21	·4
1925	·24	·34
1926	·22	·28
1927	·23	·33
1928	·19	·35
1929	·28	·34

TABLE No. XV.

Cases of cattle theft per 10,000.

Year.	North-West Frontier Province.	Punjab.
1901	..	2·70
1902	..	1·29
1903	..	1·22
1904	..	..
1905	..	0·92
1906	..	0·87
1907	..	0·82
1908	·08	0·92
1909	..	0·92
1910	..	0·98
1911	..	1·01
1912	..	1·13
1913	..	1·11
1914	..	1·10
1915	..	1·02
1916	0·57	0·82
1917	0·33	0·69
1918	0·37	0·60
1919	0·31	0·75
1920	0·74	0·89
1921	0·42	0·97
1922	0·43	1·02
1923	0·46	0·90
1924	0·38	0·92
1925	0·40	0·91
1926	0·34	0·99
1927	0·33	1·25
1928	0·33	1·16
1929	0·38	1·13

TABLE No. XVI.

Number of cases referred to Jirga: convicted and percentage of convicted to referred cases, North-West Frontier Province.

Year.	Hazara.			Peshawar.			Kohat.			Bannu.			D. I. Khan.			Total.		
	Referred.	Committed.	Percentage.	Referred.	Committed.	Percentage.	Referred.	Committed.	Percentage.	Referred.	Committed.	Percentage.	Referred.	Committed.	Percentage.	Referred.	Committed.	Percentage.
1906 ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	132	71	..
1907 ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	128	79	..
1908 ..	17	12	71	119	68	57	38	20	53	11	8	73	12	12	100	197	120	61
1909 ..	19	10	53	82	43	52	79	38	48	40	17	43	17	11	65	237	119	50
1910 ..	27	10	37	122	50	41	64	34	53	72	40	56	20	17	85	305	151	50
1911 ..	31	21	68	131	79	60	125	85	68	92	49	53	22	11	50	401	245	61
1912 ..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	331	194	58
1913 ..	49	20	40	158	98	62	69	45	65	52	24	46	24	10	41	352	197	56
1914 ..	52	32	61·5	211	147	69·6	63	43	68·2	58	29	50	11	7	63·6	396	258	65·3
1915 ..	40	23	57·5	142	101	71·1	118	104	88·1	82	46	56	29	22	75·8	411	296	72
1916 ..	26	17	65·3	200	114	57	72	63	87·5	109	76	69·7	33	27	81·8	440	297	67·5
1917 ..	21	13	61·9	224	139	62	55	38	69	90	61	67·7	25	22	88	415	273	65·7
1918 ..	22	15	68·1	185	116	62·7	44	30	68·1	85	68	80·0	13	7	53·8	349	236	67·6
1919 ..	28	19	67·8	183	98	53·5	53	38	71·7	85	57	67·0	26	11	42·3	375	223	49·4
1920 ..	58	20	34·4	320	128	40·4	55	29	52·7	92	41	44·5	24	18	75·0	549	236	42·9
1921 ..	97	84	86·5	315	174	55·2	115	80	69·5	90	46	51·1	84	33	70·2	664	417	62·8
1922 ..	44	38	86·3	269	146	54·2	94	78	82·9	112	68	60·7	15	12	80·0	534	342	64·0
1923 ..	21	9	42·8	178	109	61·2	34	20	76·4	54	36	66·6	16	18	75·0	313	192	64·4
1924 ..	58	35	60·3	331	171	51·6	30	28	93·3	67	37	55·2	33	11	33·3	519	282	54·3
1925 ..	52	32	61·5	315	166	52·6	45	26	57·7	64	31	48·4	51	30	58·8	527	285	54·0
1926 ..	33	18	54·5	258	145	56·2	37	30	81·0	47	26	55·3	31	17	54·8	406	236	58·1
1927 ..	67	43	64·1	264	167	63·2	55	44	80	53	36	67·9	15	7	46·6	454	297	65·4
1928 ..	35	16	45·7	260	169	65·0	51	40	78·4	30	16	53·3	20	9	45·0	396	250	63·1
1929 ..	39	24	61·5	208	129	62·0	100	75	75·0	77	42	54·5	15	6	40·0	439	276	62·8

TABLE No. XVII.

Fines under section 22 Frontier Crimes Regulation, North-West Frontier Province.

Year.	Hazara.		Peshawar.		Kohat.		Bannu.		Dera Ismail Khan.		Toatal.	
	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
		Rs.		Rs.		Rs.		Rs.		Rs.		Rs.
08	1	1,000	6	8,000	6	2,100	10	14,230	1	3,000	24	28,330
09	3	418	6	9,298	7	6,977	3	3,320	1	300	20	20,213
10	6	8,100	13	19,897	7	2,350	4	5,159	4	2,844	34	38,350
11	3	1,400	2	700	5	2,400	3	2,235	..	..	13	6,735
12	2	150	..	..	9	2,460	6	4,210	4	3,030	21	9,850
13	2	471	3	1,040	4	2,250	4	750	3	2,200	16	6,711
14	..	..	9	4,480	4	4,631	4	8,515	7	4,470	24	22,024
15	4	1,581	4	2,972	6	1,755	2	4,150	5	2,409	21	12,867
16	4	2,046	9	13,512	10	6,060	8	3,777	17	17,600	47	42,995
17	2	1,410	26	17,363	2	3,500	8	2,915	4	942	42	26,130
18	1	660	8	10,110	1	450	9	3,450	1	300	20	14,970
19	3	4,855	12	38,701	12	7,242	2	2,700	3	4,100	32	57,598
20	2	537	1	1,500	12	11,929	4	1,990	2	6,000	21	21,958
21	4	350	3	4,500	5	2,800	13	16,150	1	80	26	23,880
22	3	2,625	4	5,373	22	15,653	7	1,750	..	..	36	25,301
23	2	1,180	..	..	2	1,366	5	5,671	..	..	9	8,217
24	4	2,946	3	1,588	2	900	6	7,237	1	500	16	13,171
25	3	1,700	5	5,320	1	2,000	7	2,574	1	2,000	17	13,594
26	2	1,430	10	7,883	4	1,980	..	..	6	12,836	22	24,140
27	2	698	4	3,775	9	3,500	2	800	..	..	17	8,773
28	3	1,784	6	5,108	12	4,010	3	1,300	..	..	24	12,202
29	3	2,005	6	6,596	4	3,229	7	2,854	..	..	20	14,684

Figures previous to 1908 not available.

TABLE No. XVIII.

Out-laws in tribal territory.

Year.	Wanted in				
	Peshawar.*	Kohat.	Bannu.**	Dera Ismail Khan.	Hazara.
1919	473	328	329	..	22
1921	539	458	577	..	33
1925	511	408	552	..	77
1926	642	387	533	21	83
1927	477	298	385	13	82
1929	522	239	228	20	60
1930	536	244	226	18	58
	* Includes following residents of tribal territory outlawed for offences in British territory.		** Includes following residents of tribal territory outlawed for offences in British territory.		
1919	278	..	284	..	..
1921	301	..	284	..	..
1925	257	..	345	..	..
1926	288	..	389	..	..
1927	248	..	259	..	..
1929	275	..	139	..	..
1930	289	..	138	..	..

Outlaws known to Political Agents to be in tribal territory.

Year.	Khyber Agency.	Kurram Agency.	Remarks.
1919	..	4	Others not received.
1921	..	9	
1925	34	14	
1926	48	23	
1927	56	33	
1929	73	34	
1930	84	27	

APPENDIX III.

Twenty-five selected précis of typical cases dealt with under the Frontier Crimes Regulation and copies of statements dealing with the Political Havalat.

Précis No. 1.

Case No. 115/2, 1925.

VILLAGE SHAH MANSUR, MARDAN.

Crown versus *Abdul Shakur Accused.*

Section 302.

On 27th September 1925 at about 11 A.M. Abdul Ghafar, a resident of Shah Mansur, was stabbed and died immediately. There were several injuries on the body. At 2 P.M. on the same day Abdul Shakur, his brother, reported at the Thana that the deceased had picked a quarrel with one Shahzaman and had been killed by him. On 29th September 1925 Musamat Bibi Khanam, the widow of the deceased charged Abdul Shakur, Abdul Hamid and Ajab, an absconder, all three brothers, with the murder of her deceased husband. On 12th October 1925 Abdul Shakur made a statement before the Magistrate that his deceased brother Abdul Ghafar was killed by Ajab the absconder, who was carrying on with Musamat Bibi Khanam during the absence of the deceased. It may be noted that the deceased had been away in the Punjab and other places, for a period of 14 years and had returned to his village 5 months before his murder. The Police believed the story of the woman and alleged that the three accused were enjoying the profits of the land belonging to the deceased during his absence and that they had killed him because they wanted to inherit his property. Abdul Shakur and Abdul Hamid were therefore placed for an enquiry before a Magistrate. The Magistrate in his order said that there were no eye witnesses and there was no judicial proof as to who had killed Abdul Ghafar and therefore there was no possibility of conviction by a regular Court. He asked the District Magistrate to refer the innocence or guilt of Abdul Shakur, Abdul Hamid and Ajab to the decision of a jirga, but, at the same time, remarked that in his opinion Musamat Bibi Khanam, the widow of the deceased, was carrying on with Ajab and her case should also be placed before the jirga. On 12th December 1925 the District Magistrate examined Musamat Bibi Khanam, who stated that her deceased husband had been away from the village for 14 years and that she had been living in her own village with her own brother during the absence of her husband. The Deputy Commissioner thought that this statement was of significance and invited the attention of the members of the Jirga to it. Four members of the Jirga were appointed, namely, Mohammad Akbar Khan, Ghulam Haider Khan, Pandal Khan and Ibrahim Khan. The innocence or guilt of Abdul Shakur, Abdul Hamid, Ajab the absconder, and Musamat Bibi Khanam was enquired into by the Jirga. The prosecution witnesses supported the story of Musamat Bibi Khanam to the effect that the deceased had been killed by Abdul Shakur, Abdul Hamid and Ajab. In their defence Abdul Shakur and Abdul Hamid produced four witnesses, Nabib Ullah, Sharif, Rahmat-Ullah and Wahid-Ullah. Nabib Ullah stated that he was prepared to swear that Abdul Shakur and Abdul Hamid were innocent and that Musamat Bibi Khanam was carrying on with Ajab who had killed the deceased. Sharif, Rahmat Ullah and Wahid Ullah in one statement proclaimed the innocence of Abdul Shakur and Abdul Hamid and stated that the woman Musamat Bibi Khanam was at the bottom of it and that she and Ajab had conspired together to kill Abdul Ghafar. The jirga on 7th January 1926 found Musamat Bibi Khanam and Ajab guilty of the murder of Abdul Ghafar. They were of opinion that Abdul Shakur and Abdul Hamid were not guilty. On 8th January 1926 the District Magistrate after accepting the verdict of the Jirga convicted Musamat Bibi Khanam under Section 302, Indian Penal Code and sentenced her to 10 years rigorous imprisonment and sent up the file to the Chief Commissioner for confirmation of sentence. The sentence was confirmed by the Chief Commissioner, the Hon'ble Mr. Kecae, on 27th January 1926. The application for revision on behalf of Musamat Khanam was also rejected.

Ajab was subsequently tried and sentenced to death by the Sessions Judge who held that Musamat Bibi Khanam had been convicted on false evidence, that the real motive of the murder was as had been alleged by her, and that there was no foundation for the story that she was intriguing with Ajab. The Sessions Judge accordingly wrote the letter reproduced below which secured the release of the woman :—

Substance of letter No. 513, dated 30th March 1927, from Lieutenant-Colonel W. A. Garstin Sessions Judge, Peshawar, to the Secretary to the Hon'ble the Chief Commissioner, North-West Frontier Province, Peshawar.

In this letter the Sessions Judge says that the case Crown versus Ajab was completed on 2nd March, 1927, with the result that Ajab was sentenced to be hanged. The sentence of death was confirmed by the Court of the Judicial Commissioner on 24th March 1927. The Sessions Judge recommended that the petition of Musamat Bibi Khanam, widow of Abdul Ghafar, should be granted and her sentence remitted as she is found to be innocent. The Sessions Judge remarks that it would be seen from his judgment that he was of opinion that the grounds on which the Council of Elders held Musamat Bibi Khanam to be guilty were entirely without foundation and that the motive for the murder was a dispute between the brothers over their lands. The Court of the Commissioner upheld this view and agreed with the Sessions Judge about the motive

for the crime. During the course of Ajab's trial the question of the guilt of Musamat Bibi Khanam came in to prominence and the trial of Ajab showed that she was in no way connected with the murder. The Sessions Judge and the Assessors had the opportunity of seeing and hearing the compurgators who swore before the Council of Elders of the complicity of Musamat Bibi Khanam in the murder but the Assessors before the Court of Session were positively of opinion that Musamat Bibi Khanam had been convicted on false evidence. Musamat Bibi Khanam was pregnant when she was convicted by the Deputy Commissioner. She gave birth to a child when in jail.

In these circumstances the Sessions Judge was of opinion that there has been a serious miscarriage of justice in the conviction of Musamat Bibi Khanam and recommended strongly that her sentence should be remitted under Section 401 of the Criminal Procedure Code.

It appears that the sentence was subsequently remitted by the Hon'ble the Chief Commissioner.

Précis No. 2.

POLICE STATION KALLU KHAN, MARDAN.

Crown versus *Hamid Ullah, Hazrat Ullah Khan Zaida, Said Hussain, Mir Zaman and Rahim Ullah.*

Under Section 302.

One Amir Ghorh was killed on 11th March 1921.

It was alleged that the deceased had a liaison with the wife of Hamid Ullah, a woman of very bad character. The case was enquired into by Rai Sahib Hukam Chand, Magistrate first class, who in his order says that there were no eye-witnesses and no judicial proof for the conviction of the accused. The order of the Magistrate is dated the 14th September, 1921. He, however, asked the Additional District Magistrate of Mardan what to do in the case, whether he should refer it to the jirga or discharge the accused. The additional District Magistrate of Mardan advised him to discharge the accused; consequently all the accused persons * * * were discharged. The police was not satisfied with the order of discharge and made an application to the Deputy Commissioner praying that the case should be referred to a jirga. The Deputy Commissioner on 3rd January 1922 referred the case of all the accused persons to a jirga, remarking that as the cause of murder appears to be the misbehaviour of a woman and the honour and shame of a Pathan were involved the innocence or guilt of the accused persons should be referred to a jirga in accordance with the recent orders of the Chief Commissioner.

The jirga found that there was no evidence in the case and none was produced by the prosecution. They, however, held, on the statement of the Lambardar, that the deceased was killed by Hamid Ullah, Mir Zaman, Said Hussain and Rahim Ullah and found them guilty of the murder of Amir Ghorh. They also said that Shah Dad, an absconder, was also guilty. They recommended to the Deputy Commissioner that each of the guilty persons should be sentenced to 5 years' rigorous imprisonment and to a fine of Rs. 100 each, half to be paid to the complainant. The Deputy Commissioner accepted the findings of jirga and sentenced Hamid Ullah, Mir Zaman, Said Hussain and Rahim Ullah each to five years and to a fine of Rs. 100 under Section 302. His order is dated the 28th February 1922.

Shah Dad the absconder was subsequently arrested and placed on trial before another jirga. This jirga found Shah Dad not guilty. The Deputy Commissioner accepted the findings of the Jirga and discharged Shah Dad. On 9th July 1922 the Chief Commissioner on the application of Hamid Ullah, Mir Zaman, Said Hussain and Rahim Ullah ordered their re-trial by a second jirga. The result was that all the accused persons were discharged by the second Jirga. They however recommended that a fine of Rs. 1,000 should be inflicted on the inhabitants of the village. On 1st November 1922 the Deputy Commissioner accepted the findings of the jirga and discharged all the accused but refused to impose a fine on the inhabitants of the village.

Précis No. 3.

PESHAWAR DISTRICT.

Crown through Sher Mohammad Khan, resident Agra Payan

Versus

Abdul Malik, Nur Malik and Shah Zamir residents of Agra.

Section 302, I. P. C.

The first Jirga consisted of—

(1) Arbab Gul Mohammad Khan of Amba-Dher,

(2) Latif Khan of Nisatha,

(3) Khan Bahadur Mohammad Yusuf Khan of Dheri-Zardad,

(4) Azam Khan,

(5) Abdul Rahim Khan.

This jirga found the three accused guilty and after conviction they were sentenced as follows :—

(1) Abdul Malik to 14 years' imprisonment.

(2) Shah Zamir to 5 years' imprisonment.

(3) Nur Malik being a minor was fined Rs. 1,500 only or in default was to undergo simple imprisonment for 18 months.

After the conviction it was brought to the notice of the Resident in Waziristan and Commissioner that the only witness against the three accused was Khurshida, the widow of the deceased Khan Mohammad. She subsequently went to the Tribal Territory in order to marry Rahim Ullah an oultlaw (a cousin of Khan Mohammad deceased). Throughout the enquiry of the case all the three accused had represented that Rahim Ullah had murdered Khan Mohammad on account of his liaison with the widow of the deceased. Later on Khurshida's marriage with Rahim-Ullah threw a strong light on the real facts of the case. The Resident in Waziristan therefore asked the Deputy Commissioner, Peshawar, to institute another jirga in order to find out how far the three accused were responsible for the murder of Khan Mohammad. The Deputy Commissioner's report to the Resident in Waziristan shows that Rahim-Ullah together with his wife Khurshida was arrested at his father's house on 17th May 1921 in connection with a previous murder of one Yusuf.

The finding of the second jirga is not on this file. However it is clear from another file that all the three accused convicted by the first jirga were released by the second jirga, the members of which were selected from another Tahsil in accordance with the wishes of the Resident in Waziristan.

Précis No. 4.

PESHAWAR DISTRICT.

Crown through Haider deceased of Pushti Khara Bala

Versus

1. Said Ahmad, 2. Hasham and Umra Khan of Pushti Khara Bala.

CHARGE UNDER SECTION 302, I. P. C. FOR THE MURDER OF HAIDER.

Facts.—Haider deceased was shot through the chest with a rifle on the evening of 13th August 1926 and died at 1-30 on the same night. Aziz Khan, uncle of the deceased, was called by telephone from Peshawar. He made a report of the murder at Police station Burj Hari Singh at about 6-A.M. on the following morning and accused 1. Mohommed Umar Khan, 2. Sarwar Khan, 3. Aslam Khan, 4. Gul Rahman and 5. Farid of the murder.

The Sub-Inspector went to the spot and after investigation arrested the 3 accused named above, and reported that the persons named by deceased's relatives were falsely named by them on account of enmity. Hasham and Said Ahmad accused are close relatives of the deceased. Enmity of a serious nature admittedly existed between the deceased and his relatives and Mohommed Umar Khan and the other 4 accused.

All the principle witnesses were disbelieved by the magistrate as having come forward to make statements before the police 4 days after the deceased's murder, and there was no circumstantial proof to connect the accused with the murder. Thus the verdict of guilty against the accused by the Council of Elders was based on mere surmise, and this finding was against every principle of justice and equity.

The Deputy Commissioner agreeing with the finding of the jirga sentenced 1. Said Ahmad and 2. Hasham to 14 years rigorous imprisonment each and submitted the case to the Chief Commissioner for confirmation of the sentences.

The Chief Commissioner refused to confirm the sentences, but referred the case back to the Deputy Commissioner for a second trial by a second jirga, the members of which he appears to have selected himself *viz* :—1. Nawab of Hoti, 2. Nawab of Tank, 3. Khan of Zaida, 4. Arbab Mohammad Akram Khan of Landi, 5. Khan Bahadur Maulvi Ghulam Hassan Khan, 6. Sheikh Khuda Bakhsh retired Extra Assistant Commissioner.

The 2nd jirga made an elaborate enquiry, visited the spot, and took local evidence. They came to the conclusion that the case against all the three accused was false. The jirga also came to the conclusion that the Sub-Inspector's investigation was perverse and that he had been bribed.

The jirga in their verdict expressed the following principle which they said they followed in coming to a decision in favour of the accused :—

> " We take the liberty of respectfully stating that even the Regulation under which cases are referred to jirgas must be regarded as based on equitable principles of justice, and cannot be presumed to aim at arbitrary convictions of the accused without

proof of their guilt. The opinion of the jirga must be based on substantial proof and not on mere surmise. The proof should be such that it may incline a reasonable person to the belief that a certain fact exists, or does not exist. We have adopted this principle in coming to the verdict indicated above."

The Deputy Commissioner accepted the finding of the second jirga and discharged all the three accused.

Remarks.—The first jirga found innocent persons guilty of murder on mere surmise and without proof. The Deputy Commissioner sentenced two persons to 14 years' rigorous imprisonment including 3 months solitary confinement each. Had the case not gone up to the Chief Commissioner for confirmation of sentences, 2 innocent persons would have suffered rigorous imprisonment to 14 years. The second jirga enumerated a principle of justice which they followed and they found the accused not guilty. The Deputy Commissioner accepted that verdict including the principle enunciated by the 2nd jirga.

Précis No. 5.

Case No. 28/2 of 1926.

PESHAWAR DISTRICT.

Crown through Shahbaz versus *Musamat Rakhima and others.*

CHARGED UNDER SECTION 302, I. P. C.

Musamat Rakhima, widow of Shahbaz, deceased, and Abdul Rahman were sent up for trial under Section 302, Indian Penal Code on a charge of murdering, by poison, Shahbaz of village Kalu Khan. The medical evidence clearly proved that the death was due to poisoning. It seemed that Musamat Rakhima was a woman of bad character. She did not like her husband who apparently was an ugly man of poor physique. Abdul Rahman was suspected of having abetted her in the crime because he was one of her lovers. The jirga members were of the opinion that one or other of her lovers must have been her accomplice in the crime. The jirga, however, found that Musamat Rakhima, was guilty and that there was not sufficient proof against Abdul Rahman. The Deputy Commissioner in his order dated 28th June 1926, agreeing with the finding of the jirga, convicted Musamat Rakhima under Section 302, Indian Penal Code and sentenced her to 14 years' rigorous imprisonment. The sentence was confirmed by the Hon'ble Mr. W. J. Keene on 9th July 1926. An application for revision was rejected by the Hon'ble the Chief Commissioner on 23rd September 1926.

The Magistrate who tried the case, in the first instance, in his order dated 7th June 1926 says " there is no evidence against the accused other than that Musamat Rakhima is a faithless woman and has many paramours ; that Abdul Rahman, accused, gave bail on her behalf during the Police investigations ; and that the house of Musamat Awal Jan sister of Abdul Rahman accused is situated close to that of the deceased and both the accused used to go there and visit each other ".

The jirga members convicted Musamat Rakhima on the statement of Malik Iliyas Khan of Kalu Khan, who stated that Musamat Rakhima was guilty. It is to be noted that Malik Iliyas Khan's evidence was based on surmise.

Precis No. 6.

Case No. 113/2.

GENERAL REGISTER No. 2550 OF 1929.

K. E. V. Abdul Hamid.

PESHAWAR DISTRICT.

Case under Section 11, F. C. R.—Offence under Section 302, I. P. C.

Bazai, a water carrier, was shot dead at mid-night. One Abdul Hamid was suspected, as he was believed to have had intimacy with the deceased's wife. The wife repudiated the suggestion. S. I. Sahib Singh investigated the case and challaned Abdul Hamid who, it should be mentioned, had been previously bound over to be of good behaviour under Section 110, C. P. C. There was no evidence of any kind in the case, and the accused was admitted to bail. The Magistrate recommended that the D. C. should make a reference to Jirga. The D. C. in an order, dated 15th February 1929 said " there is no direct evidence in the case as to by whom the murder was committed, but there is a motive against the accused and against no one else, and it is obvious that public opinion regards Abdul Hamid as the murderer". In those circumstances, a reference was made to a jirga consisting of 4 persons residing in different villages.

The jirga noted their finding that four of the prosecution witnesses who had deposed in favour of the prosecution made discrepant statements before the jirga. They named 3 other prosecution witnesses, who definitely supported the accused. They referred to 2 witnesses, including the sub-inspector, who supported the case for the prosecution, not of course by giving

relevant evidence as to the crime itself. The jirga then proceeded to consider the defence and held that the defence was not credible and had been concocted. They noted the fact that they had visited the spot and made further enquiries but that the Lambardars did not appear before them. They observed as follows:—

> "No one gave any evidence against the accused but no one has named any other man as the murderer of the deceased. The reasons for which no one gave evidence against the accused is that the deceased was a poor man. The accused who is on bail, is a badmash and every-body thought that he would get off and become their enemy. Our enquiries made from the people of adjacent villages and the facts of the case clearly show that the motive stated by the police is absolutely correct. The accused was a lover of Musamat Sabrai, wife of the deceased, for which the deceased quitted his village Pushtkhara Bala and went to Sarband, which enraged the accused. Moreover, Sir Nawab Saheb has also written on the guilt of the accused. We therefore see no reason why we should not hold the accused guilty for the offence. The Lambardars of both the Pushti Khara villages are very idle and do not disclose the real facts in the matter for which many cases go untraced, as reported by the Magistrate Ilaqa."

The accused absconded sometime before the jirga recorded their finding though he was present up to the stage when he made his own statement. On the finding of guilt returned by the jirga, the D. C. noted that as "there is no chance of arresting the accused, the case be consigned to the record room" warrants under Sections 87 and 88 were issued.

The trend of the D. C.'s order shows that he would have taken the same view of the case as the jirga had done and would in all probability have convicted if the accused had not absconded.

Précis No. 7.

CHARSADDA

Crown (through Sahahzadamir deceased)

Versus

1. Mohommed Hussain.

2. Gul Hassan.

3. Zain-ud-Din.

4. Miran Said (outlaw).

SECTION 302, I. P. C.

This case relates to the murder by stabbing of one Shahzadmir aged 22 on the 3rd August 1926 in the village "Hujra". The first information report was made on the same day by Sher Baz, uncle of the deceased, charging the above-mentioned 4 accused. It is alleged that the murder was due to an intrigue between the deceased and Badri, wife of accused No. 1. Miran Said accused No. 4 absconded and the other three were challaned in due course. Soon after the occurrence on the 3rd August, *i.e.*, on the night of 5/6th August 1926, four members of the accused family and party *viz.*, 1. Mohommed Asim 2. Mohommed Nasim, 3. Gul Nasim and 4. Sher Hassan were brutally murdered in retaliation.

No direct evidence was forthcoming in the case. Sher Baz, uncle of the deceased, states that he was lying asleep when his nephew, Lal Bahadur (aged 10), came and informed him that the deceased had been murdered by the accused. The case was referred to a Jirga under orders of the D. C. dated 13th October 1926.

Jirga finding dated 12th December 1926.—The cause of the murder is stated to be that the deceased had unlawful friendship with either the sister or the mother of Miran Said (Accused No. 4) who, when sleeping with the deceased in the "Hujra" on the night of the occurrence, killed him. From open and secret enquiries we have come to the conclusion that accused Nos. 1, 2 and 3 are innocent and that Miran Said only is guilty.

The D. C. in his order dated 9th March 1927 agreed with the finding of the Jirga.

NOTE.—It would be interesting to note that in the F. I. R. it was alleged that the deceased had illicit connection with the wife of accused No. 1. Subsequently the *Jirga* shoved the whole blame on the shoulders of accused No. 4 who had absconded and his sister or mother was brought into the show.

Précis No. 8.

Case No. 59/22 of 1930.

Crown versus *Aziz Khan and Sharifullah.*

CHARGE UNDER SECTION 302, I. P. C.

Ram Chand was killed by gunshots at 2 A.M. on 12th October 1929 at his house. A report was made the same day at 6-30 A.M. The wife of the deceased complained that she was awakened by the shot and found her husband dead. She suspected Sharifullah, alleging that he had made overtures. On the following day Aziz Khan was charged, and the motive of dispute was alleged to be that he had cut maize belonging to the deceased. The Police committed Aziz Khan and Sharifullah, charging the former in column No. 1 and the latter in column No. 2.

The Magistrate suggested that the case be referred to a Jirga. The Deputy Commissioner found that Aziz was generally suspected to be the culprit and the quarrel took place on cutting the maize. He referred the following two questions to the Jirga :—

(1) Did Aziz murder Ram Chand by shooting ?

(2) Did Sharifullah abet the murderer ?

The Jirga consisted of 2 Hindus and 2 Muslims. The Jirga remarked that all the respectable persons declared that Aziz committed the crime and that Sharifullah was innocent. The defence witnesses were ordinary men and not worthy of any trust. Besides, they did not suggest the name of any other person if Aziz was not the murderer. The Jirga recommended 10 years for Aziz and acquittal for Sharif. The Deputy Commissioner upheld the finding of the Jirgah and the Commissioner could find no reason to interfere.

Précis No. 9.

Case No. 103/20/1921.

BANNU.

Crown through Mussammat Khair Bibi, wife of Faujdar Khan, Wazir Daddi Khel of Mian Dad

Versus

1. *Juma Gul, son of Gul Ghaza.* 2. *Jan Mohammad, son of Khan Gul.* 3. *Rajan, son of Dagan.* 4. *Sahib Gul, son of Khair Din.* 5. *Aman Gul, son of Said Gul. Caste Wazirs Dadi Khel of Gul Ghazan Khan.*

CHARGE UNDER SECTION 302, I. P. C.

Murder of Mussammat Khair Bibi.

On the night of the 11/12th July 1921, Musummat Khair Bibi, the wife of Faujdar Khan a Dadi Khel Hathi Khel of Miandad Dakhli Karlosta, Police Station Domel was shot dead, while laying asleep, by certain unknown persons. None of the offenders were seen. The deceased's husban Faujdar and his bother Gulmir were both away at the time. The Police investigation led to the arrest and prosecution of the above five named accused persons before the Assistant Commissioner and the Magistrate 1st Class who by his order, dated 8th August 1921 recommended the case to be referred to a Council of Elders, as there was no judicial proof.

The Council of Elders unanimously found all the 5 persons guilty of the murder of Musammat Khair Bibi, but that as matter of fact they shot the deceased by mistake for her husband's brother Gulmir as she was lying on a charpoy under a man's sheet. The motive for the murder they find to have been the prosecution of a blood fued. This blood fued came before the court in connection with the repatriation of outlaws, *vide* case K. E. through Saleh Khan *versus* Gul-Mir and 2 others. In that case Saleh Khan, brother of Juma Gul, accused No. 1 in the present case, was murdered by Gul Mir on account of an intrigue with Gul Mir's wife Musamat Moghal Khela, and in persuance of the fued Rahim Gul a relative of Saleh Khan was also murdered in Tribal Territory. It was in revenge for these two murders that the deceased was shot by mistake for Gul Mir. Accepting the Council's finding the D. C. held all the five accused to be guilty of murder under Section 302, I. P. C. The Council made no recommendation for leniency but the Deputy Commissioner in the circumtances of the case and with the view to avoid further intensifying the fued ordered each accused to pay a fine of Rs. 200 or in default five years R. I. Out of the fine when recovered Rs. 500 was to be paid to Faujdar Khan, husband of Mussammat Khair Bibi as compensation for her. The order of the Deputy Commissioner is dated 23rd November 1921.

NOTE.—Any one of the five might have committed the murder but all were convicted apparently because it was impossible to say who actually committed the murder.

Précis No. 10.

Case No. 80 of 1921.

KOHAT.

Crown versus *Kala Din, son of Rustam, Afghan of village Sheikhan, Kohat District.*

CHARGE UNDER SECTION 379, I. P. C.

On the night of October 19/20th 1920, a mare and a pony were stolen from Bungalows Nos. 31 and 32 Kohat Cantonment. The animals were owned by two Military Officers of the station and were worth Rs. 400. Four Lambardars of village Sheikhan stated to the Police that Kala Din of their village was the offender. The Sub-Inspector however, sent up a final report and recommended the case to be filed. The evidence of four Lambardars and two Sub-Inspectors Mohammad Usman and Abdul Hai was taken and the judicial proof being *nil* the case was referred by the Additional District Magistrate under Section 11(1), F. C. R., to a jirga.

The accused and Akbar Shah, outlaw, were fast friends and they were said to have stolen the two horses. Akbar Shah was dead.

Akbar Shah was betrothed to a girl at Sheikhan. The girl's mother was a widow. Kala Din at the time lived with the widow and thus made the acquaintance of Akbar Shah when he came to visit his mother-in-law in secret. The girl in question was promised in marriage to a brother of Kala Din.

The Lambardars of Sheikhan stated that the accused had been suspected in three thefts of cattle in their village. A syce from Kohat Cantonment was seen by some of them to have gone to Sheikhan and to have talked with him privately. The identity of the syce has not been established but this much was known that he was a resident of the Chhachh tract and was employed in Kohat Cantonment. It was surmised that the syce had been of some use in the theft of the two horses and wanted payment for the part played by him.

The accused objected to the jirga finding because they had not sworn the Lambardars of Sheikhan on the Quran.

The A. D. M. accepted the award of the jirga and sentenced him to undergo R. I. for a term of 1½ years including three months solitary confinement.

The order of the A. D. M. is dated 8th September 1921.

The application of revision was rejected by the C. C. on 14th December 1921.

The jirga went through the police Zimnis and the judicial file and heard the accused and the witnesses for the prosecution and defence. They also made public and secret enquiries. They say that—

1. "though there is no ocular evidence as to the guilt of the accused yet the evidence of village Lambardars as well as the circumstantial evidence and the Police investigation leave no room for doubt in respect of the criminality of the accused and it is certain that in this case he is either an accomplice or in league with the thief,"
2. "there is general complaint of offences in the Cantonment against the accused. For this reason the accused, in our opinion, is guilty of the theft of two horses from Kohat Cantonment,"
3. "they recommended R. I. for 1½ years."

Jirga members were :—

1. Mohammad Jan.
2. Amin Gul.
3. Subedar Khadi Sher.
4. Amir Ali Khan.

NOTE.—No evidence was taken by the *jirga*.

Précis No. 11.

Case No. 26 of 1920.

PESHAWAR.

King Emperor versus *Burhandin and others.*

CHARGED UNDER SECTIONS 302 AND 306, I. P. C.

Case tried under Section 11, F. C. R.

A dacoity was committed in the house of one Qalander in village Kuladand. His daughter was killed by dacoits, who were armed, but no motive other than loot could be ascribed to the raiders. They carried off property belonging to Qalander who did not identify any of the dacoits but, nevertheless charged no less than 8 persons responsible for the murder of his daughter and for the robbery committed in his house. There was absolutely no evidence against any of the accused named by Qalander. Some of the accused absconded and the rest were challaned by the police. The case was eventually referred to a very strong Jirga consisting of 10 members. The Magistrate recorded that the accused were Mohmands while the complainant was Mohammedzai by tribe. A mixed Jirga was for that reason appointed. Both parties accepted the personnel.

The proceedings before the jirga were very short. The parties agreed to abide by the oath of four referees named by them. Three of them swore with the Quran in their hands that three out of the four accused before the jirga were guilty of the dacoity, while the fourth referee refused to take oath. The verdict of the jirga was in the terms of the agreement of the parties and the accused were declared guilty of dacoity and murder.

On receipt of this finding the Magistrate accepted the finding and sentenced the three accused to 14 years' rigorous imprsionment subject to confirmation by the Chief Commissioner, who in due course confirmed the sentences. The Magistrate felt justified in acting on the finding of the jirga given, in the circumstances already stated, on the following two grounds :—

1. " As a general rule the whole body of Mohmands resident in British territory know who are guilty of the various crimes for which Mohmands are responsible. The accused in this case are Mohmands and the ' compurgators ' who declared them guilty are also Mohmands," and
2. " The oath was taken before the open jirga."

NOTE.—The accused might have been rightly convicted in this case. The procedure resorted to by the *jirga* is perhaps open to the comment that no effort was made to elicit from the referees, who affirmed the guilt of the accused, as to whether they deposed from personal knowledge, belief or suspicion. If what they stated was warranted by mere suspicion or belief resting on surmise, there can be no two opinions as regards the worthlessness of their evidence. If, on the other hand, they had personal knowledge of the complicity of the accused the conviction was justified. Personal knowledge in this connection may not necessarily be that derived from being an eye-witness to the dacoity and murder. If they had first hand information as regards the accused forming part of the gang which proceeded to raid Qalander's house it would be valuable. If the referees had personal knowledge of the possession by the accused of the property obtained in the course of the dacoity in Qalander's house their opinion would likewise be valuable. In the absence of questions of this kind being put to the ' compurgators ' and replies thereto being obtained it is impossible to say that the accused were convicted on evidence which leads to moral certainty in the mind of a prudent person who may be prepared to ignore all technical considerations but would insist on satisfactory evidence.

Precis No. 12.

Case No. 137/2.

PESHAWAR.

Crown through Arab Shah of Kunjbanda

Versus

Zardad, Ziarat Khan, Guldad sons of Said Sharif, Defendents.

SECTION 302, I. P. C.

In this case the accused were charged with the murder of one Wazir, a boy of 18 years of age. The motive was said to be that the deceased had contracted an intimacy with Mussamat Bakht Jan the unmarried sister of the accused. As no conclusive evidence to establish the guilt of the accused was forthcoming the case was referred to a jirga comprised of the following :—

1. Mohammad Aslam Khan of Hoti.
2. Subadar-Major Abdul Hamid Khan of Hoti.
3. Sardar Partab Singh of Hoti.
4. Dr. Prem Singh of Backet Ganj Mardan.

The jirga finding was that as Mussamat Bakht Jan, the unmarried sister of the 3 accused, had contracted intimacy with the deceased it was quite possible that Ziarat Khan, the eldest of the three brothers, had avenged the disgrace of the family by killing the deceased in accordance with the Pathan custom. They therefore recommended that of the three accused, only Ziarat Khan should be held guilty of the murder. Acting upon the jirga finding the Assistant Commissioner convicted Ziarat Khan under section 302, I. P. C. and sentenced him to 14 years' rigorous imprisonment subject to the confirmation of the sentence by the Chief Commissioner, discharging the other two accused on 9th December 1924.

On this the Chief Commissioner's order dated 19th January 1925 runs as under :—

" The jirga in this case have given no satisfactory reasons for their finding and I am not prepared to confirm the sentence as the case stands. In the absence of evidence the case should be decided by one of the customary methods ; the oath of either party and its witnesses for instance. The case should be referred back to a fresh jirga for further investigation and a final finding."

The Assistant Commissioner, Mardan appointed the same jirga as before and in compliance with the instructions of the Chief Commissioner the jirga members examining, the five prosecution witnesses on oath, held that Ziarat Khan was guilty of the murder. On the other hand Ziarat Khan's witnesses, numbering 5, also swore to his innocence in the guilt. It is also noteworthy that the complainant himself, although summoned, did not appear before the jirga. In view of the absence of the complainant, the Assistant Commissioner Mr. Caroe recommended acquittal of Ziarat Khan subject to his and the complainant's execution of bond under Section 41, F. C. R.

On return of the file to the Chief Commissioner he did not agree with the recommendation of the A. D. M. and confirmed the sentence of 14 years rigorous imprisonment passed by the former A. D. M. in the first instance on the ground that the file did not show that a summons was served on the complainant, according to the report of the peon, Tribal territory and that the findings of the jirga were not based on the oaths of the prosecution witnesses.

On an application of Revision as well he did not see any reason to interfere in the matter.

Précis No. 13.

Case No. 14/2 of 1923.

Crown through Saifullah versus *Sahibzada, 2. Gundal,* and *3. Haidar.*

CHARGED UNDER SECTCON 302, I. P. C.

Date and time of occurrence 7-30 p.m., 24th March 1923.

Date and time of Report 8 a.m., 25th March 1923.

The innocence of the guilt of the persons was referred to the Council of Elders consisting of three members. Before the jirga the parties chose Abdul Karim, Mehrban Shah, Nur Hashim, Gul Hasham, Imams of Dhari Nawab and Gulab motabars of Sabuki, Rahmat Shah Lambardar and Abdul Hinan and Ghulam Hassan and Qaino and Hamesh Gul as their arbitrators and said that they would accept what these people said on oath.

Five men namely Mehrban Shah, Nur Hasham, Gulab Shah, Rahmat Shah and Abdul Hinan out of the 10 persons appeared before the jirga. Of these Mehrban Shah said that he could not say whether the accused under arrest were guilty or not. Abdul Hinan said that he was a relative of the accused and that they were not guilty. The remaining three persons Nur Hasham, Gulab Shah and Rahmat Shah stated on oath that the accused were guilty. They said that Ghulam Akbar prosecution witness arranged this murder by the payment of money to Sahibzada accused as the deceased had enmity with Ghulam Akbar.

In the opinion of the jirga there was no necessity of making further investigation nor was there any need to summon the remaining five witnesses. The jirga said, " We have made open and secret enquiries. The fact is that on the day of occurrence the deceased was going home from his village, when he reached a clump of trees, Sahibzada, accused, fired at him from very close quarters and killed him. The deceased died instantly. The jirga found that the accused under arrest had killed the deceased over the ' miana ' in dispute and that they were guilty.

The order of the Council of Elders is dated 9th August 1923.

Order of D. C., dated 25th August 1923.

The findings of the Council of Elders confirmed the prosecution case Sahibzada is the only murderer of Saifullah and Ghandal is an abettor. The findings are correct. Sahibzada being guilty of an offence under section 302 is sentenced to 14 years subject to confirmation by the Chief Commissioner. Ghandal sentenced to 7 years under Section 302/114, I. P. C.

Précis No. 14.

CHARSADDA.

Crown through Malik Aman of Tangi Barazai

Versus

1. Izzat,
2. Mohammed Hussain *alias* Gujor of Tangi Barazai.

SECTION 302, I. P. CODE.

Occurrence night of 23/24th March 1928.

F. I. R. 6-45 A.M. on 24th March 1928.

Sahibullah Lambardar, made the following report at the Thana

The dead body of Malik Aman a lad of 15/16 years of age was found lying in the lane in front of Mullah Hanifulla's house. His brother Abdul Qaiyum said that Izzat murdered the deceased by strangulation, and that he knew that Izzat was in love with the deceased and the couple used to go about together. The remaining part of the story would be related by the deceased's brother.

Remarks of the Committing Magistrate, 18th May 1928.

Medical evidence proved that the deceased was strangled presumably with a puggaree which was found knotted tightly round the neck. It was alleged that the crime is the result of an unnatural passion. Gujor is supposed to have practised sodomy on Izzat, while the latter desired to commit the same crime with Malik Aman who according to the witnesses produced, denied him this pleasure and had been murdered in consequence. Police investigation produced a slightly different theory. Malik Aman used to extend his favours to Izzat but there had been a quarrel between them about a fortnight before and it was on account of this quarrel that the murder took place.

There is ample evidence to show that Malik Aman was very frequently in the company of both the accused and that he was last seen in their company on the night of the occurrence.

A point against Gujor is that chaff was found on the body and in the clothes of the deceased and similar chaff was found in a heap in the corner of Gujor's house and scattered about the

floor. No such chaff was found either in Hanifullah's house or in Izzat's house. The inference drawn from the prosecution is that Izzat and Gujor took Malik Aman into Gujor's house on pretence of a reconciliation on the occasion of the 'Id' and then murdered him. Further corroboration is found in the story of the arrest. Both the accused seem to have made attempts to escape.

There are of course a number of weak points in the prosecution evidence which must be duly considered. The evidence is purely circumstantial and a great deal of it is interested. The case is a fit one for reference to jirga.

Jirga finding, 22nd May 1928.....Guilty.

Necessary formalities were gone into; Charsadda and Tangi were visited and inquiries were made on the spot which all went to show that accused Nos. 1 and 2 killed Malik Aman. The accused requested that some Hindus and Chaudhris be summoned from whom inquiries about the accused could be made. This was done. They (six of them) deposed that the accused were guilty of murder.

Order of the Additional District Magistrate, 2nd June 1926.

I see no reason to disagree with the finding of the Jirga. Accused's defence witnesses have either failed altogether or failed to convince the Jirga. The accused have put in a written statement attributing the finding to the undue influence of Mir Alam Khan. It is true that Mir Alam Khan has been against the accused ever since the case began, for it was he who arrested them and he appears as a witness against them, but there is nothing to suggest undue influence in this. The Jirga members were accepted by the parties and have conducted their proceedings openly. I find both the accused guilty, sentence them to 14 years' rigorous imprisonment, each including 3 months solitary confinement.

Sentences confirmed by the Chief Commissioner on 21st June 1928.

Précis No. 15.

Case No. 39 of 1926.

KOHAT DISTRICT.

Crown through Ishar Das of Hangu

Versus

Khewas Khan, Mohammad Amir, Niamat Khan and Salim Khan.....Accused.

CHARGE UNDER SECTION 456, I. P. C.

On 4th February 1926 the Shop of Ishar Das was broken into and goods to the extent of Rs. 337-6-0 were looted.

From the Police enquiry Khewas Khan, Niamat, Mohammad Amir and Salim Khan were suspected. On the information supplied by Taimur Khan, Chaukidar, brother-in-law of Khewas Khan, the latter's house was searched and a piece of soap and a shirt were identified as the property of the complainant.

Owing to lack of evidence against any of the other three suspects and on the recommendation of their Maliks orders were passed that the case should be referred for trial to a jirga. This jirga found Salim Khan and Khewas Khan guilty and orders were passed against them. On revision the orders of conviction were set aside and a fresh trial was ordered.

The evidence of 'Rabia Khel Motabars' was heard in the presence of the second jirga who brought in a unanimous finding of guilty against Khewas Khan and Mohammad Amir.

Agreeing with the finding of 2nd jirga the Deputy Commissioner in an order dated 10th February 1927 found Khewas Khan and Mohammad Amir guilty under Section 457, I. P. C., and sentenced them to pay a fine of Rs. 169 each of the money of which if received Rs. 337 were to be paid to Ishar Das as compensation.

Précis No. 16.

Case No. 75 of 1928.

KOHAT DISTRICT.

Crown versus *Gul Mohammad alias Gulu, son of Said Mohammad of Torwarri.*

CHARGE UNDER SECTION 302, I. P. C.

Gulu an absconder of Torwarri was charged under Section 302, I. P. C., for the murder of his wife Mussammat Zartakha.

Briefly the story of the prosecution is this:—

Gulu left for his home in Tribal territory and returned unexpectedly at 10 P.M. one night. He is alleged to have found his wife in the act of adultery with one Feroz Khan, whom he chased

and wounded. In returning from the chase next day he found that his wife was missing. By coaxing he persuaded her to return. She did so, apparently almost at once, for at mid-day the report was made that she had been murdered.

Gulu admits the murder but pleads that he killed his wife immediately he found her in the act of adultery with Feroz Khan, and that therefore he was not responsible for his actions. The case was submitted to a jirga who, though disbelieving the story as related by the accused made a "strong recommendation to mercy."

As remarked by the Magistrate "the accused is hardly entitled to any of the general exceptions owing to the deliberation with which he planned to murder his wife," but he recommended that the circumstances extenuate the crime.

The D. C. agreed with the Magistrate that the accused deserved some consideration. He says :—

> "In the first place it is natural that he would first pursue his wife's seducer, and in the second it is not unnatural to suppose that his anger would not have abated by the next day even though he had time for deliberately planning the crime. This deception is inclined to allienate sympathy, but for a man overcome with anger and bent on revenge even to killing, would scarcely stop."
>
> "Accused has been an outlaw for 7 years, he has lost all his property in British territory due to the fact that he absconded; had he not done so it is doubtful if his sentence would have been extremely severe."
>
> "Agreeing with the jirga I find accused guilty under Section 302, I. P. C., and sentence him to undergo R. I. for a period of 3 years."

This order is dated 14th October 1928.

Précis No. 17.

Case No 66 of 1926.

KOHAT DISTRICT

Crown through Mussamat Zarmina,

Versus

1. Alias Khan, 2. Sarbaz Khan, 3. Mir Gul Khan, 4. Mussamat Bibi Jan, 5. Mussammat Zarnigah, 6. Sarwar Khan.

Charge under Section 302, I. P. C.

MURDER OF MUSSAMAT ZARMINA.

The jirga made open and secret enquiries and came to the conclusion that 1. Mussamat Zarmina the deceased had not been on good terms with her husband, Gulbat, for a long time. Consequently her husband and Alias, her husband's younger brother, got tired of her. Alias and Gulbat conspired to kill Mussamat Zarmina, who came to know of their intentions and immediately ran away from her husband's house and took shelter in the house of Gulai son of Said Nasir, Rabia Khel of Torsata. But Gulai refused to protect her and handed her over to Alias who took her to Tribal territory and murdered her there. Alias admits that he murdered her. Afghan Khan, father of Zarmina had a money claim regarding his daughter's murder.

The jirga adds that Gulbat Khan husband of Mussamat Zarmina was entitled to blood money but as he was dead Mirzaman his father was entitled to blood money but as he did not wish to take blood money from Alias Khan the accused who was his son, Afghan Shah, father of Musammat Zarmina according to custom was only entitled to Rs. 100 as Sharmana. Hence the jirga members were of opinion that blood money, *i.e.*, Rs. 100 be taken from Alias Khan and paid over to Afghan Shah father of the deceased. The remaining accused were held to be innocent.

The Deputy Commissioner accepted the finding of the jirga and in accordance with it convicted Alias Khan of the murder of the Mussamat Zarmina and acquitted the remaining accused.

In accordance with the recommendation of the jirga Alias was ordered to pay Rs. 100 as Sharmana to Afghan Shah father of Mussamat Zarmina.

Alias was further ordered to pay a Government fine of Rs. 200.

Précis No. 18.

Case No. 59 of 1926.

KOHAT DISTRICT.

Crown through Moghal Shah of Sarogari

Versus

Alias Khan son of Mir Baz Rabi Khel

CHARGE UNDER SECTION 302, I. P. C.

The prosecution alleged that Alias Khan, the accused, asked Moghal Shah's brother's wife to have improper friendship (Yarana) with him. The woman told her husband's younger

brother. Afterwards Moghal Shah said something improper to Mussamat Lalmira who told Alias who became enraged and one day murdered Moghal Shah with a shot gun. Alias Khan admitted having murdered Moghal Shah because the latter had illegal connection with Mussamat Zarmina his brother's wife. The jirga found that Moghal Shah had no connection with Mussamat Zarmina. They added that, blood money used to be Rs. 300 but as the people have become wealthy hence in our opinion Rs. 800 in British coin should be paid as blood money in lieu of the murder of Moghal Shah by Alias Khan to Gul Shah the deceased's father. Zarghun Shah, one of the jirga members and a relation of Alias Khan, accused, dissented.

The Deputy Commissioner agreed with the finding of the Council of Elders and held Alias guilty of the murder of Moghal Shah.

In accordance with the recommendation of the jirga he ordered Alias Khan to pay blood-money of Rs. 750 in addition to the Government fine of Rs. 700.

The order of the Deputy Commissioner is dated 26th October 1926.

Précis No. 19.

DISTRICT BANNU.

Case No. 19/11 of 1927.

Crown Versus Wakhidad s/o Maula Dad, Wazir of Waziran.

Charge u/s 302 I. P. C.

On 19th June 1925 Gul Ghazan was murdered by Wakhidad, who absconded to Tribal Territory but subsequently handed himself up unconditionally for trial. The case against him was referred to a Council of Elders under section 11 F. C. R. He admitted having murdered Gul Ghazan. The facts as found by the Council of Elders were as follows :—

Gul Ghazan and Ghazan Khan, brother of Wakhidad the accused were Khassadars serving under Jemadar Aimangai. Some five months before the offence Ghazni Khan the brother of the accused had been shot. As Gul Ghazan was accused of having shot Ghazni Khan the case was investigated by the Police but the facts were so much distorted that the Police came to the conclusion that Ghazni Khan had accidently shot himself while cleaning his rifle. The present accused however maintained that Gul Ghazan had shot his, accused's brother. The Council of Elders unravelled the true facts of Ghazni Khan's murder which were as follows :—

Aimangai was in love with Ghazni Khan, the accused's brother whom he kept as his personal orderly and "Werka." Gul Ghazan was constantly remonstrating with his brother Aimangai about this and complaining that he was spending his whole pay on Ghazni Khan. Aimangai replied that his pay was his own and he would do what he liked with it. The brothers consequently were on bad terms. On one occasion Aimangai told his brother to do sentry duty in place of Ghazni Khan but Gul Ghazan definitely refused to do this. One day when he found Ghazni Khan in the house of Aimangai he shot him. As already stated the case was investigated but was filed and no action was taken against Gul Ghazan.

Five months later when the present accused Wakhidad was sitting in the Chauk, which is the joint property of the accused and his cousin Zarabat Khan, Gul Ghazan walked in. The impudence of Gul Ghazan in walking into the Chauk so boldly enraged Wakhidad to such an extent that he seized his rifle and shot Gul Ghazan on the spot. The D. C. therefore convicted the accused Wakhidad u/s 302, I. P. C. He says that "the facts stated above do, however, in my opinion entitle the accused to leniency as regards punishment. I therefore sentence the accused Wakhidad to 7 years R. I."

The order of the Deputy Commissioner is dated the 14th, July 1927.

NOTE.—No proceedings except the statement of the accused by the *jirga*.

Précis No. 20.

CHARSADDA.

Crown v. Ghulam Habib.

304.

One Ghulam Haider stands charged with the murder of Afroze, wife of his uncle. The accused absconded to Tribal territory but returned subsequently.

The deceased had a quarrel with the mother of the husband of the deceased. The accused, the nephew of the complainant, struck Afroze with an axe and killed her.

The accused confessed his guilt, only alleging grave and sudden provocation. There is complete Judicial proof in the case. But the Committing Magistrate stated "Judicial proof is more than sufficient, but in view of the fact that he surrendered himself with the hope that he would not be committed to the Sessions, which had been agreed to by myself, I refer the case for Jirga.

The Jirga said, "After paying consideration to the facts and the statements on the file we are of opinion that the accused has committed a criminal offence but unfortunately this offence is charged in the form of a serious crime. Accused is guilty of 326 I. P. C. and in our opinion he is liable to 2 years imprisonment." District Magistrate says that there can be no doubt that the accused was gravely provoked. I sentence him to 7 years R. I.

Note by member.

(1) Despite there being full judicial proof the accused was sent up for Jirga trial by the Magistrate.

(2) The possibility of a trial in the Sessions Court acts as a deterrent. Hence the popular belief that Jirga have contributed to the multiplication of Crimes in the Province.

(3) The Jirga went so far as to suggest the number of years for which the accused to be sent to jail.

Précis No. 21.

HAZARA DISTRICT.

Case No. 22/2 of 1927.

Crown V. *Mohammad.*

Charge under section 457, I. P. C., tried under Section 11, F. C. R.

This was one of a batch of three cases in which Mohammad accused was prosecuted for offences under sections 457 & 460, I. P. C. This record relates to what has been described in the Magistrate's order of reference to jirga as case No. 1. The accused was alleged to have committed house-breaking by night in the house of Hira Singh. The evidence against the accused consisted of the recovery of a shawl in the course of a search of his house, which was identified by Hira Singh complainant to be his. The evidence relied on by the prosecution, if accepted as true, would warrant conviction by a criminal court. The Magistrate recorded the evidence for the prosecution and defence and framed a charge sheet, but subsequently moved the D. C. to refer the case to a jirga. Accordingly the D. C. remitted the following issues to a jirga consisting of 4 persons :—

1. Is the gulabi shawl the property of Hira Singh, the complainant ?
2. Was it discovered in the house of Mohammad ?
3. If so, was it stolen by Mohammad from Hira Singh ?

The jirga found the accused guilty, holding that he had stolen the shawl, the property of Hira Singh, complainant, but proceeded to find that two other persons, Shaikha and Ilahiya were his accomplices and were also guilty.

The jirga referred to a confession made by Shaikha which was retracted in a cognate case, and which confession led to the search of Mohammad's house and to the discovery of the shawl.

The D. C. who had made the reference was apparently succeeded by another officer, who referred the case to a 2nd jirga on the ground that the verdict of guilty against Shaikha and Ilahiya, who had not been accused in the case, was not justified. He mentioned some other grounds for the action he took. The 2nd jirga arrived at the same finding.

Finally the D. C. sentenced the accused to 7 years R. I.

NOTE.—There was no reason for the case being tried through a jirga instead of by a Court. The evidence relied on by the second jirga consisted of the testimony of Hira, who identified his shawl, and of another witness, Gopi, who likewise proved the shawl to be the property of Hira Singh. The recovery of the shawl in the search of the accused's house shortly after the burglary was satisfactorily proved by the officer making the search. The case was apparently referred to the jirga because the confession of Shaikha was considered by the Magistrate to be inadmissible, but the D. C. who made the original reference to the jirga definitely ruled that it was admissible under section 27 having led to the discovery of the stolen property from the house of the accused. The reason why trial through the jirga was preferred apparently was certainty of a conviction and of no appeal being possible.

Précis No. 22.

KOHAT DISTRICT.

Case No. 115 of 1929.

Crown through Yunas Versus *Lal Baz s/o Mir Khan of Lachi.*

Charge under section 307, I. P. C.

The prosecution story in this case is that on the evening of 9th October 1928 Yunas complainant in company with Bahadari went to look after their maize fields. While passing the garden of one Mohammad Ali Khan they saw a helping party including Lal Baz accused who had apparently come to look after the crops in the garden. After greeting, Lal Baz seems to have called out, half jestingly, saying they were thieves out for the stealing of maize. This led

to an altercation and abuse. Lal Baz lost his temper and fired a shot, with the rifle he had which fortunately passed between Yunas and his companion without wounding either. He then threw down his rifle and hid it in a maize field and made off. A number of other persons had arrived by this time and Yunas went to report to Shamasud-din-Khan, his master. A report in these terms was made next morning in the Police Station.

When investigation started, the Sub-Inspector induced Lal Baz to produce a rifle, from the house of a woman named Bibi Gula, which appeared to have been freshly fired. Eventually Lal Baz himself admitted in court that he had actually fired a round from this rifle one day before the evening in question but sought to defend himself saying that he had fired at a jackal to scare it off the crops. The Assistant Commissioner's remarks run as follows :—

> "The stories of Yunas and Bahadari generally corroborate one another. There is no hint that any enmity existed between the complainant and accused such as might have induced complainant to make a false charge against Lal Baz. Lal Baz himself admits that he fired a shot, and his plea that it was directed at a jackal is absurd. The case might easily have been dealt with in the ordinary courts if the magistrate had given it a little more attention."

The Jirga held that there was no doubt whatever as to the truth of the case, and stated that Lal Baz suddenly flew into a passion on being abused and fired the shot.

The Deputy Commissioner convicted Lal Baz of an offence under section 307, I. P. C. Taking into consideration that there was no premeditation, under section 307, I. P. C. read with section 12 F. C. R. he sentenced Lal Baz to 2 years' R. I.

The rifle was forfeited to Government.

The order of the Deputy Commissioner is dated the 21st February 1929.

Précis No. 23.

DISTRICT PESHAWAR.

Case No. 22 of 1928.

Crown through Waris (deceased) of Hisar Tang

Versus

1. Shera Din
2. Ziarat Gul } *All three of Hisar Tang.*
3. Makki Din

Charge under section 302, I. P. C.

Murder of Waris.

In this case three persons, namely, Shera Din, Ziarat Gul, and Mohi-ud-din were charged under section 302, I. P. C., with the murder of one Waris. The accused and the deceased belong to village Hisar Tang, Police Station Nizampur. The occurrence, it is alleged, took place in the beginning of November 1927, and the F. I. R. was made on the 23rd November 1927 by Piara Din, uncle of Waris, in which he said that the deceased was murdered by the three accused. Subsequently a corpse was seen in kila and the villagers of Hisar Tang identified it to be the dead body of Waris. A torn up shirt, a trouser and a kullah which were found on the spot, were identified to be that of Waris. The body was headless. The motive is said to be that the deceased and accused had gambled and as the former had won all the money, the latter had killed him because they wanted to rob him of his money. The case was referred to a jirga on 5th January 1928 by the A. D. M. The members of the jirga were :—

1. Mohammed Hafiq.
2. Shah Mohammed.
3. Risaldar Abdullah Khan.
4. Mohammed Akram Khan.

The finding of the members of the Council of Elders is dated the 26th January 1928. They went through the Police files and the Judicial record and examined witnesses for the prosecution and the defence. They made open and secret enquiries. They took Shahadat-i-am at village Hisar Tang on 22nd January 1928. They also made enquiries from the inhabitants of the neighbouring villages. There were eight witnesses for the prosecution including the mother of the alleged deceased. Almost all of the witnesses for the prosecution said that the deceased had been murdered by the three accused. Three of the members of the jirga, namely, (1) Mhd. Akram, (2) Risaldar Abdullah Khan, (3) Shah Mohammed were of opinion that the deceased was murdered by Ziarat Gul and Shera Din. As regards Mohi-ud-din they said that although he was present at the time of the murder, he had not taken part in it; while the fourth member Mohammed Rafiq Khattak, Honorary Magistrate was of opinion that Ziarat Gul alone was guilty and the other two accused persons were innocent. The members of the Jirga

also make mention of a letter written by Mr. Mohammed Yaqub, Judicial Extra Assistant Commissioner, dated the 16th January 1928, in which he stated that the accused were terrible gamblers and that they had murdered the deceased. The members of the Jirga strongly relied on the contents of this letter written by a responsible officer. While the finding of the Jirga was being translated into English, the A. D. M. received a telegram informing him that the alleged murdered man was alive. On 31st January 1928, the A. D. M. passed an order on the back of the telegram to the following effect :—

> " As the deceased person has been found out to be alive, so the accused are discharged. The file will show beyond any shadow of doubt that the body of a dead person was found out and seen after it was believed by all the people that it was the body of the deceased. I am therefore not prepared that the accused were falsely charged by any one in a deliberate way. Hence no action against any one is necessary. "

Précis No. 24.

BANNU DISTRICT.

HATHI KHEL CASE.

Case No. 53/11 of 1930.

Date of institution in the Court of D. C., 12th December 1930.

Date of decision in the Court of D. C., 21st January 1931.

Goshwara No. 1439 of village Aral, Paragana Bannu.

Crown through Captain Ashcroft and others murdered and wounded sepoys of the 6/13th Rifles (F. F.)

Versus

Ayub Khan, etc., 87 accused, List attached.

Charge under sections 149/302, 147 and 148, I. P. C.

The circumstances of the case which are said to have led to the incident of the 24th August 1930 at Spina Tangi near Police Station Domel, are as follows :—

In the spring of 1930 " The Congress movement " is said to have spread from the city of Bannu to the surrounding country side. The main supporters of this movement were Mullah Abdul Jalil and Mulla Fazl-i-Qadir. The latter was known to have been the principal speaker at certain Congress meetings held in villages. He succeeded in obtaining the sympathies of Ayub Khan (accused No. 85), a Hathi Khel and a near relative of the head of that tribe, the late K. B. Khair Mohd. Khan.

By notification No. 9159-P. of 11th May 1930 the Hon'ble the Chief Commissioner declared the association known as the " Bannu District Congress Committee " and " subordinate allied bodies " and the " Naujawan Bharat Sabha ", respectively, in the Bannu District to be unlawful within the meaning of section 16 of the Criminal Law Amendment Act 1920, as these were interfering or had for their objects interference with the maintenance of Law and Order and that they constituted a danger to the Public peace.

On the 10th of July 1930 the District Magistrate of Bannu Mr. C. H. Gidney promulgated an order under section 144 Cr. P. C. in the Bannu District " prohibiting the holding of any procession or gathering within the Municipal limits of Bannu city or within a radius of 10 miles until further notice ". He further prohibited until further notice, " the carrying by any person within the above limits of any lathi, lor, knife or any weapon of offence or capable of being used as such ". The public were further warned that volunteers of the Congress Committee, etc., noted above were prohibited " from appearing in any part of the District Bannu and if they were to do so in disregard of the Local Government's Notification No. 9159-P., dated the 11th May 1930, they would be dispersed by force ".

On 10th July 1930, the operation of the said order of the District Magistrate, Bannu, dated the 14th May 1930 was extended by the Notification of the Local Government No. 13660-P., dated the 10th July 1930 for a further period of two months with effect from 14th July 1930.

On 10th August 1930 the Resident in Waziristan saw a Hathi Khel Jirga and announced to them an ultimatum (it does not appear under what Act) which was to expire on the 12th August 1930. The terms were as follows :—

1. The surrender of all licensed arms and all the village defence rifles.
2. The bringing in of the 5 principal Hathi Khel ring-leaders.
3. The expulsion of Mullah Fazl-i-Qadir.
4. The cessation of Congress meetings within Hathi Khel limits.

As none of the terms were complied with, the D. C. of Bannu Mr. C. H. Gidney (after obtaining sanction from Colonel Griffith, Resident in Waziristan on 20th August 1930) directed the seizure of the following persons and of all property belonging to them under section 21, F. C. R.

1. Ayub Khan s/o Umar Khan, 2. Mirdad s/o Saida Khan, 3. Mir Salam, Pital Khel, 4. Badshah Khan s/o Nawaz, 5. Amir Sher Khan of Murghali, 6. Taj Ali Khan of Murghali, 7. Ahmad Shah s/o Rehmat Shah, 8. Durranai s/o Umar, all described in the proceedings as residents of British territory District Bannu. Mr. Gidney further directed, " in the event of these persons not being found, the confiscation of all their property and the arrest of their relatives and the seizure of such moveable property belonging to these relatives as may be found."

In compliance with the Deputy Commissioner's order, Mr. Ghulam Hassan Khan, Magistrate, Illaqa Domel, with the D. S. P. went to Murghalli on the morning of 21st ; and reported that, " (*a*) Taj Ali was already in the lock-up and no moveable property was found in his house."

" (*b*) Amir Sher Khan was not found in his house. His relatives—1. Khalifa s/o Rehmat Din, caste Wazir Parba Khel, uncle of Amir Sher Khan, 2. Newaz s/o Meraj Gul, b/o Amir Sher Khan, 3. Sher Ahmad s/o Inzar, 4. Dad Gul s/o Pirat Khan, 5. Wazir Azam s/o Spin Gul were arrested and handed over to the Assistant Commissioner as ordered by the Deputy Commissioner. All the live stock belonging to the near relatives of the said Sher Khan *e.g.*, cows, donkeys, goats, etc., etc., were handed over to the Domel Police."

" (*c*). On the morning of 22nd August 1930 the houses of Ahmad Shah and Durranai were searched. They were not found in the village but their relatives—1. Zalak s/o Umar Khan b/o Durranai, 2. Gul Isab s/o Kharak cousin of Durranai, 3. Gula Badshah s/o Rehmat Shah b/o Ahmad Shah Dasta Pir s/o Mirgul, 5. Khidar Khan s/o Dasta Pir were arrested and handed over to the Domel Police." Their live stock, *e.g.*, cows, donkeys, trunks, wool, thread, wheat, charpoys, etc., etc., were handed over to the Domel Police.

All property moveable and immoveable of Taj Ali Khan, Amir Sher Khan, Durranai, Ahmad Shah, Ayub Khan and Mirdad Khan was attached and confiscated. Subsequently the immoveable property of the first four was restored. The immoveable property of Ayub and Mirdad was restored to their relatives on 18th April 1931, *i.e.*, three months after their convictions.

On the 21st of August 1930 parties of Troops, Constabulary and Police rounded up the villages of absconding ring-leaders. Three of these were arrested but Ayub Khan and Mirdad, accused Nos. 85 and 86 were not found at their village. This action had succeeded in bringing in certain licensed weapons.

On Friday, the 22nd August 1930 an announcement was made in the Kasaban Mosque, outside Bannu city that a large meeting would be held at a hamlet called Mash Killi in Hathi Khel Limits.

On 23rd August 1930 the Deputy Commissioner instructed the Superintendent of Police to proceed to the proposed place of meeting. Here large Chapar was found in course of erection and was demolished and the materials were burnt. Three persons who were said to be the conveners of this proposed meeting were arrested and after consultation with the Resident in Waziristan the Deputy Commissioner decided to confiscate the property of these persons and burn their houses. It is not apparent from the record whether this order of the Deputy Commissioner which was subsequently carried into effect was an oral order or written one. Further it does not appear from the record as to under what act or regulation this decision was arrived at. Was it an executive order or order passed under section 34, F. C. R. ? Nobody can say. Accordingly on the morning of 24th August 1930 a combined force of 300 of the 6th Bn., 13th Frontier Force Rifles together with 100 Frontier Constabulary moved out to a point some 12 miles along the Bannu-Kohat Road. Two parties were formed. One party proceeded to the hamlet of one Bijan, an alleged convener of the meeting whose house was duly destroyed and burnt. The house of one Raibat was also burnt.

While this was being done a message was received that Mulla Fazli Qadir, Ayub Khan and Mir Dad were in the neighbourhood with their men and that they wished to surrender themselves but before doing so wished to see an officer. The Deputy Commissioner sent off two Wazir Maliks (not Hathi Khels) to discuss more precisely what Ayub Khan, etc., wanted.

The Maliks returned with a reply that Ayub Khan, etc., refused to have anything to do with any maliks but wished to see an officer (*vide* statements of Political Tehsildar, M. Ghulam Hassan Khan, E.A.C., Saidan Gul before the Special Magistrate Mufti Mohammad Yaqoob Khan). Very shortly after this a messenger arrived direct from Ayub Khan that he and his party could surrender themselves at Bannu Jail and insisted on holding the meetings and further that all confiscated property should be returned to the owners. (*Vide* statements of the above witnesses.)

Captain Ashcroft who was directed to reinforce a platoon of the Military left at Mamash Khel however decided to move forward in the direction of the crowd. This he did, halting at some 50 yards from the crowd. According to the prosecution witnesses and the finding of the Jirga this crowd numbered about 600. According to p. w. Dewan Ali, another witness for the prosecution produced before the special Magistrate, it appears that Captain Ashcroft with his 25 men pushed his way into the mob and ordered his men to fix bayonets, after pushing a youngman aside and grappling with an old man with a long beard. It appears from the evidence

that several members of the mob were armed with swords and firearms. The result was that Captain Ashcroft and 8 sepoys of the 6/13th Rifles (F. F.) namely :—

No. 6890 Sepoy Raja Khan
No. 6287 L/N Sajawal Khan
No. 9933 Sepoy Yakub
No. 9446 Sepoy Abdul Aziz
No. 6687 Sepoy Jalal Khan
No. 6854 Sepoy Walli Khan
No. 8457 Naik Mohd. Zar Khan
No. 6901 L/N Suleman Ali
} were killed.

and 10 wounded on the Military side.

How many were killed and wounded on the side of the mob no one can exactly say. It is a very significant fact that while many witnesses for the prosecution depose that they had seen many men belonging to the crowd killed and wounded, they are unable to give even an approximate number. It is admitted by the members of the Jirga and also by the D. C. that the casualties on the side of Hathi Khel were very heavy indeed.

After the firing had ceased a large number, *e.g.*, 67 of the mob, and called by the Jirga and D. C. a " Lashkar " who were apparently lying on the ground taking shelter were brought in by the troops to Bannu and placed in the Jail. It appears that soon after the occurrence, most of the accused persons were put in the Political Havalat and by the order of Mr. Gidney, Deputy Commissioner, Bannu, dated the 16th October 1930 they were transferred to the judicial lock-up. This number forms the majority of the accused. A certain number of arrests were also made. Subsequently the total number of the accused was 86. No " parcha " was cut for 24 days. After the expiry of this period the present accused were challaned. The case was enquired into by the Special Magistrate, Mufti Mohammad Yaqoob Khan, especially deputed for the purpose.

On 24th November 1930 Mr. Campbell, D. C., Bannu, issued the following instruction to the Special Magistrate :

" With reference to the Case Crown *versus* Hathi Khel you are to conduct as full an enquiry as possible preliminary to the submission of the Case to a Council of Elders, under Section 11 F. C. R., *i.e.*, the proceedings of the F. C. R." On 26th November 1930 the applications of the accused to engage the services of pleaders, were refused both by the D. C. and the Special Magistrate, as the enquiry was *ab initio* under the F. C. R. The enquiry before the Magistrate commenced on 26th November 1930 and lasted till 2nd December 1930. The Special Magistrate examined 47 witnesses for the prosecution who had direct knowledge of the occurrence. The medical evidence (*vide* statement of witness No. 46 Lieutenant Chaudhary, I.M.S., Bannu) shows that " Captain Ashcroft had one gun-shot wound and a lor wound on the right temple. The post-mortem examination was not considered necessary as the cause of death was definitely known. On question by the prosecuting Inspector, the witness stated that in his opinion the lor injury was inflicted on Captain Ashcroft after he was dead as a result of the gun-shot wound. The gun-shot wound killed Captain Ashcroft immediately. The lor injury might have been inflicted after the gun-shot wound. There was no flow of blood from the lor injury ; whereas there was a lot of bleeding from the other injury and this showed that Captain Ashcroft was dead when he was struck with the lor. The other persons, who were killed on the side of Military had bullet wounds."

Dr. Sardari Lal, witness No. 47, Bannu, examined injuries on the bodies of 28 persons belonging to the Hathi Khel tribe and others, three of whom died subsequently. Most of these injuries were due to shots fired from small-bore rifles. As there was no charring on any of the wounds, the shots in the opinion of witness, must have been fired from a distance of 4 or 5 feet.

The statements of Lieutenant Chaudhary, I.M.S., and that of the Assistant Superintendent of Police show that information of this collision was given to the Deputy Commissioner. Captain Wainwright and his party came up and lewis guns were fixed and were fired for about three hours. At the close of firing, the dead and wounded were found in the dry bed of Spina Tanga Nallah. P. W. 6, Head Constable Mian Hamid of the Bannu Police, says that wounded and dead belonging to the crowd were lying on the spot. The witness picked up 3 or 4 wounded persons but the Superintendent of Police said that it was getting late and that " We must go and so we all went away leaving the dead and the wounded of the mob at the spot."

P. W. 10 Sher Mohammad Khan, Sub-Inspector of Police said the orders of the Deputy Commissioner under section 144, Cr. P. C. were made public by him personally to the villagers through the Lambardars of different villages. Ayub Khan, Mirdad and Mir Azam were leaders of the Congress. The houses of Bijan and Robiat were burnt under an order from the Deputy Commissioner. (See also the statement of K. S. Sultan Mohammad Khan, Political Tehsildar).

P. W. 12 Jemadar Diwan Ali of the 6/13th Rifles says that many persons belonging to the mob were armed. Some of the members of the mob were shouting " Allah-o-Akbar ". He goes on to say, " Captain Ashcroft gave us no definite orders that ' we should fire or not ' ".

Captain Ashcroft pushed away an old man with a long beard. Munawar, P. W. 13, stated that " Captain Ashcroft and his party entered the mob and mixed up with them and that Captain Ashcroft was struck with a sword on the head and also received a gun shot in the neck."

Both the assailants of Captain Ashcroft, *e.g.*, the old man with a long beard and a young man were shot dead by the witness. The witness saw an old man getting hold of Captain Ashcroft's clothes and in return Captain Ashcroft got hold of the old man's clothes. The witness fired at the old man who was grappling with Captain Ashcroft and shot him dead.

P. W. 26 Atta Mohammad Khan deposed as to the message about surrendering that passed between Ayub Khan and the Deputy Commissioner as given above. The witness further stated that he saw Captain Ashcroft going towards the mob and told the Deputy Commissioner that the officer in question was taking a dangerous step. The Deputy Commissioner sent for Malik Muzaffar Khan and orderd him to go at once and stop Captain Ashcroft from going towards the meeting. Malik Muzaffar Khan, mounted a horse and had gone about fifty paces to give the D. C.'s message to Captain Ashcroft when a shot was heard and shortly after more shots were fired. Malik Muzaffar Khan therefore returned towards the place where the D. C. was. After 5 or 6 shots had been fired " on the entry of Captain Ashcroft with his party into the mob, the Military fixed 3 Machine Guns and started firing at the mob." The witness proceeds to say that in accordance with the orders of Resident, " The Hathi Khels had deposited all their licensed arms before the 23rd August except 3 or 4 licensed guns and rifles because these persons would not deposit them ".

P. W. 38 Selwyn, A. S. P., Bannu proves the messages about the surrender from Ayub Khan, etc., to the Deputy Commissioner and further says that Ayub Khan and Mirdad were coming with their party to surrender on certain terms. The witness further says " We surrounded the mob at least half an hour before Captain Ashcroft came in contact with the mob." The witness could not say how many fire-arms the mob had but shots were fired by it.

It appears from the evidence of Mr. Rouse that Mullah Fazli Qadir was wounded and died when he was being carried on the top of a lorry to Bannu Jail.

It is also clear from the evidence that the houses of Ayub Khan and Mirdad were burnt soon after the occurrence.

The report of the Special Magistrate, Mufti Mohammad Yaqoob Khan is dated the 2nd December 1930. It was submitted to the Deputy Commissioner on 12th December 1930. He describes the facts and discusses the evidence.

It should be remembered that all the accused persons are British subjects, and residents of British Territory, District Bannu. The six principal accused persons namely, Ayub Khan Mirdad, Mir Sahibdin, Mir Azam, Pir Badan and Mohammad Sher pleaded alibi. Ayub Khan, Mirdad and Mir Azam surrendered during the trial. In a statement Ayub Khan says that he and Mirdad were absent from their village on the 22nd and 23rd August 1930. They had gone to the Marwat area. They returned on 24th of August and wished to have a talk with the Deputy Commissioner at Bannu to impress upon him that they were not Badmashes and ring-leaders of the Congress movement. They came to know that the Deputy Commissioner was at Mashkhel and therefore they had sent a message through Zarmir and Said Gul requesting the Deputy Commissioner to give them an interview. They never intended to take part in the meeting of 24th August 1930, and they never said that they wanted to lead a procession in Bannu City after the meeting was over and then surrender. Ayub Khan says that he was at a distance of 3 miles from the place of occurrence when he heard the shots and went straight away to his village.

Mirdad says that he was ill in Umar Khan Kaurana on the day of the occurrence. In other respects his statement is the same as that of Ayub Khan.

Both Ayub Khan and Mirdad declare that as many as 80 men belonging to the Hathi Khel tribe and others were killed on the spot besides a large number of wounded.

Mir Sahibdin says that he was wounded in the leg in his own village by a bullet fired by a machine gun.

The other three accused persons say that they were not present at the scene of occurrence at any stage.

On the 2nd January 1930, Mr. Campbell, D. C., Bannu, referred the case to a Council of Elders consisting of the following members :—

1. K. S. Arbab Sher Ali Khan of Taikhal, Peshawar.
2. Subedar Azizullah Khan of Penang, Peshawar.
3. Mir Alam Khan of Tangi, Peshawar.
4. Mohd. Umar Khan of Topi, Peshawar.
5. Khan Sahib Subedar Major Sultan Mir of Kohat.
6. K. S. Subedar Laiq Shah of Kohat.
7. Captain Alam Khan of Baghdada, Peshawar.

His order runs as follows :—

" On the 24th of August 1930, a collision occurred at Spina Tangi Mullah near Domel. In this affair Captain Ashcroft of the 6/13th F. F. Rifles was killed together with several men of his regiment. The Hathi Khels suffered very heavy casualties, a large number were killed and wounded and a greater number were arrested on the site or subsequently. These persons who were arrested are now on their trial."

" I now pass formal orders referring the guilt of the 85 accused (as per list attached) to a Council of Elders under section 11, F. C. R. The points for consideration by the Jirga appear to me as follows :—

It will be for Jirga to determine :—

1. Which, if any, of the accused formed part of this gathering and whether they are liable under section 147, I. P. C.
2. Which, if any, of the accused formed a part of this assembly being armed at the time and so are liable under section 148, I. P. C.
3. Which, if any, of the accused in defiance of orders and notifications promulgated under section 144, Cr. P. C. took part in this assembly with the common intention of committing murder and thus being liable under sections 149/302, I. P. C.

I would draw the attention of the Jirga members to the orders and notifications referred to in the evidence from which it would appear that at that time in this District a gathering of any nature would be held to be an unlawful assembly. It does not, therefore, appear to be open to very serious discussion whether the persons who took part in this affair had reached the point where they intended to hold a mass meeting. The mere fact of their having collected together with the intention of proceeding to an appointed site would appear to be in contravention of the orders promulgated. This, however, is a point on which the Jirga should give an opinion."

Finding of the Jirga, dated the 8th January 1931.

They said that their investigation continued from 2nd to 8th January 1931. They examined the Police and the judicial records, the statements of the Prosecution witnesses, of the accused and their defence. They also made secret and open enquiries. They find that the Hathi Khel tribe announced a meeting for 24th August 1930 at Spina Tangi. They further say that warrants of arrest were issued against Ayub Khan, Mirdad, Pir Badan and Mir Sahib Din before 24th August 1930, but that they evaded the arrest and carried on propaganda against the Government in company with Abdul Jalil and Fazl-i-Qadir. They say that a crowd numbering more than 600 with drums beating and in dancing attitudes was coming towards Spina Tangi from east to west. Ayub Khan, etc., sent Saidan Gul and Amir with a message that they had already advertised the meeting for 24th August 1930 and as they had invited other persons, they would hold the meeting on that day and after the meeting they would march with the procession through Bannu City and surrender themselves. They found that the accused who were subsequently convicted by the D. C. formed an unawful assembly and that Ayub Khan, Mirdad, Mir Badan, Mr Azam, Mohammad Sher and Mir Sahibdin were carrying fire-arms which they used on the 24th August 1930. They found the accused who were subsequently discharged by the Deputy Commissioner not guilty, as the members of the Jirga were of opinion that these persons neither formed part of unlawful assembly nor were they present at the spot. They were arrested on the road. It is to be noticed that the members of the Jirga do not discuss the evidence on the record and do not give reasons for their findings.

However, there is no evidence on the record to show that Ayub Khan, Mirdad, Mohammad Sher, Mir Azam, Mir Sahibdin and Pir Badan possessed fire arms and that they had used these arms against the Military. Probably the finding of the Jirga is the result of their secret enquiries.

The final order of the Deputy Commissioner, Banuu was passed on 21st January 1931. After stating the facts, he finds that " the persons who formed the gathering were acting in contravention of lawful orders passed by the Deputy Commissioner, Bannu from time to time and that therefore all such persons were members of an unlawful assembly. The facts that they had or had not reached their goal does not enter into the question for they were already acting in contravention of these lawful orders in collecting together and marching to the scene of meeting ". He further finds that " it is only reasonable to suppose that the main number managed to make good their escape and there is strong presumption for believing that a considerable number of accused in court, were unarmed people who were too frightened to attempt to escape when such heavy firing as occurred was in progress and only lay near the scene of action to avoid being shot. Presumably the advent of troops, the noise of drums and shouts from the Lashkar and the general excitement prevailing attracted a large number of people to the site merely as onlookers ". He continues, " The number of weapons recovered from the scene of occurrence was peculiarly small. The witnesses for the prosecution have

been unable to identify any of the accused as being on the scene of occurrence armed with deadly weapons. Without such evidence therefore it is not possible to bring home the offence to the great majority of the accused. The Jirga, however, as a result of their enquiries, as can be seen from their finding have definitely found that Ayub Khan, Mir Azam, Mirdad, Mir Sahibdin, Mohammad Sher and Pir Badan were all armed with various kinds of firearms. Except for these six persons, therefore the offence under section 148, I. P. C. as against the remainder must fall to the ground". He goes to say that "the evidence of the men of the 6/13th Rifles show that an assault was made upon the person of Captain Ashcroft before any shot had been fired by the military or the police. There is no evidence whatsoever on record to show that the troops opened fire first." As regards the common intention of the six persons named above, Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Mohammad Sher and Pir Badan, they intended to fulfil their intention to hold a meeting at the appointed place, in direct opposition to the force of Government in the vicinity, with the use of arms, the resultant action of which they cannot but have been aware".

The Deputy Commissioner therefore found Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Moahmmad Sher, Pir Badan guilty of an offence under section 149/302, I. P. C. and sentenced Ayub Khan and Mirdad as being the leaders to 14 years' rigorous imprisonment each, subject to the confirmation by the Hon'ble the Chief Commissioner. He also sentenced Mir Azam, Pir Badan, Mohammad Sher and Mir Sahibdin to 10 years' rigorous imprisonment each, subject to the confirmation by the Hon'ble the Chief Commissioner.

The Deputy Commissioner also convicted and sentenced under section 148, the various accused whose names are given as "convicted" in the attached list. He accepted the finding of the Jirga as regards the remainder and discharged them.

The sentences on Ayub Khan, Mirdad, Mir Azam, Mir Sahibdin, Pir Badan and Mohammad Sher were confirmed by Colonel Griffith, the Commissioner and Resident in Waziristan on the 12th March 1931.

An application for revision of these six persons was rejected by Colonel Griffith, Resident in Waziristan on the 17th July 1931, in brief order which runs as follows :—

"The finding and the sentences in this case were clearly justified, the proceedings were regular and I see no ground for interference".

List of Accused.

1. Mohi-ud-Din son of Masha Din, Mamat Killa Wazir Spina Tangi.
*2. Balak son of Hayat, Wazir Spina Tangi.
3. Khawaja Mir son of Faizal, Wazir Mamat Killa.
4. Zakki son of Naulak, Wazir Mamat Killa.
*5. Kotanai son of Mir Baz, Wazir Mamat Killa.
6. Gulamir son of Mamir, Wazir Mamat Killa.
7. Jnant son of Sohbat, Wazir Hathi Khel, Mamat Killa.
*8. Sada Khan son of Sadia Khan, Wazir Mamat Killa.
9. Masim son of Gul Abaza, Wazir Mamat Killa.
10. Shah Zamir son of Mir Salam, Wazir Mamat Killa.
11. Azad Khan son of Gul Bagh, Wazir Mamat Killa.
12. Mehr Dad son of Sher Dil, Wazir Bandar Killa.
13. Amir Shah son of Sher Dil, Wazir Bakar Khel, Khattak Aral Killa.
14. Mir Sada Khan son of Amir Shah, Wazir Khattak, Aral Killa.
*15. Abdul Majid son of Zaffar Khan Khattak Aral Killa.
*16. Sahib Gul son of Gul Khan Khattak, Aral Killa.
17. Abdul Mohammad son of Gulahmad Aral Killa.
*18. Juma Roz son of Bawta Khan, Wazir Kurah Killa.
19. Sher Dad son of Mina Khan, Wazir Kurah Killa.
*20. Maluk son of Din Mohammad, Wazir Kurah Killa.
21. Haqmehr Shah son of Gul Mahdi, Wazir Azim Killa.
*22. Shah Khan son of Mohammad Akbar, Wazir Azim Killa.
23. Mohammad son of Wattai, Wazir Khorandil Killa.
24. Shain son of Sher Gul, Wazir Kamar Khel.
*25. Mir Sada Khan son of Gul Anar, Wazir Khoran Dil Killa.

26. Mir Agha Jan son of Zar Khan, Wazir Kamar Killa.
27. Said Khan son of Amin Khan, Wazir Kamar Killa.
28. Zari Shah son of Mehr Dil, Wazir Kamar Killa.
*29. Gul Khan son of Mehr Dil, Wazir Kamar Killa.
*30. Bahawal son of Mazan, Wazir Mani Jan Killa.
31. Abbas Khan son of Khan, Wazir Isa Khel.
32. Thakadar son of Karar, Wazir Isa Khel.
*33. Sardar son of Thakadar, Wazir Isa Khel.
34. Masin son of Vakil, Wazir Warana.
35. Bawta Khan son of Samand, Wazir Spina Tanga.
36. Ghazal son of Zar Khan, Wazir Mawar Killa.
37. Ghat son of Mir Khan, Wazir Mawar Killa.
38. Dabarai son of Mir Khan, Wazir Mawar Killa.
39. Said Khan son of Juma Khan, Wazir Spina Tanga.
40. Juma Khan son of Zadrai, Wazir Mawar Killa.
41. Amal Khan son of Aid Mohammad, Wazir Dandi Killa.
42. Fazalai son of Aid Mohammad, Wazir Dandi Killa.
43. Gul Jawahar *alias* Gulzar Khan son of Malik Azam, Wazir Dandi Killa.
44. Rabnawaz son of Mir Jan, Wazir Dandi Killa.
*45. Allah Khan son of Palla Khan, Wazir Sadarwan.
46. Jumawir son of Mirza Mohammad, Wazir Matakai.
47. Mirdad son of Awal Dad, Khattak, Jullundar Shah Killa.
48. Gul Mawas son of Mirash, Khattak, Sheikh Umaran Killa.
49. Hawal Dad son of Musharab, Khattak, Jullundar Shah Killa.
50. Mirza Khan son of Khanai, Khattak, Hinja Banda.
51. Nur Mohammad *alias* Khanai son of Sardad, Wazir Sparka.
*52. Abdul Manan son of Akor Khel, Wazir Khorindal Killa.
53. Ghulam Haider son of Yaran Muhana, Brahim Killa, D. I. Khan.
*54. Jawahir Shah son of Nazim Shah, Sayed, Thathi Michan Khel.
55. Wajan son of Mirza Khan, Jhandu Khel.
56. Sarfaraz Khan son of Muqarrab Khan, Pashtun, D. I. Khan.
*57. Gul Jawahar son of Lal Baz, Pashtun of Sikkandar Killa.
*58. Tor Ali Shah son of Walli Shah, Said, Adhami Jhandu Khel.
*59. Azam Khan son of Kata Mir, Khattak, Gambar.
*60. Fazal son of Khulgi Shah, Khattak, Gambar.
61. Sada Din son of Arafin, Quresh of Gambar.
*62. Mohammad Gul son of Haibat Khan, Pathan Sagi Michen Khel.
63. Nashadad son of Khan, Pathan Nurar.
*64. Zarbat Shah son of Bahauddin, Painda Khel, Manduri.
*65. Jan Mohammad son of Khani Shah, Wazir Karlasta.
*66. Aliasudddin son of Agar, Wazir Karlasta.
67. Ghafar Shah son of Mir Akbar, Qureshi of Jhandu Khel.
*68. Mohammad Amin son of Karim Dad Wazir, Mindar Khel.
69. Azmir son of Asal Din, Khattak of Akhami.
*70. Zar Khan son of Ghat Mir, Wazir Kherandal Killa.
71. Pir Ghulam son of Mir Kalam Pashtun of Mira Khel.
72. Mir Sahib Din son of Wahab Din, Qureshi of Khist Killa.
73. Gula Khan son of Purdil, Wazir Jata Khel.
*74. Khan Bad Shah son of Ali Mat Khattak of Amir Jan Killa.

*75. Khanzada son of Khanai, Wazir Braham Killa.
76. Azad Khan son of Zeri Gul, Khattak Aral.
*77. Shivrang son of Ghazni, Khattak Miwar Killa.
*78. Haq Dad son of Saleh Khan, Wazir Azim Navi Killa.
*79. Ali Hussain son of Mir Hussain, Wazir Chola Khel.
*80. Payao Khan son of Said Amin, Wazir Kotan Killa.
81. Mohammad Sher son of Bakhmal, Banuchi of Gambir.
82. Lal Baz son of Mir Baz, Pashtun of Sikandar Killa.
83. Pir Badan son of Nur Biyan, Khattak of Land Kamar.
*84. Fazal Rahim Mulla son of Muzammil Shah, Quresh of Sadrawan.
85. Ayub Khan son of Umar Khan ..
86. Mirdad son of Sada Khan .. .. } Surrendered during progress of trial.
87. Mir Azam son of Raz Gul .. ..

* These accused were sentenced to one and a half years rigorous imprisonment under Section 147 I. C. P.

The accused Ayub Khan and Mirdad are sentenced to undergo fourteen years' rigorous imprisonment subject to the confirmation of the Chief Commissioner, and accused Mir Azam, Pir Badan, Mohammad Sher and Mir Sahib Din to undergo 10 years' rigorous imprisonment subject to the confirmation of the Chief Commissioner.

The remaining accused were acquitted.

COPY.

List of people confined in Political Hawalat in connection with the case of Maulvi Fazal Qadir.

1. Mullah Abdul Khalim s/o Maulvi Mohammad, partana of Piran Taghal Khel b/o Qazi Fazal Qadir.

2. Mullah Rahmatullah s/o Maulvi Mirza Pashtoon of Jand Taghal Khel, sister's son of Fazal Qadir.

3. Mullah Abdul Qayum son of Maulvi Abdur Rehman, Pashtoon of Degan, sister's son of Fazal Qadir.

4. Abdul Rahim son of Maulvi Abdul Rehman of Kotka Akhmandin in Fatema Khel, sister's son of Fazal Qadir.

5. Ibrahim alias Changi son of Fazal Qadir, sister's son of Fazal Qadir.

6. Abdul Ali son of Mohammad Araf of Bhai Khan Maidan, sister's son of Fazal Qadir.

7. Rokhanzad son of Haji Amir Mukhtar Pashtoon of Sarmast Mira Khel, shelterer of Fazal Qadir.

8. Mohammad Sharif, } sons of Zober Khan, caste Qurashi of Sabbu Khel Khattak.
9. Mohammad Aslam, } Sister's sons of Fazal Qadir.
10. Hazrat Shah, }

Verified.

(Sd.) W. L. CAMPBELL,
Deputy Commissioner.

The 13th June 1931.

Please let me know why prisoner No. 8 is still shown as a political prisoner. The men who were arrested in connection with the Spina Tangi Show have been transfered under my order to the judicial lock-up.

(Sd.) C. H. GIDNEY,
Deputy Commissioner, Bannu.

The 8th November 1930.

Superintendent of Jail No. 1602, dated the 8th November 1930.

The prisoners arrested on 24th August were all transferred from the political hawalat to judicial lock-up under your orders.

This prisoner Gulla Khan was admitted on 11th September 1930 under the offence "Political." I did not know that the prisoner was arrested in connection with the Spina Tangi Show. I have shown him now in the judicial lock-up, under instructions received from the court of Treasury Officer on 6th November 1930.

(Sd.) *Superintendent of Jail.*

Received on 15th November 1930 4 P.M.

Seen. (Sd.) C. H. GIDNEY.

The 20th November 1930.

COPY.

FORM A.

List of Political Prisoners in the Political Hawalat in the Bannu District.

Serial No.	Name.	Father's name.	Tribe.	Reasons for detention.
1	Mina Din	Kipat	Wazir, Hathi Khel ..	Political.
2	Saifullah	Abdullah Khan ..	Do.	Do.
3	Hayatullah Khan ..	Gul Samand ..	Do.	Do.
4	Mada Mir Khan ..	Mohammad Khan ..	Do.	Do.
5	Saida Khan	Khawaja Mohammad Khan.	Do.	Do.
6	Niaz Budin	Darya Khan ..	Do.	Do.
7	Rasul Khan	Darya Khan ..	Pashtoon	Do.
8	Gulla Khan	Pur Dil	Do.	Do.
9	Abdullah Khan ..	Mir Ajab	Do.	Do.
10	Attaullah	Amir Khan.. ..	Quraishi	Do.
11	Mir Abbas Khan ..	Pauji Khan ..	Pashtoon	Do.
12	Piyao Khan	Said Amir	Wazir, Patal ..	Do.
13	Mohan Lal	Janam Das ..	Hindoo	D. I. K.
14	Chela Ram	Kallu Ram ..	Hindoo	D. I. K.

Yesterday when the Deputy Commissioner inspected the jail the number of political prisoners was given to be 14 on the board.

Out of these 14 prisoners orders for the release of Nos. 1—6 have been issued and these will be released to-day.

No. 7. Rasul Khan has been arrested for harbouring Ayub Khan and Mirdad. The Police are investigating his case.

No. 8. Gulla Khan is Sirki Khel Wazir. He was wounded on 24th August 1930 in the engagement at Spina Tangi.

No. 9. Abdullah Khan has been arrested for having carried away a Government rifle.

No. 10. Attaullah is the man who was spreading agitation in Mahsud and Wazir countries.

No. 11. Mir Abbas is the brother of Mohibullah alias Maithal, Hathi Khel who had fired at the car of Mr. Dundas on 24th August 1930.

No. 12. Piyao Khan is Hathi Khel and is said to have been arrested in connection with disturbance of Spina Tangi.

Nos. 13 and 14 are Hindus. I do not know anything about them. They are said to have been sent from D. I. Khan District.

Precis No. 25.

PESHAWAR DISTRICT.

Case No. 316/2 of 1929.

(Village Bhanamari, District Peshawar). King Emperor *versus* Monohar Lal and Radha Kishen, and

Case No. 317/2 of 1929.

(Village Bhanamari, District Peshawar). King Emperor *versus* Radha Kishen, Saida Jan and others.

The facts of the two cases noted above are fully set out in the order of the Deputy Commissioner, Peshawar, dated the 3rd January 1930, making a reference to a jirga. The orders may be reproduced in extenso.

" This order deals with two cases of murder which, though committed on different dates, are alleged by the prosecution to be the result of a single conspiracy. The important facts are as follows :—

" On the night of the 12th/13th July 1929 one Jai Ram Gar, a Hindu Engineer employed in the factory of Rai Bahadur Lala Harji Mal, was murdered in his quarter at the factory when sleeping in his courtyard. The crime was discovered early the following morning by one Jeth Singh, a Hindu shop-keeper, who occupied the neighbouring quarter as a tenant of the factory proprietors. Jeth Singh was also sleeping in his courtyard divided from that of Jai Ram Gar by a single partition. When he woke in the morning, he went into his room and found that several boxes containing his property had been removed. The connecting door with Jai Ram Gar's quarter was also open. On going through into Jai Ram Gar's quarter he found his boxes and other boxes of Jai Ram Gar lying open, and in the courtyard Jai Ram Gar was lying on his bed dead. Medical evidence shows that death was caused by severe blows with a heavy blunt weapon on the head, and suggests that death had taken place sometime before midnight. Jeth Singh aroused Jai Ram Gar's servant, who was sleeping on the roof of the quarter, and the alarm was given. The police investigation merely found that one Manohar Lal, who is also employed in the factory, had been sleeping on the roof until 2 A.M., during the night, when he had gone down to the factory to take his turn of work in place of Onkar, the servant of Jai Ram Gar. Onkar had duly woken up Manohar Lal and taken his place on the roof. Neither of these persons admit having seen or heard anything of the murder, but suspicion fell upon Manohar Lal for reasons that will be explained lower down. It was also established that access to the place where Jai Ram Gar was killed could only have been had by some one living in the factory or admitted thereto by an inmate. A *pagri* was found tied to the wall outside the factory as if to suggest that the murderer had climbed up by that route ; but since it was proved that this *pagri* belonged to Jai Ram Gar himself, this was regarded by the Police as a deliberately false clue. The Police finally formed the theory that the murder was committed by Manohar Lal, with possibly some assistance from other factory employees, at the instance of one Radha Kishen, who had been previously employed as Manager of the factory. The only evidence against Radha Kishen was the statement of his late employer, Lala Bashesher Nath, owner of the factory, that they had parted on bad terms and that Radha Kishen had since been trying to harm Lala Bashesher Nath and to stop the working of the factory. Manohar Lal is connected with Radha Kishen, and it is suggested that the latter instigated the murder of Jai Ram Gar in order to terrorise the factory employees and to prevent the proprietor from securing labour. There was also one additional clue against Manohar Lal in that a finger print, which is identified by the Phillaur expert as that of Manohar Lal, was discovered on one of the opened boxes in Jai Ram Gar's room. Manohar Lal could give no explanation of this finger mark, and he was arrested by the Police on the 2nd of August. On the 1st August, the small daughter, aged about 8 years, of Krishen Lal, who had been Manager of the factory since the 23rd June, disappeared. She was last seen in the evening when her father had left her at the factory and she had been subsequently despatched to her home in the City by Gurbakhsh Singh, another employee at the factory. Gurbakhsh Singh states that he sent her in the charge of Said Jan, a factory labourer, with whom she had previous acquaintance. In spite of an extensive search for the girl, no trace was found until the 4th of August, when her corpse was found lying in a cemetery just outside the City. Medical evidence showed that her throat had been cut and other minor injuries inflicted. Said Jan denied all knowledge of the matter and said he had never been entrusted with charge of the child. However, on the 10th August, one Mohammad Gul, another employee in the factory, made a statement to a Magistrate in the form of a confession. In this statement he said that he and Khan Bahadur, Ghulam Gul and Saida Jan, all labourers, had been approached by a Hindu, brother of Manohar Lal, accused in the first case. This Hindu had offered them Rs. 500 to take the girl and kill her, and that in order to earn this reward the four of them had taken the girl and murdered her. Although this confession appears to have been made in good faith and without any pressure, it was subsequently retracted in Court. Taking this crime with the other, the police again formed the theory that Radha Kishen was the moving spirit and had offered money through Devi Dass, brother of Manohar Lal, to secure the murder of Kishen Lal's daughter. In this case also the motive was to ruin Lala Bashesher Nath's business and to prevent him from keeping any manager for the factory.

" It must be admitted at once that there is no possibility of a Judicial Court arriving at a verdict of guilty on the evidence available. There is, however, no conceiveable motive for these two murders, except that put forward by the Prosecution. In my opinion a strong Jirga will be able to appraise the available evidence and further sources of information may also be open to them. The persons accused are all liable to be tried under section 11, F. C. R., since Radha Kishen, although he now claims to be resident of Campbellpore in the Punjab, was actually born in the Mardan Sub-Sivision and lived there for the first few years of his life. I, therefore, order under section 11 F. C. R. that the case of Jai Ram Gar's murder may be referred to jirga for decision of the following question :—

" Did Manohar Lal actually murder Jai Ram Gar or assist in the crime ? if so, did he do so at the instigation of Radha Kishen ?"

"The following Jirga is appointed without valid objection on the part of the accused :—

1. K. S. Sheikh Khuda Bakhsh.
2. K. B. Seth Karam Illahi.
3. K. B. Ghulam Hassan Khan.
4. R. S. Lala Mehr Chand Khanna.
5. Sardar Naranjan Singh.
6. R. S. Lala Ram Chand of Risalpur."

It should be noted that Radha Kishen was, at the time when the murder was committed, residing in Cambellpore in the Punjab. He was brought under arrest to Peshawar, when proceedings were started against him. During the time he was employed in the factory of Lala Basheshar Nath, he, of course, lived there for several years. He objected to being tried under the Frontier Crimes Regulation, but his objection was over-ruled on the ground that he had spent part of his childhood in this province with a relative.

It was admitted, as will be seen from the order quoted above, that there was absolutely no evidence to connect Radha Kishen with any of the two murders. The only motive that was suggested was that he had been dismissed by Basheshar Nath, who refused to re-employ him in spite of Radha Kishen's entreaties. The jirga observed in one of the two cases as follows :—

"Although it appears curious that a man should commit murder to obtain an employment, he (Radha Kishen) has already been badnamed twice for committing such crimes. One file, relating to the murder of Hari Ram, is also existing. Also, there is a general rumour about him that he is a dangerous man. An idea also occurs as to why Jai Ram Gar was selected for this murder. One reason for this is that he had a previous enmity with Radha Kishen.

Once he was transferred from Kasur to Peshawar, but he refused to work under Radha Kishen and left work and went away. Moreover, Jai Ram Gar's house was open and he had no family with him. The other employees live in closed houses with their families."

In the other case they say :—

"The ring-leader is Radha Kishen, a head-strong fellow. He had no enmity with Basheshar Nath, and the latter dismissed Radha Kishen from service as he was not useful. It is a general rumour both in the city and in 'ilaka' that, before this, two murders were committed by the conspiracy of Radha Kishen. He caused the death of one Charanjit Lal, goldsmith, by giving him poison. He (Charanjit Lal) was a rich man. Thus Radha Kishen is in possession of his wealth and wife. The second murder of Hari Ram was committed at the conspiracy of Radha Kishen. The deceased's mother is crying upto this day that her son has been murdered by the conspiracy of Radha Kishen. The betrothal of Ganga Bishan's daughter was arranged by Radha Kishen for his son and this was cancelled due to the strong-headedness of the latter. In this conection also Radha Kishen has written many letters wherein he threatened the heirs of the girl of murder. Fakir Chand, son of Ganga Bishen, has produced two letters—attached herewith on file. In the murder of Jai Ram Gar, Krishan Lal gave evidence against Manohar Lal and this act enraged Radha Kishen much and he proposed the murder of Krishen Lal's daughter—which could easily be committed because the girl Mussamat Bimla was acquainted with Saida Jan and Ghulam Gul. She was aged 6-7 years....". Accused Saida Jan and Ghulam Gul made certain confessions in which they implicated certain persons. Radha Kishen's name was, however, not mentioned. As regards the accused Saida Jan and Ghulam Gul the jirga observed that they "are relatives and Khan Bahadur was an employee in the factory and was dismissed from the service at the proposal of Krishan Lal. We do not admit the admission of the crime by Nano to be correct. Also, there is no evidence against Nano. We, therefore, hold him to be innocent. Similarly, there is no proof against Devi Dass excepting this that he is the brother of Manohar Lal.....Radha Kishen, Saida Jan, Ghulam and Khan Bahadur are the guilty persons."

Radha Kishen and Manohar Lal in one case and Radha Kishen and Saida Jan and Ghulam Gul in the other were convicted and sentenced to 14 years' rigorous imprisonment.

There was some evidence, circumstantial or that afforded by the incriminating statements of Saida Jan and Ghulam Gul, but there was absolutely no evidence against Radha Kishen. Every passage occurring in the finding of the jirga which can give indication of any evidence against Radha Kishen has been quoted. He may or may not be guilty, but the finding depends on a purely speculative theory, *viz.*, that he had been dismissed by Basheshar Nath, who refused to reinstate him, and that in consequence of this enmity he caused the death of Jai Ram Gar in order to injure the business of Basheshar Nath, and that he again caused the death of Krishna Lal's daughter, a view which found favour partly because Krishen Lal gave evidence against Manohar Lal. The jirga seems to have been greatly influenced by what was rumoured as regards certain other murders and affairs which were in some way attributed to Radha Kishen. As the murders could not be accounted for on any other theory the Deputy Commissioner accepted the verdict. It was not a case of circumstantial evidence but one which rested on nothing but a theory.

APPENDIX IV.

(1) The first Frontier Crimes Regulation of 1871.
(2) Regulation No. III of 1901.
(3) Regulation No. IV of 1901.
(4) Regulation No. IV of 1922.
(5) Regulation No. III of 1931.

APPENDIX IV (1).

The Frontier Crimes Regulation of 1871.

RULES PROPOSED FOR THE DISTRICTS OF PESHAWAR, KOHAT, BUNNOO, DERA ISMAIL KHAN AND DERA GHAZI KHAN, UNDER ACT XXXII, VIC., CAP. 3.

1. In the event of any frontier tribe acting in a hostile of unfriendly manner to the British Government, it shall be lawful for the Deputy Commissioner, subject to the sanction of he Commissioner, to detain all or any members of the said tribe, and to detain or confiscate their property; to debar members of the tribe from access into British territory, and to prohibit British subjects from all intercourse with such tribe.

2. No new hamlet, village, tower, or walled enclosure shall be erected without the consent of the Commissioner of the Division, who shall have power to prohibit the erection thereof if deemed necessary. In the event of the Commissioner prohibiting such erection, he must record the grounds of his decision.

3. The Deputy Commissioner, with the concurrence of the Commissioner, may impose fines on village communities, the inhabitants of which, after due enquiry, are found to be guilty of colluding with or harbouring criminals, or combining to suppress evidence in criminal cases:

Provided that when the fine imposed shall exceed one-half of the year's revenue of the village, the case shall be referred for sanction to the local Government.

All fines imposed under this section shall be recoverable, in default of payment, in the same manner as arrears of land revenue.

4. When any person is known or believed to have a blood feud or other cause of quarrel likely to lead to bloodshed with parties beyond the border, the Deputy Commissioner may require such person to reside beyond the limits of the territory to which these rules apply, or in such place within the territory as he may deem desirable:

Provided that if such person be a resident of the village, hamlet, or place from which he is required to remove, the sanction of the local Government be obtained.

5. Whenever it may be expedient on military grounds, it shall be lawful for the local Government to direct the removal of any village on the immediate border to another site.

6. When a person is accused of murder or other heinous offence, and sufficient proof is not forthcoming for judicial conviction, the Deputy Commissioner may cause the case to be referred to the decision of elders convened according to Pathan or Belooch usage, and cause such decision to be carried into effect as if it were a sentence of Court: provided such sentence shall extend only to the infliction of a fine on the convicted party.

7. Section 445B of Act VII of 1869 and the last clause of Section 497 of the Indian Penal Code* shall have no force in the districts to which these rules apply.

* In such case the wife shall not be punishable as an abetter.

8. Section 209 of Act VIII of 1869 shall be read as if the clause noted in the margin were omitted.

Specified in column 7 of the 2nd Schedule as hereto annexed as triable by the Court of Session.

9. It shall be lawful for the Lieutenant-Governor to issue rules and orders from time to time, prescribing and regulating the duties of the inhabitants in regard to the protection of the border from raids, the prevention and detection of crime, and the carrying and possession of arms.

10. Persons offending against any of the rules here laid down, or against any of the rules and orders issued by the Lieutenant-Governor under the preceding section, shall be liable, on conviction, to imprisonment, rigorous or simple, which may extend to six months, or fine, which may extend to Rs. 1,000.

11. In every district a register shall be kept up of all cases dealt with under these rules, and a statement of all such cases shall be submitted half-yearly to the local Government.

12. The Police Act V of 1861 may, at the discretion of the Lieutenant-Governor, be extended to the districts of Peshawar, Kohat, Bunnoo, Dera Ismail Khan and Dera Ghazi Khan, subject to the limitations specified below:—

(*a*) Such portion of the duties of the Inspector-General of Police as refer to inspection, pay, and clothing shall be performed by the Inspector-General of Police, Punjab.

(*b*) All other duties now performed by the Inspector-General shall be performed by the Commissioner, who shall be held to possess the powers of an Inspector-General, within the limits of his own division.

(*c*) Deputy Commissioners shall be held to be *ex-officio* Deputy Inspectors-General of Police within the limits of their respective districts, without prejudice to their exercise of all the powers of a Magistrate.

APPENDIX IV (2).

The Frontier Crimes Regulation, 1901 (III of 1901) with collection of notifications and orders issued thereunder or pertaining thereto.

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THE FRONTIER CRIMES REGULATION, 1901 (III OF 1901).

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SECTIONS.

REGULATION No. III of 1901.

(Received the assent of the Governor-General on the 18th September 1901, published in the "Gazette of India" on the 21st idem, and in the "Punjab Government Gazette" on the 3rd October 1901.)

A REGULATION FURTHER TO PROVIDE FOR THE SUPPRESSION OF CRIME IN CERTAIN FRONTIER DISTRICTS.

WHEREAS it is expedient further to provide for the suppression of crime in certain frontier district; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, commencement and extent.

1. (*1*) This Regulation may be called the Frontier Crimes Regulation, 1901; and

(*2*) It shall come into force at once.

(*3*) It extends to the districts of Peshawar, Kohat, Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan; but the Local Government may, by notification in the local official Gazette, exempt any local area from the operation of all or any of its provisions.

No local area has been exempted (see page 60).

(*4*) Sections 1 to 5, 10, 20, 21, 26 to 28, 31, 32, 36, 37, 56, and 60 to 64 are of general application, but the remaining sections may be enforced, in whole or in part, as the case may be, only against Pathans and Biluchis, and against such other classes as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, declare to be subject thereto.

For notification under this sub-section see page 560.

(*5*) A notification under sub-section (*4*) may declare a specified class only to be subject to all or any of the provisions of this Regulation in a district or part of a district.

No declaration under this sub-section has been made—see page 61.

Explanation.—The word "class", as used in sub-sections (*4*) and (*5*), includes any persons who may be collectively described in a notification under this section as persons subject to all or any of the provisions of this Regulation.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "Council of Elders" means a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Deputy Commissioner may in each case direct; and

(*b*) "Deputy Commissioner" includes any Magistrate of the first class appointed by the Deputy Commissioner by order, in writing, to exercise all or any of the functions or powers specified in the first part of the First Schedule, and also any Magistrate appointed by the Local Government to exercise all or any of such functions or powers.

Relation of Regulation to other enactments.

3. (*1*) The provisions of this Regulation shall take effect in cases to which they apply, notwithstanding anything in any other enactment.

(*2*) The powers conferred by this Regulation may be exercised in addition to any powers conferred by or under any other enactment, and, where the contrary is not expressed or implied other enactments in force in any place in which all or any of the provisions of this Regulation are for the time being in force shall, so far as may be, apply to cases dealt with in that place under this Regulation.

CHAPTER II.

POWERS OF COURTS AND OFFICERS.

Additional District Magistrates.

4. (*1*) In any district in the whole or any part of which all or any of the provisions of this Regulation are for the time being in force, the Local Government may appoint any Magistrate or Magistrates of the first class to be an Additional District Magistrate or Additional District Magistrates without any limit of time.

(2) Every Additional District Magistrate so appointed shall have all the ordinary powers of a District Magistrate specified in the fifth part of the Third Schedule to the Code of Criminal Procedure, 1898. V of 1898.

(3) When exercising any of the powers of a Deputy Commissioner under this Regulation, an Additional District Magistrate shall be deemed, for the purposes of this Regulation, to be the Deputy Commissioner.

(4) Every Additional District Magistrate shall exercise his powers in subordination to the District Magistrate, and in such cases or classes of cases, and within such local limits, as the District Magistrate may, by order in writing, direct.

Power of District Magistrate to withdraw or recall cases.

5. (1) The District Magistrate may withdraw any case from or recall any case which he has made over to an Additional District Magistrate, whether the Additional District Magistrate is exercising jurisdiction with respect to the case as a Magistrate or as a Deputy Commissioner.

(2) If the case may, under the Code of Criminal Procedure, 1898, be referred to another Magistrate competent to inquire into or try it, the District Magistrate may, instead of disposing of the case himself, refer it to such other Magistrate for inquiry or trial, as the case may be. V. of 1898.

Power to pass sentence of whipping in certain cases.

6. Where any person against whom, under Section 1, sub-section (4), this section may for the time being be enforced is convicted by a Cr minal Court of an offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 304, 307, 324, 325, 326, 376, 377, 382, 392 to 399, 427, 428, 429, 435, 436 and 448 to 460, the Court may, subject to the provisions of Section 393 of the Code of Criminal Procedure, 1898, pass upon him a sentence of whipping in addition to any other punishment to which he may be sentenced. XLV of 1860. XV of 1898

Tender of Pardon to accomplice.

7. Section 337 of the Code of Criminal Procedure, 1898, shall, for the purposes of this Regulation, be construed as if :—

** Amendment of Section 7 as effected by the Frontier Crimes (Amendment) Regulation No. VI of 1926.*

(a) the words in sub-section (1) " triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under Section 211 of the Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely, Sections 216-A, 369, 401, 435 and 447-A " and XLV of 1860. XLV of 1860.

(b) the whole of sub-section 2 (A),

were omitted.

CHAPTER III.

COUNCILS OF ELDERS.

Civil reference to Council of Elders.

8. (1) Where the Deputy Commissioner is satisfied, from a Police report or other information that a dispute exists which is likely to cause a blood-feud, or murder, or culpable homicide not amounting to murder, or mischief, or a breach of the peace, or in which either or any of the parties belongs to a frontier tribe, he may if he considers that the settlement thereof in the manner provided by this section will tend to prevent or terminate the consequences anticipated, and if a suit is not pending in respect of the dispute, make an order, in writing, stating the grounds of his being so satisfied referring the dispute to a Council of Elders, and requiring the Council to come to a finding on the matters in dispute after making such inquiry as may be necessary and after hearing the parties. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner.

For rules regarding the working of this section see page 36.

For instructions regarding the use of this section see paragraph 4 (d) of the circular reproduced at page 66 and the memo. at page 68.

(2) The order of reference made under sub-section (1) shall state the matter or matters on which the finding of the Council of Elders is required.

(3) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may—

(a) remand the case to the Council for a further finding ; or

(b) refer the case to a second Council ; or

(c) refer the parties to the Civil Court ; or

(d) pass a decree in accordance with the finding of the Council or of not less than three-fourths of the members thereof on any matters stated in the reference ; or

(e) declare that further proceedings under this section are not required.

Effect of decree on finding of Council.

9. A decree passed under Section 8, sub-section (*3*), clause (*d*), shall not give effect to any finding or part of a finding which, in the opinion of the Deputy Commissioner, is contrary to good conscience or public policy, but shall—

(*a*) be a final settlement of the case so far as the decree relates to any matter stated in the reference, although other matters therein stated may remain undisposed of; and

(*b*) have, to that extent and subject to the provisions of this Regulation with respect to revision, the same effect as a decree of a Civil Court of ultimate resort, and be enforced by the Deputy Commissioner in the same manner as a decree of such a Court may be enforced.

For instructions regarding execution of decrees see the rules at pages 36 and 37, and the memo. at page 68.

Restriction on jurisdiction of Civil Courts.

10. No Civil Court shall take cognizance of any claim with respect to which the Deputy Commissioner has proceeded under Section 8, sub-section (*3*), clause (*a*), clause (*b*), or clause (*d*).

Criminal references to Councils of Elders.

11. (*1*) Where, in the opinion of the Commissioner or Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any of several persons so accused, should be tried by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898, the Deputy Commissioner may, or, if the Commissioner so directs, shall, by order, in writing, refer the question, to the decision of a Council of Elders, and require the Council to come to a finding on the question after such inquiry as may be necessary and after hearing the accused person. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner.

For instructions regarding the use of this section see paragraph 4 of the circular reproduced at page 64.

V of 1898.

(*2*) Where a reference to a Council of Elders is made under sub-section (*1*) and the members of the Council have been nominated the names of the members so nominated shall, as soon as may be, be communicated to the accused person, and any objection which he may then make to the nomination of any such member shall be recorded. The Deputy Commissioner shall consider every objection made by an accused person under this sub-section, and may, in his discretion, either accept or reject the objection, provided that in the latter case, he shall record his reasons for so doing. The Deputy Commissioner, shall after disposing of any objection made by the accused person, appoint the members of the Council.

(*3*) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may—

(*a*) remand the question to the Council for a further finding; or

(*b*) refer the question to a second Council; or

See the rule at page 39.

(*c*) acquit or discharge the accused person or persons or any of them; or

(*d*) in accordance with the finding on any matter of fact of the Council, or of not less than three-fourths of the member thereof, convict the accused person or persons, or any of them, of any offence of which the facts so found show him or them to be guilty:

Regarding punishment see paragraph 4 (b) of the circular reproduced at page 65.

Provided that a person discharged under clause (*c*) shall not be liable to be retried for any offence arising out of the same of facts after the expiry of two years from the date of such discharge.

Punishment on conviction on finding of Council.

12. (*1*) Where the Deputy Commissioner convicts a person under Section 11, sub-section (*3*) clause (*d*), he may pass upon him any sentence of fine.

(*2*) Where the Deputy Commissioner so convicts a person of an offence mentioned in the Second Schedule, he may whatever may be the punishment prescribed for the offence, sentence the person, in lieu of or in addition to fine, to be imprisoned for a term which may extend to seven years, or, subject to the provisions of Section 393 of the Code of Criminal Procedure,

V of 1898.

1898, to be whipped, or to be whipped and imprisoned for a term which may extend to five years, or to be transported for a term which may extend to seven years; and where he so convicts a person of an offence punishable with transportation or with imprisonment for a term exceeding seven years, he may, subject to confirmation by the Commissioner, sentence the person to a term either of transportation or of imprisonment exceeding seven years but not exceeding fourteen years:

Provided, first, that a sentence of whipping shall not be passed on any person so convicted of an offence under Sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 144, 150, 216, 216-A, 400, 401, 402, 494 or 495 of the Indian Penal Code : XLV of 1860.

Provided, secondly, that a sentence of transportation or imprisonment for an offence shall not be for a longer term than that (if any) prescribed for the offence ; and

Provided, thirdly, that a sentence of transportation shall not be passed for an offence which is not punishable with transportation or with imprisonment for a term which may extend to seven years or more.

Manner of enforcing sentences.

13. (*1*) Any sentence passed under Section 12 shall be executed in the manner provided for the execution of sentence passed by a Court of any of the classes mentioned in Section 6 of the Code of Criminal Procedure, 1898. V of 1898.

(*2*) For the purposes of Sections 64 to 67 of the Indian Penal Code in reference to a sentence under Section 12 of this Regulation— XLV of 1860.

(*a*) an offence punishable with death or transportation for life shall be deemed to be punishable with rigorous imprisonment for a term which may extend to ten years ; and

(*b*) the imprisonment in default of payment of fine may be rigorous or simple at the discretion of the Deputy Commissioner.

Time for exercising power of reference to Council of Elders.

14. The powers conferred by Section 11 on the Commissioner and Deputy Commissioner respectively, may be exercised by them, in cases committed to the Court of Session at any time before the trial before that Court has commenced, and, in cases pending before any Court inferior to the court of Session, at any time before an order of conviction or acquittal has been made.

Motion by Public Prosecutor in view to reference to Council of Elders.

15. (*1*) In any trial before a Court of Session, the Public Prosecutor may when instructed, in writing, in that behalf, by the Commissioner or Deputy Commissioner, at any time before an order of conviction or acquittal has been made with respect to any accused person, withdraw from the prosecution of such person in order that the case may be referred to a Council of Elders.

(*2*) The Sessions Judge shall thereupon stay proceedings with respect to such person and the Deputy Commissioner shall refer the case to a Council of Elders.

Case of persons jointly accused of an offence.

16. The powers conferred by Section 11, as limited by Section 14, may be exercised against, and the withdrawal of a prosecution under Section 15 may have reference to, one or some only of two or more persons jointly accused of an offence.

Power to set aside orders making or refusing to make references to Councils of Elders.

17. The Deputy Commissioner may, if he thinks fit at any time reconsider and set aside any order of the Deputy Commissioner under this Regulation—

(*a*) directing a reference to a Council of Elders, or

(*b*) refusing to make such a reference.

Recommendations of Councils of Elders.

18. (*1*) Where a Council of Elders to which a reference has been made under this Regulation, makes any recommendation to which effect might be given if it were a finding on a matter or question referred to the Council under this Regulation, the Deputy Commissioner may, if the recommendation affects a person mentioned in the order of reference and is relevant to the matter or question actually referred, deal with the recommendation or any part of it as if it were a finding under Section 8 or Section 11 :

Provided that no decree or sentence may be passed on any such recommendation as aforesaid against any person who has not had the claim or charge fully explained to him and been given an opportunity of entering upon his defence in regard thereto.

(*2*) Where the Deputy Commissioner deals with a recommendation under sub-section (*1*), he may pass any such decree as is authorised by Section 8, or any such sentence as is authorized by Section 12, sub-section (*1*), and the decree or sentence shall have the same effect and the enforced in the same manner as if it were a decree or sentence passed under Section 8 or Section 12, sub-section (*1*), as the case may be.

Record of Deputy Commissioner.

19. (*1*) Where the Deputy Commissioner passes, under this chapter, a sentence of fine exceeding two hundred rupees, or of imprisonment for a term exceeding three months, or of transportation, he shall make a record of the facts of the case, of the offence committed and of his reasons for passing the sentence.

(2) The record shall be made by the Deputy Commissioner in English and in his own hand unless for any sufficient reason he is prevented from so making it, in which case he shall record the reason of his inability and shall cause the record to be made from his dictation in open Court.

XIV of 1882. V of 1898. Attendance of parties and witnesses before Deputy Commissioner or Council of Elders.

20. Where a reference is made to a Council of Elders under this chapter, the Deputy Commissioner may exercise all or any of the powers conferred by the Code of Civil Procedure and the Code of Criminal Procedure, 1898, respectively, as the case may be, for the purpose of compelling the attendance, before himself or the Council of Elders, of the parties and witnesses, or any of them, in any case and at any stage of the proceedings.

CHAPTER IV.

PENALTIES.

Blockade of hostile or unfriendly tribe.

21. In the event of any frontier tribe, or of any section or members of such tribe, acting in a hostile or unfriendly manner towards the British Government or towards persons residing within British India, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order in writing, direct:

(*a*) the seizure, wherever, they may be found, of all or any of the members of such tribe and of all or any property belonging to them or any of them;

For instructions regarding the use of the 'political hava'at' see the memo. at page 68.

(*b*) the detention in safe custody of any person or property so seized; and

(*c*) the confiscation of any such property;

and may, with the like sanction, by public proclamation:

(*d*) debar all or any members of the tribe from all access into British India; and

(*e*) prohibit all or any persons within the limits of British India from all intercourse or communication of any kind whatsoever, or of any specified kind or kinds, with such tribe or any section or members thereof.

Fines on communities accessory to crime.

22. Where, from the circumstances, of any case, there appears to be good reason to believe that the inhabitants of any village, or part of a village, or any or them have—

(*a*) connived at, or in any way abetted the commission of an offence; or

(*b*) failed to render all assistance in their power to discover the offenders or to effect their arrest; or

(*c*) connived at the escape of, or harboured, any offender or person suspected of having taken part in the commission of an offence; or

(*d*) combined to suppress material evidence of the commission of an offence;

the Deputy Commissioner may, with the previous sanction of the Commissoner, impose a fine on the inhabitants of such village or part of a village, or any of them, as a whole.

Fines on communities where murder or culpable homicide is committed or attempted.

23. Where, within the area occupied by a village community or part of a village community, a person is dangerously or fatally wounded by an unlawful act, or the body is found of a person believed to have been unlawfully killed, the members of the village community or part thereof shall be deemed to have committed an offence under Section 22, unless the headmen of the village, community or part thereof can show that the members thereof:

(*a*) had not an opportunity of preventing the offence or arresting the offender; or

(*b*) have used all reasonable means to bring the offender to justice.

Recovery of fines.

24. Fines imposed under Section 22 shall, in default of payment, be recoverable as if they were arrears of land revenue due by the members of the community or part thereof upon whom the fine is imposed.

Forfeiture o remissions of revenue, etc., in the case of communities and persons accessory to crime.

25. Where a village community or part of a village community has become liable to fine under Section 22, it shall further be liable to forfeit, in whole or in part and for a term or in perpetuity, and remission of land revenue of which it may be in joint enjoyment, and the members of the village community or part thereof, as the case may be, shall in like manner be liable severally to forfeit any assignment or remission of land revenue or allowance paid out of public funds which they, or any of them, may enjoy.

Forfeiture of public emoluments, etc., of persons guilty of serious offences or of conniving at crime.

26. Where it is shown, to the satisfaction of the Deputy Commissioner, that any person who is in the enjoyment of an assignment or remission of land revenue or allowance payable out of public funds, has been guilty of a serious offence, or has colluded with or harboured any criminal, or has suppressed material evidence of the commission of any offence, or has failed, on the investigation of any criminal case, to render loyal and proper assistance to the authorities to the best of his ability, the Deputy Commissioner may, in addition to any other penalty to which such person may be liable under any law for the time being in force, direct the forfeiture, in whole or in part and for term in perpetuity, of such assignment or remission of land revenue or allowance, as the case may.

Explanation.—For the purposes of this section the expression "serious offence" means any offence punishable with transportation or with imprisonment for a term which may extend to three years or more.

Power to direct forfeiture.

27. Forfeiture under Section 25 or Section 26 may be adjudged by order of the Deputy Commissioner for a term which may extend to three years, and by order of the Commissioner for any longer term or in perpetuity.

Powers of Local Government saved.

28. Nothing in Sections 25, 26 and 27 shall affect the powers of the Local Government with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land revenue or of any allowance paid out of public funds.

Preparation to commit certain offence.

For instructions regarding this section see page 61.

29. Where a person is found carrying arms in such manner or in such circumstances as to afford just grounds of suspicion that the arms are being carried by him with intent to use them for an unlawful purpose, and that person has taken precautions to elude observation or evade arrest, or is found after sunset and before sunrise within the limits of any military camp or cantonment or of any municipality, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both, and the arms carried by him may be confiscated.

Adultery.

30. (*1*) A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(*2*) Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the women, or, in his absence, by a person who had care of the women on his behalf at the time when the offence was committed.

CHAPTER V.

PREVENTIVE AND OTHER AUTHORITY AND JURISDICTION.

For powers of a Deputy Commissioner under this section. See page 62.

Power to prohibit erection of new villages or towers on Frontier.

31. (*1*) No new hamlet, village habitation, tower or walled enclosure shall, without the previous sanction, in writing, of the Commissioner, who may either grant or refuse such sanction as he thinks fit, be erected at any place within five miles of the frontier of British India.

(*2*) Where the Commissioner refuses to sanction the erection of any such hamlet, village habitation, tower or walled enclosure, as the case may be, he shall record his reasons for so doing.

Power to direct removal of villages.

32. Where is it expedient on military grounds the Local Government may, by order in writing, direct the removal of any village situate in close proximity to the frontier of British India to any other site within five miles of the original site, and award to the inhabitants such compensation for any loss which may have been occasioned to them by the removal of their village as, in the opinion of the Local Government, is just.

Regulation of *hujras* and *chauks*.

33. (*1*) No building of the kind commonly known as a *hujra* or *chauk*, and no building intended to be used as a *hujra* or *chauk*, shall be erected or built, and no existing building not now used as a *hujra* or *chauk* shall at any time be used as such, without the previous sanction, in writing, of the Deputy Commissioner.

(*2*) Whoever contravenes the provisions of sub-section (*1*) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Demolition of buildings used by robbers, etc.

34. (*1*) Where the Deputy Commissioner is satisfied that any building is habitually used as a meeting place by robbers, house-breakers, thieves or bad characters or for the purpose of gambling, he may, by order, in writing, prohibit the owner or occupier thereof from so using

such building, and, if the order is not obeyed, may, by a like order, direct that the building be demolished. Such further order shall be without prejudice to any punishment to which the owner or occupier of such building may, under any law for the time being in force, be liable for disobedience of the prohibitory order.

(2) No person shall be entitled to any compensation in respect of the demolition of any building under sub-section (1).

Naubati chaukidari system.

35. (1) Where, in the opinion of the Deputy Commissioner, the custom of providing for watch and ward by what are commonly known as *naubati chaukidars* exists in the case of any village community, and the village community or any part thereof fails to provide for the due performance of such service, or any member of the village community fails to perform his duty of watch and ward according to the customary rotation in respect of such duties, the Deputy Commissioner may impose a fine, which may extend to one hundred rupees in any one case, upon the village community or part or member thereof so failing as aforesaid.

(2) The provisions of Section 24 shall be applicable to the recovery of fines imposed on any village community or part thereof under this section.

(3) Where such custom as aforesaid has not existed or has fallen into disuse in any village Community, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order, in writing, direct its introduction or revival, as the case may be; and thereupon the provisions of sub-section (1) shall apply in respect of the village community.

For rules regarding this section, see page 37 rule 4, and page 40.

Power to require persons to remove in certain cases.

36. Where, in the opinion of the Deputy Commissioner, any person:—

(a) is a dangerous fanatic; or

(b) belongs to a frontier tribe and has no ostensible means of subsistence or cannot give a satisfactory account of himself; or

(c) has a blood-feud; or

(d) has occasioned cause of quarrel likely to lead to bloodshed;

the Deputy Commissioner may, by order, in writing, require him to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said territories as may be specified in the order:

Provided that, if the person has a fixed habitation in the place which the Deputy Commissioner requires him to leave, an order under this section shall not be made without the previous sanction of the Commissioner.

Penalty for breach of certain orders.

37. Whoever contravenes the provisions of Section 31, or disobeys an order under Section 21 or Section 32, or a prohibition under Section 34, or a requisition under Section 36, shall be punishable with imprisonment for a term which may extend to six months, and shall also be liable to fine which may extend to one thousand rupees.

Powers of arrest.

38. In any place in which all or any of the provisions of this Regulation are for the time being in force:—

(i) any private person may, without an order from a Magistrate and without a warrant arrest or cause to be arrested and make over or cause to be made over to a police officer, or take or cause to be taken to the nearest police station, any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; and

V of 1898. (ii) Section 46 of the Code of Criminal Procedure, 1898, shall be read as if the following sub-section were added thereto, namely:—

"(4) But this section gives a right to cause the death of a person against whom those portions of the Frontier Crimes Regulation, 1901, which are not of general application, may be enforced:—

(a) if he is committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as to afford reasonable ground for believing that he intends to use arms to effect his purpose; or

(b) if a hue and cry has been raised against him of his having been concerned in any such offence as is specified in clause (a), or of his committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as are referred to in the said clause."

XLV of 1860.

Arrest without warrant in cases under Section 498, Indian Penal Code.

39. (1) Where there is reason to believe that a person has committed or attempted to commit an offence punishable under Section 498 of the Indian Penal Code, an officer in charge of a police station may, without an order from a

Magistrate and without a warrant, arrest that person on the requisition of the husband of the woman, or, in his absence, of a person having the care of her on his behalf, or in the absence of both the husband and any such person as last aforesaid from the village in which the woman resides, on the requisition of a headman of the village.

(2) A police officer making an arrest under sub-section (1) shall, without unnecessary delay, take or send the person arrested to the nearest Magistrate having jurisdiction.

(3) The Magistrate may, in default of bail being furnished to his satisfaction, detain the person arrested for such period, not exceeding fifteen days, as may be necessary to enable the husband, or, in his absence, a person who had care of the women on his behalf, to make a complaint.

Security and surveillance for the prevention of murder or culpable homicide or the dissemination of sedition.

40. (1) Where the Commissioner or the Deputy Commissioner is of opinion that it is necessary, for the purpose of preventing murder or culpable homicide not amounting to murder, or the dissemination of sedition, to require a person to execute a bond for good behaviour or for keeping the peace, as the case may be, he may order the person to execute a bond, with or without sureties, for his good behaviour or for keeping the peace, as the case may be, during such period, not exceeding three years, as the Commissioner or the Deputy Commissioner, as the case may be, may fix.

(2) The Deputy Commissioner may make an order under sub-section (1):—

(a) on the recommendation of a Council of Elders, or

(b) after enquiry as hereinafter provided.

(3) Where a person has been convicted in accordance with the finding of a Council of Elders of an offence mentioned in Section 106 of the Code of Criminal Procedure, 1898, or punishable under Section 302, Section 304, Section 307, or Section 308 of the Indian Penal Code, the Deputy Commissioner at the time of passing sentence, or the Commissioner at the time of revising the sentence, may make an order under sub-section (1) with respect to that person. XLV of 1860.

(4) Where the Deputy Commissioner makes an order under sub-section (1) on the recommendation of a Council of Elders, he shall record his reasons for acting on the recommendation.

(5) Where the Commissioner or the Deputy Commissioner is of opinion that sufficient grounds exist for making an order under sub-section (1), he may, either in lieu of, or in addition to, such order, by order, in writing, direct that the person concerned shall notify his residence and any change of residence in the manner prescribed by Section 565 of the Code of Criminal Procedure, 1898, during such term, not exceeding three years, as may be specified in the order. V of 1898.

Security from families or factions in case of blood-feud.

For instructions regarding the use of this section, see paragraph 4 (c) of the circular reproduced at page 66.

41. Where a blood-feud or other cause of quarrel likely to lead to bloodshed exists, or in the opinion of the Deputy Commissioner, is likely to arise between two families or factions, the Deputy Commissioner may, on the recommendation of a Council of Elders or after inquiry as hereinafter provided, order all or any of the members of both families or factions or of either family or faction to execute a bond, with or without sureties, for their good behaviour or for keeping the peace, as the case may be, during such period not exceeding three years, as he may fix.

Procedure in inquiry.

42. (1) An inquiry for the purposes of Section 40, sub-section (2), or Section 41, may be conducted, so far as may be necessary, out of court:

Provided that a person from whom it is proposed to require a bond under Section 40, or the principal members of a family or faction from which it is proposed to require a bond under Section 41, shall be given an opportunity of showing cause in Court why a bond should not be required, and of having his or their witnesses examined there, and of cross-examining any witness not called by himself or themselves who may testify there to the necessity or otherwise for the execution of a bond.

(2) Sections 112, 113, 115 and 117 of the Code of Criminal Procedure, 1898, shall not apply to an inquiry under this section, but the Deputy Commissioner shall record his order with the reasons for making it. V of 1898.

Breach of bond.

43. (1) A bond executed under Section 40 shall be liable to be forfeited, if the persons bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment.

(2) A bond executed under Section 41 shall be liable to be forfeited, if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment in respect of any member of the opposite family or faction to which the bond related.

(3) If, while a bond executed under Section 41 is in force, the life of any member of either family or faction is unlawfully taken or attempted, the Deputy Commissioner may declare the bond of all or any of the members of the other family or faction and their sureties (if any) to be forfeited, unless it is shown to his satisfaction that the homicide or attempt was not committed by, or in consequence of the abetment of, any member of that family or faction.

Imprisonment in default of security.

44. (1) Where a person ordered to give security under Section 40 or Section 41 does not give security on or before the date on which the period for which the security is to be given commences, he shall be committed to prison, or, if he is already in prison, be detained in prison until that period expires, or until within that period he furnishes the required security.

(2) Imprisonment for failure to give security under this chapter may be rigorous or simple as the officer requiring the security directs in each case.

Length of imprisonment.

45. Where a person has suffered imprisonment for three years for failure to give security under Section 40 or Section 41, he shall be released, and shall not again be required to give security unless a fresh order is passed in accordance with the provisions of this chapter or of the Code of Criminal Procedure, 1898.

V of 1898.

Further security.

46. (1) Where a person has, under the provisions of this chapter, given security or been imprisoned for failure to give security, he may be brought before the Deputy Commissioner, if, on the expiry of the period for which security was required to be given, the Deputy Commissioner so directs.

(2) Where the Deputy Commissioner thinks it necessary, for the purpose of preventing bloodshed, to require security for a further period from any person so brought before him, he shall record a proceeding to that effect.

(3) The proceeding may be founded on the facts on which the original order to give security was founded, and it shall not be necessary to prove any fresh facts to justify an order to give security for a further period under this section ; but such an order, if passed, shall have the same effect and be enforced in the same manner as an original order to give security under Section 40 or Section 41.

(4) Notwithstanding anything in this section, no person shall suffer, for failure to give security under this chapter, continuous imprisonment for more than six years or, without the sanction of the Commissioner, for more than three years.

Modified application of Chapters VIII and XLII, Act V, 1898.

47. (1) Where, within the territories in which all or any of the provisions of this Regulation are for the time being in force, it is found necessary or expedient to take security under this Regulation from Pathans or Biluchis or any other classes against whom all or any of the provisions of Sections 40 to 46 may for the time being be enforced, the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898, shall be read as if for the words " High Court ", " Court of Session " and " Sessions Judge ", wherever they occur, the word " Commissioner " were substituted, and all references to any such Courts shall be deemed to refer to the Court of the Commissioner.

V of 1898.

V of 1898.

(2) Subject to the provisions of sub-section (2) of Section 42 and sub-section (1) of this section, the provisions of the said chapters of the Code of Criminal Procedure, 1898, shall, so far as they are consistent therewith, be applicable to every proceeding under this chapter relating to the taking of security ; but all applications for revision in respect to any such proceeding shall be made to, and be disposed of by, the Commissioner.

CHAPTER VI.

Appeal and Revision.

Appeals barred.

48. No appeal shall lie from any decision given, decree or sentence passed, order made, or act done, under any of the provisions of this Regulation.

Revision.

49. The Commissioner may call for the record of any proceeding under this Regulation and revise any decision, decree, sentence or order given, passed or made therein.

Powers in exercise of criminal revisional jurisdiction.

50. The Commissioner may, in the exercise of his revisional jurisdiction in any criminal proceeding, exercise the power to direct tender of pardon conferred by Section 338, and any of the powers conferred on an Appellate Court by Sections 195, 423, 426, 427 and 428 of the Code of Criminal Procedure, 1898, and may also enhance any sentence :

V of 1898.

Provided that nothing in this chapter shall be deemed to authorize the Commissioner to set aside the finding on any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice.

Sentences which may not be passed on revision.

51. No sentence shall be passed by the Commissioner in the exercise of his revisional jurisdiction which the Deputy Commissioner could not have passed under this Regulation.

Powers in exercise of civil revisional jurisdiction.

52. Nothing in this chapter shall be deemed to authorise the Commissioner to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under this Regulation, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice, or that the decision, decree or order is contrary to good conscience or public policy.

Record of reasons.

53. Where, in the exercise of his revisional jurisdiction in any proceeding under this Regulation, the Commissioner varies or sets aside any decision, decree, sentence or order, he shall record his reasons for so doing.

Procedure where the decision, etc., to be revised was given by the Commissioner as Deputy Commissioner.

54. (*1*) The Commissioner shall not revise any decision, decree, sentence or order given, passed or made by himself in the capacity of Deputy Commissioner.

(*2*) Where any such decision, decree, sentence or order is brought to the notice of the Commissioner with a view to the exercise by him of his revisional jurisdiction in respect thereof under this Regulation, the Commissioner shall report the case to the Local Government, and it shall be disposed of by the Local Government or by such officer as the Local Government may appoint in that behalf.

Enforcement of orders made on revision.

55. Every order made by the Commissioner in exercise of his revisional jurisdiction shall be enforced as if it were an order of the Deputy Commissioner or District Magistrate, as the case may be, and the Deputy Commissioner or District Magistrate shall do all acts and things necessary to give effect thereto.

CHAPTER VII.

Supplemental Provisions.

Recovery of fines, etc. from relatives of person liable.

56. Where, by a decree passed under Section 8 or by a sentence passed under Section 12, any person belonging to a frontier tribe becomes liable to pay a fine or other sum of money, the Deputy Commissioner may, on the recommendation of a Council of Elders and on satisfying himself that such a course is in accordance with local tribal custom, by order, in writing, direct that the amount shall be recovered from the property, movable or immovable, of such of the relatives or fellow-tribesmen of the person so liable as may be specified in the order.

Power of Deputy Commissioner to order disposal of certain fines.

57. (*1*) The Deputy Commissioner may make such order as he thinks fit for the disposal of the proceeds of any fine imposed under Section 12, Section 18 or Section 22, and, subject to any order made by the Commissioner under Chapter VI, the proceeds shall be disposed of accordingly.

(*2*) Where, in pursuance of an order made under sub-section (*1*), a person has received compensation for an injury out of the proceeds of a fine, no Civil Court shall take cognizance of a claim to compensation based on the same injury.

Maintenance of registers.

58. Registers shall be kept up, in forms to be approved by the Local Government, of all cases dealt with by the Deputy Commissioner and by the Commissioner under this Regulation.

Jurisdiction of ordinary Courts in cases under Sections 29, 30 and 37.

59. An offence punishable under Section 29 or Section 30 may be tried by a Court of Session or by the Court of a Magistrate of the first class. An offence punishable under Section 37 may be tried by any Magistrate of the first class.

Finality of proceedings under Regulation.

60. Except as therein otherwise provided, no decision, decree, sentence or order given, passed or made, or act done, under Chapter III, Chapter IV, Chapter V or Chapter VI shall be called in question in, or set aside by, any Civil or Criminal Court.

Application of provisions of Indian Penal Code respecting fines and imprisonment.

61. The provisions of Section 61, and those of Sections 63 to 74, of the Indian Penal Code, shall, subject to the provisions of Section 13 of this Regulation, apply to sentences passed under this Regulation. XLV of 1860.

For rules framed under this section see pages 36, 39 and 40.

62. The Local Government may make rules to carry out the purposes and objects of this Regulation.

Power to make rules.

63. No suit or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done, under this Regulation.

Protection for persons acting under Regulation.

V of 1887.

64. The Punjab Frontier Crimes Regulation, 1887, is hereby repealed.

Repeal.

THE FIRST SCHEDULE.

[*See Section 2, clause (b).*]

PART I.

Powers and functions with which Magistrates of the first class may be invested by Deputy Commissioners.

(*a*) In the case of an Additional District Magistrate—all or any of the powers and functions of a Deputy Commissioner.

(*b*) In any other case—all or any of the following powers, namely :—

(*i*) power to make orders of reference to Councils of Elders under Section 8, sub-section (*1*) ;

(*ii*) power to nominate and appoint the members of the Council when an order of reference to a Council has been made under Section 8, sub-section (*1*) ;

(*iii*) power to nominate the members of the Council when an order of reference to a Council has been made under Section 11, sub-section (*1*) ;

(*iv*) power to consider and dispose of objections made by an accused person to members so nominated, and to appoint the members of a Council of Elders under Section 1 sub-section (*2*) ; and

(*v*) power to take security under Section 40.

PART II.

Powers and functions with which Magistrates may be invested by the Local Government.

(*a*) Power to nominate and appoint the members of a Council of Elders where an order of reference to a Council has been made under Section 8, sub-section (*1*) ;

(*b*) Power to nominate the members of the Council when an order of reference to a Council has been made under Section 11, sub-section (*1*) ; and

(*c*) Power to consider and dispose of objection made by an accused person to members so nominated and to appoint the members of a Council of Elders under Section 11, sub-section (*2*).

THE SECOND SCHEDULE.

[*See Section 12, sub-section (2).*]

XLV of 1860.

1. Any offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 131, 144, 148, 150, 193, 194, 195, 196, 201, 211, 212, 216, 216-A, 302, 304, 307, 308, 324, 325, 326, 328, 354, 363 to 369, 376, 377, 379 to 382, 386, 387, 392 to 399, 400, 401, 402, 411 to 414, 427 to 429, 435, 436, 440, 448 to 460, 494, 495, 497 and 498.

2. Any offence punishable under Section 29 or Section 30 of this Regulation.

3. Abetment of any of the offences aforesaid.

4. Attempt to commit any of the offences aforesaid, which are not themselves expressed to be attempts to commit offences.

APPENDIX IV (3).

The Frontier Murderous Outrages Regulation, 1901.

REGULATION NO. IV OF 1901.

[Received the assent of the Governor General on the 18th October, 1901 ; and published in the Gazette of India on the 26th idem.]

A REGULATION TO MAKE BETTER PROVISION FOR THE SUPPRESSION OF MURDEROUS OUTRAGES IN CERTAIN FRONTIER TRACTS.

Whereas it is expedient to make better provision for the suppression of murderous outrages in certain frontier tracts ; It is hereby enacted as follows :—

Short title, commencement and extent.

1. (*1*) This Regulation may be called the Frontier Murderous Outrages Regulation, 1901 ; and

(*2*) It shall come into force at once.

(*3*) Save as otherwise provided by section 6, sub-section (*2*), it extends only to the territories for the time being administered by the Chief Commissioner of British Baluchistan ; but the Local Government may, either of its own motion or at the request of the Judicial Commissioner, exempt any local area, or withdraw any case or class of cases, from the operation of all or any of its provisions.

Punishment of fanatic committing, or attempting to commit, murder.

2. (*1*) Any fanatic who, within the meaning of the Indian Penal Code, commits murder, or does any act with such intention or knowledge, and in such circumstances, that, if he by that act caused death, he would commit murder, shall be punishable with death or with transportation or imprisonment for life, and all his property shall be forfeited to the Government. XLV of 1860.

(*2*) Notwithstanding anything in section 393 of the Code of Criminal Procedure, 1898, or in any other enactment for the time being in force, where any such fanatic as aforesaid is sentenced to transportation or imprisonment for life, he may also be sentenced to whipping in addition to such transportation or imprisonment. V of 1898.

Forfeiture of property and disposal of body of fanatic killed in committing offence under section 2.

3. Where any fanatic is killed in the act of committing an offence punishable under section 2, or, having been wounded and arrested in the act of committing any such offence, afterwards dies of his wounds, the Court which, under the provisions of section 4, would have had cognizance of the offence if the offender could have been brought to trial, may proceed to hold an inquest into the circumstances of the death of the fanatic, and, on proof of his having been killed as aforesaid, or of his having died of wounds received as aforesaid, may adjudge that all his property shall be forfeited to the Government, and may dispose of his body as it may think fit.

Court before which offences punishable under section 2 to be tried.

4. (*1*) Any offence punishable under section 2 shall be tried by the Sessions Judge or Deputy Commissioner of the district in which it was committted :

Provided that the jurisdiction so conferred on the Sessions Judge or Deputy Commissioner may be exercised by any Magistrate of the first class whom the Local Government, or the Sessions Judge or Deputy Commissioner to whom such Magistrate is subordinate, may, after the commission of an offence punishable under section 2, specially invest with such jurisdiction for the purpose of trying such offence.

(*2*) In every trial held under this Regulation the Court shall follow the procedure for the trial of warrant-cases by Magistrates prescribed by Chapter XXI of the Code of Criminal Procedure, 1898 : V of 1898.

Provided that, where the Court is of opinion that any witness or evidence is offered for the purpose of vexation or delay or of defeating the ends of justice, it may require the accused person to satisfy it that there are reasonable grounds for believing that such witness or evidence is material, and, where the Court is not so satisfied, it shall not be bound to summon the witness or examine the evidence so offered.

Trial to be with aid of assessors.

5. (*1*) Every trial held under this Regulation shall be conducted with the aid of two or more assessors as members of the Court.

(*2*) The Court may appoint such persons, other than persons specified in section 278 of the Code of Criminal Procedure, 1898, at such time, and in such manner, as it may think fit, to serve as assessors, and no persons shall be exempt, within the meaning of section 320 of the said Code, from liability to serve as such assessors. V of 1898.

(*3*) The provisions of the said Code shall, save as aforesaid, apply to assessors appointed under this section.

Contents of judgment and execution of sentence.

6. (*1*) When any trial held under this Regulation is concluded, if the accused person is convicted, it shall be sufficient if the Court, in passing judgment and recording the finding and sentence, specifies the offence of which he is convicted, and the Court shall immediately issue a

warrant to the officer in charge of the prison in which the prisoners is confined, or to which the Court has, by its judgment or by a subsequent order, directed him to be transferred for this purpose, to cause the sentence to be carried into execution, and the sentence shall be carried into execution, accordingly :

Provided that, where a sentence of death is passed, the Court may, from time to time, if it seems to it that the public interest so requires, extend the date fixed for the execution of the sentence, and the execution shall be postponed accordingly.

(*2*) The Court may, under sub-section (*1*), direct a prisoner to be transferred for the execution of a sentence passed upon him under this Regulation to any prison in British India, whether in the territories for the time being administered by the Chief Commissioner of British Baluchistan or not ; and nothing in the Prisoners Act, 1900, or in any other enactment for the time being in force, shall be deemed to preclude the officer in charge of such prison from carrying such sentence into execution.

(*3*) Notwithstanding anything in the Code of Criminal Procedure, 1898, or in any other enactment for the time being in force, no sentence of death passed under this Regulation shall require confirmation by any Court.

Disposal of body of offender on execution of sentence of death passed under section 2.

7. When a sentence of death passed under section 2 has been carried into execution, the body of the offender shall be disposed of as the Court by which he was sentenced, shall direct.

Proceedings to be reported to Local Government.

8. The proceedings in every trial held under this Regulation shall, without unnecessary delay, be reported by the Court to the Local Government.

V of 1898.

No appeal from order or sentence under Regulation.

9. Notwithstanding anything in the Code of Criminal Procedure, 1898, or in any other enactment for the time being in force, no appeal shall lie from any order made or sentence passed under this Regulation.

Procedure where offence charged is not punishable under section 2.

XLV of 1860.

V of 1898.

10. Where the Court is of opinion that a person charged with an offence punishable under section 2 is not so punishable, but has committed an offence punishable under the Indian Penal Code, the accused person shall be dealt with in manner provided in such case by the Code of Criminal Procedure, 1898.

Power for Local Government to confine person charged with, or suspected of, offence punishable under section 2.

11. The Local Government shall have, with respect to the confinement of any person charged with, or suspected of an intention to commit, or abet the commission of, an offence punishable under section 2, the powers vested in the Governor General in Council by any law for the time being in force regarding the confinement of persons charged with, or suspected of, State offences ; and the provisions of any such law shall, *mutatis mutandis*, be applicable in every case in which the Local Government proceeds under the authority of this section.

Detention of persons in anticipation of proceedings under section 11.

12. Any Magistrate of the first class may cause any person against whom there are, in his opinion, grounds for proceeding under section 11, to be arrested, and may, after such inquiry as he may think necessary, detain such person in safe custody until he has received the orders of the Local Government, to which he shall in every such case, without unnecessary delay, report his proceedings.

Arrest, etc., of persons suspected of intending to commit, or of habitually conniving at commission of, offences punishable under section 2.

13. (*1*) Any police-officer may, without an order from a Magistrate and without a warrant, arrest any person against whom credible information has been received, or a reasonable suspicion exists, that he is a person who intends to commit, or abet the commission of, an offence punishable under section 2, or who habitually protects or harbours fanatics committing such offences, or who orally or in writing counsels, or by approval encourages, the commission of such offences.

V of 1898.

(*2*) Any such person as aforesaid shall bede emed, within the meaning of clause (*f*) of section 110 of the Code of Criminal Procedure, 1898, to be so desperate and dangerous as to render his being at large without security hazardous to the community, and the provisions of Chapter VIII and of sections 406, 514 and 515 of the said Code shall apply to him, except in so far as is otherwise provided in this Regulation.

(*3*) Where a Magistrate makes in respect of such person as aforesaid an order in writing as prescribed by section 118 of the said Code, he may direct such person, during the whole or part of the period of the bond,—

(*a*) to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said limits as may be specified in the order ; and,

(*b*) if he is so directed to reside within the said limits, to notify his residence and every change of residence to such authority as may be specified in the order.

(4) Whoever, being bound over to be of good behaviour under this section, commits a breach of any direction under sub-section (3), shall be deemed to have forfeited his bond, and shall, in addition to any term of rigorous imprisonment to which he may be liable for breach of the conditions of his bond, be punishable with rigorous imprisonment for a term which may extend to one year, or with fine, or with both.

(5) Every order made under this section shall be at once reported to the Local Government, and the Local Government may revise any such order.

Further preventive and punitive measures.

14. (1) Where a fanatic has committed an offence punishable under section 2, the Court, may, on the recommendation of a Council of Elders or after such inquiry as it may think necessary, take any of the following measures against any community, section of a community or individual with whom such fanatic is or has been associated in circumstances which satisfy the Court that, by reasonable prudence or diligence on the part of such community, section of a community or individual, the commission or attempted commission of such offence might have been prevented, namely :—

(a) it may impose a fine on such community, section of a community or individual and recover the same as if it were an arrear of land-revenue ; or

(b) it may direct that such community, section of a community or individual shall forfeit, in whole or in part and for a term or in perpetuity, any assignment or remission of land-revenue or allowance payable out of public funds of which it or he may be in enjoyment.

(2) No order made under this section shall take effect until it has been confirmed by the Local Government.

(3) Nothing in this section shall affect the powers of the Local Government with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land-revenue or of any allowance payable out of public funds.

Explanation.—In sub-section (1), the expression " Council of Elders " means a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Court may in each case direct.

Power for Local Government to issue circular orders.

15. The Local Government may, by notification in the official Gazette, make and issue circular orders for the guidance of officers in carrying out the purposes and objects of this Regulation ; and every circular order so made and issued shall have effect as if enacted in this Regulation.

Repeals.

16. Act XXIII of 1867 (*an Act for the suppression of murderous outrages in certain Districts of the Punjab*), *Act IX of 1877* (*an Act to revive and amend Act No. XXIII of 1867*), and so much XVI of 1874, I of 1890, of the Repealing Act, 1874, of the Baluchistan Laws Regulation, 1890, and of the Repealing XII of 1891, and Amending Act, 1891, as relates to the said Act XXIII of 1867, are hereby repealed in the territories to which this Regulation extends.

APPENDIX IV (4).

The N. W. F. P. Security Regulation, 1922.

REGULATION No. IV OF 1922.

[*Received the assent of the Governor General on the 7th March, 1922 ; and published in the Gazette of India Extraordinary on the 8th March, 1922.*]

A REGULATION TO CONTINUE IN FORCE CERTAIN PROVISIONS OF THE EXISTING LAW FOR THE PURPOSE OF SECURING THE PEACE AND SAFETY OF THE NORTH-WEST FRONTIER PROVINCE.

Whereas it is expedient that certain provisions of the existing law should continue to be in force for the purpose of securing the peace and safety of the North-West Frontier Province ; It is hereby enacted as follows :—

Short title, extent, commencement and duration.

1. (1) This Regulation may be called the North-West Frontier Province Security Regulation, 1922.

(2) It extends to the North-West Frontier Province.

(3) It shall come into force on such date as the Governor General may, by notification in the Gazette of India, appoint, and shall remain in force for a period of three years thereafter.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(a) " area " means an area forming part of the Province ;

(b) " Chief Commissioner " means the Chief Commissioner of the North-West Frontier Province ; and

(c) " the Province " means the North-West Frontier Province.

3. Where in the opinion of the Chief Commissioner there are reasonable grounds for believing that any person has acted, is acting, or is about to act, in a manner prejudicial to the peace and good government of the Province, the Chief Commissioner may, by order in writing, direct that such person—

Powers to deal with suspects.

(*a*) shall not enter the Province ; or

(*b*) shall not enter, reside or remain in any area specified in the order ; or

(*c*) shall reside or remain in any area so specified ; or

(*d*) shall conduct himself in such a manner or abstain from such acts or take such order with any property in his possession or under his control as may be specified in such order ; or

(*e*) shall remove himself from the Province in such manner and by such route and means as may be specified in such order, and shall not return thereto.

4. (*1*) An order made under clause (*a*) of section 3 shall be served by post upon the person in respect of whom it is made.

Service of orders under section 3.

(*2*) An order made under clause (*b*), clause (*c*), clause (*d*) or clause (*e*) of section 3 shall be served on the person in respect of whom it is made in the manner provided in the Code of Criminal Procedure, 1898, for service of a summons.

V of 1898.

(*3*) Any person upon whom an order has been served in accordance with the provisions of this section shall be deemed to have had due notice of such order.

5. The Chief Commissioner and any officer subordinate to him to whom a copy of any order made under section 3 has been endorsed by or under the general or special authority of the Chief Commissioner may use any and every means necessary to enforce compliance with the same.

Enforcement of orders.

6. Whoever, being a person in respect of whom an order has been made under section 3, knowingly disobeys any direction in such order may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for breach of orders under section 3.

7. (*1*) Every person in respect of whom an order has been made under clause (*b*), clause (*c*), clause (*d*) or clause (*e*) of section 3 shall, if so directed by any officer authorised in this behalf by general or special order of the Chief Commissioner,—

Power of photographing, etc., persons against whom orders under section 3 have been made.

(*a*) permit himself to be photographed ;

(*b*) allow his finger impressions to be taken ;

(*c*) furnish such officer with specimens of his handwriting and signature ; and

(*d*) attend at such times and places as such officer may direct for all or any of the foregoing purposes.

(*2*) If any person fails to comply with or attempts to evade any directions given in accordance with the provisions of this section, he may be arrested without warrant and shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

8. The power to issue search warrants conferred by section 98 of the Code of Criminal Procedure, 1898, shall be deemed to include the power to issue warrants authorising the search of any place in which any Magistrate mentioned in that section has reason to believe that an offence under this Regulation or any offence prejudical to the peace or good government of the Province has been or is being or is about to be committed, and the seizure of anything found therein or thereon which the officer executing the warrant has reason to believe is being used or is intended to be used for any such purpose as aforesaid, and the provisions of the said Code, as far as they can be made applicable, shall apply to searches made under the authority of any warrant issued under this section and to the disposal of any property seized in any such search.

V of 1898.

Powers of search.

APPENDIX IV (5).

The N. W. F. P. Public Safety Regulation, 1931.

REGULATION No. III OF 1931.

[*Received the assent of the Governor General on the 21st January, 1931 ; and published in the Gazette of India on the 24th January, 1931.*]

A REGULATION TO MAKE PROVISION FOR SAFEGUARDING THE PUBLIC SAFETY IN THE NORTH-WEST FRONTIER PROVINCE.

Whereas it is expedient to make provision for safeguarding the public safety in the North-West Frontier Province; It is hereby enacted as follows :—

1. (*1*) This Regulation may be called the North-West Frontier Province Public Safety Regulation, 1931.

Short title, duration and extent.

(2) It shall remain in force for the period of one year only ;

Provided that the Governor General in Council may, by notification in the Gazette of India, direct that it shall remain in force for one further period not exceeding one year.

(3) It extends to the whole of the North-West Frontier Province, but shall have effect only in such areas as the Chief Commissioner may, by notification in the North-West Frontier Province Gazette stating his reasons, specify in this behalf.

(4) A notification under sub-section (3) shall remain in force for such period not exceeding two months, as may be specified therein :

Provided that the Chief Commissioner may, by notification in the North-West Frontier Province Gazette, direct that any such notification shall remain in force for one further period not exceeding two months, and thereafter, with the previous sanction of the Governor General in Council, may, from time to time, in like manner, direct that it shall remain in force for a further period not exceeding two months.

Competent authorities.

2. (1) The Chief Commissioner shall be competent authority for all the purposes of this Regulation.

(2) The Chief Commissioner may, by notification in the North-West Frontier Province Gazette, appoint any civil or military officer to be a competent authority for any or all of the purposes of this Regulation in any area specified in such notification.

Power to take temporary possession of land and otherwise to take order with property.

3. (1) Where, in the opinion of a competent authority, such action is necessary for the purpose of securing the public safety, such competent authority may, after recording an order in writing stating his reasons,—

(a) take temporary possession of any land, and construct military works, including roads, thereon, and remove any trees, hedges, crops and defences therefrom ;

(b) take temporary possession of any buildings or other property, whether moveable or immoveable, including works for the supply of electricity or water and any source of water supply ;

(c) take such steps as may be expedient for placing any lands, buildings or structures, in a state of defence ;

(d) cause any buildings, structures, trees, hedges, crops or other property of any kind to be destroyed or removed ; and

(e) do any other act involving interference with private rights in property.

(2) Where any person has suffered loss by the exercise of any power conferred by sub-section (1), he may apply to the Deputy Commissioner for compensation, and the Deputy Commissioner shall pay to such person such compensation, either in a gross sum of money or by monthly or other periodical payments, or both, as shall be agreed upon in writing between the Deputy Commissioner and such person.

(3) Where the Deputy Commissioner and the person claiming differ as to the sufficiency of the compensation, or where any dispute arises as to the apportionment of the compensation, the Deputy Commissioner shall refer the difference or dispute to the decision of the District Court.

(4) An appeal shall lie to the Court of the Judicial Commissioner against a decision of the District Court under sub-section (3).

(5) The Chief Commissioner may authorise any Additional District Magistrate or Sub-Divisional Officer to exercise the powers of a Deputy Commissioner under sub-sections (2) and (3).

Power to take possession of immoveable property with a view to permanent possession.

4. (1) Where it appears to a competent authority that any immoveable property is likely to be needed for any public purpose connected with the defence of the North-West Frontier Province, and, in the opinion of such authority, it is necessary for the purpose of securing the public safety to take immediate possession of such property, then, notwithstanding anything contained in the Land Acquisition Act, 1894, the competent authority may, after recording an order in writing stating his reasons, enter upon and take possession of such property, before any notification is issued, declaration is made, objection is raised, or award of compensation is made under that Act. 1 of 1894.

(2) Where the competent authority so taking possession is not the Chief Commissioner, he shall report his action to the Chief Commissioner.

(3) As soon as may be after possession of any immoveable property is taken under this section, or where possession of immoveable property has been taken under section 3 and the Chief Commissioner decides to acquire such property permanently, the Chief Commissioner shall issue a notification under section 4 of the Land Acquisition Act, 1894, and thereafter the property shall be acquired in accordance with the provisions of that Act, in so far as they are not inconsistent with this section or with section 3. 1 of 1894.

Rights of access to land, etc.

5. A competent authority may, after recording an order in writing stating his reasons enter upon any land, buildings or other property.

Power to close roads.

6. Where, in the opinion of a competent authority, such action is necessary for the purpose of securing the public safety, such competent authority may close or divert any road or pathway

Provided that the competent authority shall—

(*a*) give notice in writing of such action to the local authority (if any) in whose charge such road or pathway is ; and

(*b*) restore any such road or pathway to its original use and condition as soon as the necessities of the case permit this to be done.

Power to require the showing of distinguishing marks by day and the carrying of lights by night.

7. (*1*) Where, in the opinion of a competent authority, such action is necessary for the purpose of securing the public safety, such competent authority may require that persons moving about in any locality shall show prescribed distinguishing marks by day and shall carry lights by night

(*2*) The competent authority shall publish notice of such requirements in the said locality in such manner as he may consider best adapted for informing the public thereof.

(*3*) Whoever contravenes any requirement made and published under this section shall be punishable with imprisonment which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Bar of jurisdiction.

8. Save as provided in this Regulation, no order under this Regulation shall be called in question in any Court, and no suit, prosecution or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Regulation.

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