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TOPICS OF THE WEEK.

WE cannot commend the practice of some members of the Legislative Assembly and of the Council of State who raise discussions at Delhi on matters relating to provincial subjects, particularly the transferred ones, such as, for instance, the encouragement of Unani and Ayurvedic treatment, promoting cattle-breeding, restricting the export of cattle, etc. The subjects transferred and the powers given to the ministers are few enough in the estimation of all and it is essential that they should not be robbed of their due importance by overlapping in the central legislature. Further, it should be remembered that when there is a dispute as to whether a particular matter is provincial or central, the final decision rests with the Governor-General. In the United States, Canada or Australia such a dispute would be referred to the law courts. This power vested in the central executive is itself an evil, but it will be only aggravated by the practice we have referred to. In order to discourage it, the members will do well to vote against the motions without going into their merits, as Mr. Sastri voted against Lala Sukhbir Singh's resolution on improvement of cattle.

THE disorders at Trichur in Cochin State which were directly connected with the non-co-operation movement should open the eyes of the blindest believer in the possibility of its continuing on non-violent lines. It is not very material whose the provocation was. The contention of the critics of the movement has always been that however much Mr. Gandhi may try to keep it free from violence it would nevertheless result, the necessary degree of self-control being impossible for average human nature. Chaos became so supreme at Trichur that the State authorities were powerless to safeguard life or property and British force had to step in to restore order. It shows clearly that im-

PLICIT faith cannot be placed in the innate goodness of human nature. The methods followed by the Benares non-co-operators to prevent students from sitting for the Sanskrit examinations and the discourtesy and villification to which they subjected no less a person than Pandit Madan Mohan Malaviya, coming after all the severe admonitions of Mr. Gandhi, should suffice to convince him that his dream of non-violence, however beautiful, cannot be realised in this imperfect world. To what ugly lengths brutal passions can go once they are roused by whatever cause, even in the most spiritually-minded country in the world and even in the holiest of holies, was sadly demonstrated by the horrible Nankana Sahib massacre. It certainly had no connection with the non-co-operation movement, but nevertheless conveys a warning to those who rely too much on the peaceful character of the mass mind.

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CASES of firing by the military or the police on unarmed or disorderly mobs for the purpose of preventing a breach of the public peace where less drastic means would have served the purpose equally well, have unfortunately become a matter of common occurrence in India. The way in which the disturbances at Nellore in October 1919 were dealt with is an instance in point though, we may add, not the worst of its kind. The police, acting on the orders of the first class taluka magistrate accompanying the Hindu procession, fired on the Mahomedans who tried to obstruct its progress through the streets of the town and it resulted in some loss of life. Mr. Couchman was appointed by the Madras Government to enquire and report on the circumstances surrounding the occurrence, who, after recording his opinion that "it would have been better if the magistrate had simply authorised the police to use whatever means they thought fit to disperse the rioters in stead of ordering them to fire," believes that "a determined bayonet charge would unquestionably have cleared them all out." In passing, he also mentions the fact that the police are not taught to regard their batons as weapons of offence, which is "the natural method of dispersing a disorderly, but for the most part unarmed mob." We agree with Mr. Couchman in thinking that such a method effects the purpose of clearing the streets without bloodshed, which inevitably rouses the deepest and most enduring resentment.

IN what purports to be a private and confidential letter, the genuineness of which some people

doubt, H. H. the Maharaja of Kolhapur has offered to help the British Government in suppressing the non-co-operation movement and has given expression to certain other ideas which do not come as a surprise to those who are acquainted with his views and activities. The British Government is perfectly able to take care of itself and when unable to do so, His Highness may rest perfectly assured that his loyal help will be asked for. How unwanted his assistance in this direction is at present he could very well have inferred from his being prohibited to address meetings in particular parts of the Bombay Presidency. An enlightened Prince can always find enough work in his own State not to meddle in British Indian politics, even if it were not seriously objectionable on other grounds, and for aught one knows of Kolhapur, it is not exactly a paradise, His Highness himself having peculiar views as to what is due from a ruler to a particular class of his subjects. He will be serving the interests of British India best by concentrating himself least with its affairs.

* * *

MR. JOSHI raised a discussion in the Legislative Assembly on a very important, though a generally neglected, subject—the registration of trade unions. It is recognised even by the employing class that trade unions are inevitable in this age of industrialism, and that it is better to negotiate in case of strike with organised labour having an accredited spokesman than with an unorganised mass. There was therefore no resistance in any part of the House to giving a legal basis to the organisations of labour that are being formed in different parts of the country. But the more important part of Mr. Joshi's resolution asked that protection should be afforded to trade union officials from civil and criminal liability for their *bona fide* trade union activities. This demand was based upon the Trades Disputes Act in England of 1906, but it was stoutly opposed by the representatives of employers. The Government of India are of the opinion that that Act is not very popular even in labour circles in England and a reproduction of its provisions in India will not meet the needs of Indian labour. They fully realise, however, the necessity of having some such legislation. Only they have not yet made up their mind as to what form it should take. In the meantime, they have expressed their willingness to consider any constructive proposals which non-official members may bring forward. It is satisfactory that on labour questions Government's attitude is thoroughly sympathetic. To the interested pleas which were made in the Assembly on behalf of the employers, Mr. Joshi gave a very effective reply.

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WITH characteristic simplicity and straight forwardness Mr. Gandhi mentions in a recent issue of *Young India* certain simple conditions, which being fulfilled, 'Swaraj is easy of attainment before October next.' His experience of the past five months has only confirmed him in the conviction

that the country is ready for establishing Swaraj. Those simple conditions are:

- (1) Cultivating the spirit of non-violence.
- (2) Setting up Congress organisations in every village.
- (3) Introducing the spinning wheel in every home and manufacturing all the cloth, required for our wants, through the village weaver.
- (4) Collecting as much money as possible.
- (5) Promoting Hindu-Muslim unity and
- (6) Ridding Hinduism of the curse of untouchability and otherwise purifying ourselves by avoiding intoxicating drinks and drugs.

None of these conditions would be considered by others as easy of fulfilment, but the collection of funds and the promotion of Hindu-Muslim unity may be granted to be easier than others, in present conditions at any rate. It may be possible to preserve non-violence at the present level and organise Congress Committees in every village, though it is very difficult of attainment.

* * *

THE real difficulty will be in fulfilling the third and last conditions. One does not know how much insistence Mr. Gandhi puts on the word 'every' when he says that the spinning wheel should be introduced in every home. In British India alone there are some 50 million homes. All his concentrated efforts with the students during the last six weeks, not to speak of the earlier period, do not appear to have brought him even a few thousand spinners. Nor is it surprising, for the charm of the wheel vanishes with the initial flush of enthusiasm, leaving only an unprofitable and tedious drudgery behind. The prospect of every one of the fifty million homes working the wheel and producing sufficient yarn to meet the needs of the country and that too before October next, is, we shall be content to say, nil. But even more impossible, if there can be such a thing, is it to rid Hinduism of the sin of untouchability and curing mankind in India of the drink and drug habits. Mr. Gandhi has certainly the faith that moves mountains. But while faith is subjective the mountain is objective, and it is difficult to convince others that the mountain moves. How the fulfilment of these conditions can give us complete control over education, police, military and finance, we shall not now ask. What we do ask is, is it not the duty of those who do not believe in the possibility of these conditions being fulfilled, to dissociate themselves from the non-co-operation movement and thus purify and spiritualise public life?

* * *

AS to the first clause of Mr. Sastri's resolution calling for the written authority of a magistrate before firearms are used for the suppression of a riot, it need only be said that King's Regulation, No. 963, requires that the magistrate should request the commander of the troops to take action in case their interference was needed and that the request should be made "if possible, in writing." The qualification implied in the word "if possible" of this Regulation is contained in Mr. Sastri's resolution in the second clause.

* * *

THE INDIAN BUDGET.

IF one were to judge from the revised financial estimates for the current year and the budget for 1921-22, which the Hon'ble Mr. Hailey presented to the central legislature the other day, one would conclude that the extraordinary conditions of the time of war still prevailed in this country and that the restoration of the normal economic position was yet far-off. The Finance Member had to meet a large deficit in the accounts of the current year and to prepare for a large excess of expenditure over revenue in the coming year. The anticipated small surplus estimated in the budget last March was converted into a deficit and a big gap between revenue and expenditure yawned before him when he set about the task of providing for the next year. Mr. Hailey was in an unenviable position when he was called upon to usher in the new era with proposals about all-round additional taxation, the amount of which exceeded the levies made in any single year in the past. Far from the first year of the reformed legislature being characterised by trade prosperity, surpluses and schemes of useful expenditure, we have the deep shadows of trade depression darkening the whole financial scene. One would instinctively feel sympathy for the Finance Member who was confronted with an unfavourable monsoon, depressed trade, languishing industries, adverse exchange and growing expenditure and who had to face the reformed legislature with comprehensive schemes of additional taxation. But the public of India deserves greater sympathy for the heavy burdens they have to carry and the gloomy economic prospect which stands before them. It is an extraordinary circumstance that the unexpected increases in customs and income-tax revenues in the current year will be entirely swept away and a void of 22 crores must be filled up. Additional military expenditure to the tune of 15 crores, worseness of 7½ crores in the railway revenue account and increased civil expenditure amounting to 2½ crores, are mainly responsible for this result. What makes the situation particularly distressing is the fact that the deficit is not confined to the current year, but we have had deficit piled upon deficit for the past three years. The deficit in 1919-20, due entirely to the Afghan War, was 23 crores and that in the year previous was 6 crores. How were these deficits met? Said the Finance Member in his speech introducing the budget:—"These deficits, including that of the current year, have been, or are being met either by increasing our floating debt, *i. e.* by issuing fresh treasury bills to the public or by issuing fresh currency notes against the security of treasury bills created *ad hoc, i. e.*, against our own I. O. U.s. I feel confident that the House will agree with me that it is impossible to allow this process to proceed further."

This is the most serious feature of our financial position. Government has been incurring growing expenditure year after year and the resulting deficits, after making allowance for increased revenues

from certain heads, have been met by borrowing in one form or another. Government securities have depreciated and public credit is in danger of going down. Well did Mr. Hailey remark: "Camouflage the situation how we may, no country can continue indefinitely to live on its over-drafts; even worse is it to attempt to paper over the chasm between revenue and expenditure by the simple process of printing currency notes." Military and other expenditure has to be calculated for the next year on a higher scale and the low level of exchange that is likely to prevail and that will deprive Government of an amount of the anticipated savings will combine to create a wide gulf again between incomings and outgoings. What is the remedy? Certainly the sure one to which Finance Members who find themselves in a tight corner resort, *viz.* additional taxation. Mr. Hailey wanted to find nineteen crores to balance the two sides of his account in the ensuing year. And in devising means he has tried to cast his net far and wide with a view to reach all classes of the community. An increase in the general *ad valorem* duty from 7½ per cent. to 11 per cent., except in the case of matches and of certain articles of luxury which are specially dealt with, is expected to yield slightly more than 3¾ crores. This will, of course, tend to raise the cost of living; but it is some comfort that there is going to be no increase in the cotton excise duty to counterbalance the effect of the enhancement of the import duty on Lancashire piecegoods. The existing surcharge on railway goods traffic will be increased so as to give an additional 5½ crores. This tax too will fall on the ordinary consumer and will be felt by the middle and the humbler classes. Increased postal rates and the imposition of a high specific duty on matches will produce the same effect and it is to be hoped the legislature will resist the imposts in the interests of the poor consumer. The taxes upon luxuries and the increased income-tax and super-tax rates are unobjectionable, and if Government wants more money it must tap the wealthier classes further rather than exact contributions from people who can ill afford them. Mr. Hailey has spoken of his budget as an economy budget and referred to the remarkable self-restraint which the spending departments have consented to exercise. But we are not sure that there is no room for retrenchment in the charges which have been provided for in the budget already and that the Legislative Assembly is not being confronted with many a *fait accompli* in sanctioned expenditure. The budget will have to be subjected to a severe scrutiny from this point of view and we are confident that the Assembly will apply the pruning knife in the case of several of the grants which will be demanded. On the whole, the budget is a depressing budget and unfolds a gloomy prospect which is not relieved by the reflection that the present situation is a passing phase and that the financial constitution of the country is radically sound. The provinces are clamouring for a cessation of the contributions they have to pay to the central Government, which has to provide for a pro-

gressive reduction of the amounts levied upon them. Whatever saving the Government of India makes in the near future due to additional taxation and normal increase in revenues will be absorbed by the provinces and the existing scale of general taxation must indefinitely continue.

FIRING ON MOBS.

By opposing Mr. Sastri's resolution respecting the use of firearms, Government certainly lost much of the ground which they seemed to have gained by accepting the resolutions on the Punjab and the repressive laws. Their opposition to this resolution, in which Mr. Sastri asked for nothing more than that the Indian law should be put on a par with the English law in respect of the action to be taken by the authorities in repressing riots, was uncompromising; for their acceptance of clauses Nos. 5 and 6 of the resolution, which the Home Member dangled before the Council as a substantial concession, was really no concession at all. These clauses are already embodied, as Mr. Sastri explained in moving his resolution, in the Criminal Procedure Code and the Police Manual, and found mention in the resolution merely for the purpose of giving to the Council a complete view of all the necessary safeguards. The expectation was that they would surrender the autocratic power concealed under the form of law and would place within the reach of the subjects those remedies which judicial proceedings allow. Instead, well-worn pleas of the difficulties of the executive officers and the delicate duties they have to discharge were made, and special immunities claimed for them. The public have good cause to hold the opinion that so far in India the police and the soldiery have used firearms without their full necessity being established and that life has been held altogether too cheap. Until provisions similar to those mentioned in the resolution are introduced in the Indian law, this state of things must continue.

As it is, the Indian law is too simple and crude. It does not distinguish between a riot and an unlawful assembly, with a view to regulating the degree of force and the kind of weapon which the civil and military authorities may appropriately employ to quell different kinds of riot. It recognises a distinction between these offences merely for the purpose of awarding punishments. The only provisions relating to this matter that are to be found in the Criminal Procedure Code are that military force may be used, if civil force is not sufficient, to disperse an assembly and that as little force should be used in doing so as is possible in the circumstances. These provisions leave too wide a discretion to the officers and afford too little protection to the subjects. When the Hon'ble Mr. Khaparde explained that it was the object of Mr. Sastri's resolution to provide adequate safeguards in law against a too free use of firearms and other deadly weapons, the Home Member of the Government of India ridiculed the idea that any discrimination could be made between one kind of weapon

and another and that the employment of deadly weapons needed any special restrictions. But that is precisely the idea on which the English law is based. It makes a distinction between different kinds of riotous assemblies and prescribes the kind of action which the officers may legitimately take in suppressing them. Thus, according to the English law, an unlawful assembly is a meeting together of people under such circumstances of terror as would afford to firm and rational men reasonable ground for apprehending danger to the security of persons and property, but where no aggressive acts are done by the mob. To constitute the offence of riot, however, the parties must proceed to the actual execution of the purpose in such a manner as to cause terror to the people. "An unlawful assembly differs in this respect from a riot, that a riot must go forward to the perpetration of some act which the unlawful assembly is calculated to originate and inspire. Something must be executed in a turbulent manner to constitute a riot." Generally speaking, therefore, an unlawful assembly is the inception of a riot. Or, to paraphrase it in the words of another author, "an unlawful assembly has been distinguished from a riot in that it is a meeting for a purpose the actual execution of which would be a riot, but at which meeting nothing is done." But, apart from this riot, which is an offence at common law there is a statutory riot, where the mob commits felonious violence or refuses to disperse within one hour after the proclamation prescribed in the Riot Act has been read. And, according as the offence becomes more serious, the law empowers the authorities to take more drastic action or employ more dangerous weapons. The use of deadly weapons is forbidden where the officers have got to deal only with an unlawful assembly or a common law riot. Odgers says: "So long as the riot remains simply a common law misdemeanour, only slight force can be used to repress it; the police may use their staves, any other citizens may use their fists or sticks, but *deadly weapons such as swords, bayonets or firearms may not be employed.* But as soon as any of the rioters commence to perpetrate violent acts of felony, such as murder, arson or pillage, even deadly weapons may be used against those who take part in any such violence, though not against the mob as a whole. . . . But where there has not yet been any felonious violence, the rioters do not become felons until one hour has elapsed after the proclamation has been read, and *they cannot therefore be shot down.* If at the end of that period they are still rioting, the magistrate may summon the military to his assistance if there is reason to fear that the civil force may be overpowered." The Military Manual thus summarises the law as to the amount of force to be used in the suppression of unlawful assemblies and riots:—"Beginning with an unlawful assembly it would appear that the police have power to command those present to go away, and to arrest them if they do not go, also to stop others whom they see joining them. If the parties interfered with resist, such force may be used as"

"will compel obedience; but it would be extremely inadvisable to use any such force as would maim or injure the person resisting, unless he himself made attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor. Proceeding to the case of a riot before the declaration required by the Riot Act is read, the same observations apply as in the case of an unlawful assembly. After the proclamation has been read and an hour has elapsed, considerable force may, if necessary, be used for the purpose of dispersing the mob. If the mob are committing, or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. *But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or are in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force.*" Applying the foregoing rules to soldiers, the Manual says that the cases in which soldiers could legitimately be called in "*are practically confined to riots in which violent crimes, such as murder, house-breaking, or arson, are being committed, or are likely to be committed.*" Following these directions, Lord Haldane as Secretary of State for War said in his evidence that firing would be justified in cases where the Riot Act has not been read only "if the people are going about setting fire to houses and murdering innocent passers-by" or doing similar violent outrages. It is necessary that this law respecting the use of force should be incorporated in our Indian law.

The above remarks show the importance of the Riot Act, both to the executive and to the subjects. The Commander-in-Chief declined to accept Lord Haldane's description of it as being intended "for the protection of the magistrate and the military—an additional protection," but as a matter of fact it is so. For "the effect of reading the Riot Act is that if the mob does not disperse within an hour, everybody there is guilty of felony, and when people are guilty of felony, and felons will not disperse, or submit to capture, they are liable to be shot, and therefore, an hour after the Riot Act has been read, it is absolutely lawful, if you cannot stop the felony in any other way, to shoot the people there. This is an additional protection to the military." The Riot Act affords in the words of the Featherstone Report, "a statutory justification for dispersing a felonious assemblage, even at the risk of taking life." It is also a protection to the innocent subjects, because it gives them a warning and an opportunity to extricate themselves from a riotous assembly. Sir William Vincent seemed to think that the Riot Act served no useful purpose whatever in English law; for, he argued, that the reading of the Riot Act would not justify firing if it was unnecessary; and if it was necessary in view

of the violence committed by the crowd, the English law would dispense with the reading of the Riot Act. It is of course true that a riot must exist before the Riot Act can be legally read; and it is also true that if the mob gets out of hand before the proclamation is made or before one hour has elapsed after the proclamation is made, the authorities can resort to firing if necessary. In *Rex v. Fursey Gaslee J.* says:—

"Now a riot is not the less a riot... because the proclamation of the Riot Act has not been read... But if that proclamation be not read, the common law offence remains... and all magistrates and constables and private individuals are justified in dispersing the offenders, and if they cannot otherwise succeed in doing so, they may use force."

Still, the utility of the Riot Act remains. It provides for cases in which persons take part in a riot but do not commit any felonious violence. In such cases the Riot Act *must* be read and a chance given to the innocent part of the assembly to separate themselves from the guilty. If the Riot Act were a mere useless encumbrance, and if it made no difference to the legal position of the authorities who use force, it would not generally be read; but, as a matter of fact, in 99 cases out of a hundred it is read, as it came out in Lord Haldane's evidence. As to its usefulness, Edward Wise remarks in his book on "Riots:" "Severe as it (the Riot Act) is, it has been many times productive of most beneficial consequences. The timely warning given by it brings many to a sense of their danger, and as far as possible ensures the speedy vindication of the law, or at least the separation of the innocent from the guilty. . . . The importance of its provisions may be estimated by the fact that formerly it was directed to be read at every quarter sessions and at every leet or law-day, so that knowledge of its provisions might be universally spread. This practice, however, appears to have fallen into disuse." So much importance is attached to the proclamation of the Riot Act that the leaving out of the words "God save the King" was held to invalidate the proclamation and consequently the assembly was held to be not guilty of the felony of statutory riot. In the fourth clause of Mr. Sastri's resolution firing is forbidden for one hour after the proclamation, unless during the interval the assembly or crowd "causes serious damage to persons or property." Sir William Vincent pleaded that it was a too stringent provision; but it is exactly what the military regulations provide in England. Regulation No. 962 says that it is only with a view to the "prevention of serious outrage and damage to persons or property" that the exercise of military force will be justified, before the proclamation is read or within one hour after it is read.

Far more important, however, than the enactment of such provisions as are set forth in the first six clauses of Mr. Sastri's resolution is it that the aggrieved persons should have free access to the courts of law. But the requirement in the existing law of the Governor-General in Council's consent has operated as a complete bar to judicial trials

It was urged on behalf of Government that if the action taken by the civil or military authorities in putting down riots be subjected to the scrutiny of independent tribunals, they would be put to too severe a test, and that at any rate in India law must be relaxed in order to protect the officers concerned. The officers are in peril of being, on the one hand, tried and shot by a court-martial, and, on the other hand, of being tried and hanged by a judge and jury. But, as Lord Haldane explained, however difficult the position may appear in theory, "in practice it is one of those situations which is really perfectly simple. In 999 out of 1,000 cases it (the apparent difficulty) does not arise." In any case, even if the officers called upon to deal with a difficult situation are on the verge of two precipices, the law could not be altered, Lord Haldane observed, in order to save the officers from falling over these precipices. "If you do," said he, "you will make the law go over the precipices," and the supremacy of the law cannot be sacrificed in the interest of the executive. Lord Haldane was specifically asked, "As head of the Army, are you satisfied that the officers under your charge have sufficient protection?" and the reply was: "They have as much protection as the civilian. . . . The law, which is a very sensible institution, recognises their difficulties, and deals with them accordingly." The officers are not in a peculiarly difficult position; the position of the ordinary citizen is not less difficult. As Lord Haldane said: "The officer is no worse off than anybody else. If you or I were called upon by a magistrate to take part in checking a disturbance with a lethal weapon we should be in an impossible position. We should be bound by the law to obey the magistrate, and bound by the law not to do what was illegal." Why then should the law be so devised in India alone as to afford to the officer protection which is not available to the ordinary citizen? It is said that if officers are harassed by prosecutions in law courts for taking drastic action in the discharge of their odious duties, they will not be willing to assume responsibilities. The Commander-in-Chief put forward this plea. Why should officers in India alone refuse to do without unusual immunities a duty which everywhere else they manfully perform? Here they adopt a lower standard, and, instead of boldly shouldering the responsibilities of their office, come and whine for special protection which in England no one would ever think of giving. As to the peculiar circumstances of India, which, it was suggested, render it necessary to impose a restriction upon the institution of criminal proceedings, they will not stand a moment's scrutiny. Sir William Vincent, following the example of Sir James Stephen, dwelt on the differences between English lawyers and Indian lawyers as if it is not the fact that in England, thanks to liberty-loving judges, the fullest vindication of individual rights has been secured through many historic prosecutions following on the suppression

of riots by the use of firearms. No one can or does pretend that there is any difference between English mobs and Indian mobs, which is not entirely to the advantage of the latter. English mobs go to much greater excesses and are much more difficult to handle than Indian mobs. There is no valid reason therefore for refusing to embody in Indian law safeguards which the English system of jurisprudence has set up. Drastic powers are often quite necessary and ought not to be denied; but those that wield them must be held to account in an effective manner for the way in which they have to use them. The executive can never be allowed to be above law or to be its own judge. We must therefore continue to press for a stiffening of the existing law so that the lives and liberties of the people will be fully protected in emergencies. If only we made a vigorous attempt, it would be impossible for the executive for long to withhold from us the protection which we can rightfully claim.

POLICE REFORM IN BOMBAY.

A noteworthy feature of the yearly budget debates in the Bombay Legislative Council, as perhaps in all other local Councils, has been the criticism levelled by non-official members against the increasing police expenditure. It was time and again pointed out that while the demands of the police department were satisfied with great alacrity, the education of the people received a step-motherly treatment at the hands of Government. The accusation that the former was fostered at the cost of the latter used to be hurled almost every year at the local Government. It was generally believed that the introduction of the reforms would bring about a change in the direction of steadying, if not lessening, the police budget; but the Bombay budget for 1921-22 which provides for an expenditure of Rs. 1,94,09,000 on the police has belied such expectations. This is in excess of the last year's revised estimate by Rs. 13,12,000, nearly two lakhs and a quarter of which is going to be swallowed up by the revision of the pay of Imperial and Provincial Police officers. A portion of the excess is to be utilised towards improving the pay and conditions of service of the Police force. Provision has also been made in the budget for the pay of the Secretary and other charges connected with the Board set up under the new Cinematograph Act to examine cinema films. The reorganization of the criminal investigation department also shares in this increased budget provision to the extent of half-lakh. It will be seen that while some of these schemes, like the revision of pay of the lower ranks, cried for urgent improvement and could not well be held over, others could have waited until the return of better times. At any rate they should not have found a place in this year's budget which shows a deficit of over a crore.

The public would reconcile themselves even to this arrangement, unsatisfactory as it doubtless is, if it could be shown that with the growth of the police budget its efficiency was in-

creasing as judged by the criterion of 'less crime and more detection.' The facts however point quite the other way. A reference to the latest Police Report of the Bombay Presidency, that for 1919, shows that there was an increase of 16,467 in the number of cognizable and non-cognizable offences over that of the previous year. The Inspector-General of Police himself characterises this increase as 'alarming' and thinks 'the time has come when a determined effort must be made to reduce the deprivations caused by these crimes.' As for the reported cognizable crime during the year, it was 47,069 as against 39,311 of the previous year. It may in passing be noted that figures under these heads for 1916 and 1917 had shown a welcome decline. Even after making due allowance for the prevalence of famine conditions all over the presidency in 1918, leading to the letting loose of the criminal elements of the population to a greater extent, it is difficult to believe that with a more efficient police, things would not have been better. Coming to the reported serious crime, the astounding fact is recorded that the total figure for 1919, *viz.* 36,943, was the highest ever recorded. Nor is the proportion of undetected crime showing any signs of decreasing. Thus the number of undetected cognizable cases has risen from 9,789 in 1917 to 16,458 in 1919! This has awakened even high-placed officers in the department to the necessity of taking steps to foster detective ability among the members of the police force with the result that the Inspector-General has prepared a reorganisation scheme of the C. I. D. for which the budget, as said above, provides a sum of fifty thousand rupees and another for the establishment of a school for training detectives. How much this is going to cost, God alone knows! Another proof of this lack of detective ability is seen in the large number of arrests that were made in the course of investigations and in that of persons released without being brought to trial, the former being 39,595 and the latter over a thousand! Is not all this an interesting commentary on the efficiency of the police force in general? Does it not show to what a high state of perfection they have attained?

An attempt is often made to cover up the incapacity and incompetence of our police department by blaming the public for withholding their co-operation from the guardians of peace and order in India and the example of people in Europe and America is held up for them to copy. The reason of this apathy on the part of the public is not far to seek. It is to be found in the irresponsible way in which the work of the department is carried on. Those who refer to the example of the people of Europe and America need not be reminded how very kind, courteous and efficient the police there are. In fact it is hardly any exaggeration to say that they are the real friends of the people whom they are taught to look upon as their masters. How we wish we could speak in equally flattering terms about the Indian police! It cannot be denied that the average cost per head of the police force here is lower than that in any European country.

Indeed, so far as the figures for 1918 go, the cost per policeman in Scotland was three times higher than that in our country. But the smaller scale of pay can be no justification for the existing level of the police force. If they make themselves really serviceable to the people, the people on their part would not be slow to appreciate their merit. Efforts are being rightly made to encourage literacy among policemen with a view to make them the Indian counterparts of their European fellows. Out of a total force of 971 officers and 22,752 men, the number of literates in 1919 was 961 and 12,962 respectively.

That the present police force is not efficient goes without saying. That to improve it so as to make it of real use to the people will require more money is also beyond dispute. But the question is whether any economy is not possible in the present expenditure on the department? The general complaint is that higher posts have in recent years been multiplied without any appreciable improvement being effected in the work of the department. Cannot some of these posts be abolished? If the higher services are Indianised to a greater extent than has been found possible in the past, a considerable amount may be released for improving the efficiency of the department. It cannot be said that there is in India a lack of capable men who can properly be appointed to these places, and unless mere grounds of policy are allowed more than their due share of consideration in the determination of this question, there ought to be no objection to the proposed step. It should also be carefully examined if a reduction in the existing strength of the force cannot be made. Then there is a suspicion that the C. I. D. is over-staffed; and that a number of these *secret* police—the clumsy way in which they do their work hardly justifies that description—make all sorts of unfounded reports even about persons whose motives should be beyond question with a view perhaps to justify their existence lends colour to the suspicion. It is to be hoped that efforts will be made to reduce the budgetted amount for the Police department in the directions indicated above.

D. V. A.

SELECTION.

FIRING ON MOBS.

HON. MR. SRINIVASA SASTRI'S SPEECH.

The following is the text of the speech which the Hon'ble Mr. Srinivasa Sastri made in moving his resolution on the use of firearms in the Council of State on the 3rd instant.

Sir, I move that:—

This Council recommends to the Governor-General in Council that the Code of Criminal Procedure and, if necessary, other enactments be so amended as to secure the following points in the suppression of riots and unlawful assemblies:—

(i) No firearms should be used except on the written authority of a Magistrate of the highest class that may be available on the spot.

(ii) In cases of grave emergency when no Magistrate is available in the neighbourhood, the chief police or military officer present on the spot may, if he considers

that the riot or unlawful assembly cannot be suppressed otherwise, employ firearms, but the onus of proving the emergency and the impossibility of securing the presence of a Magistrate within the proper time shall lie on the officer so acting.

(iii) Before resorting to firearms, the Magistrate or other civil or military officer responsible shall read or cause to be read a proclamation, both in English and in the local vernacular, similar to that contained in the English Riot Act.

(iv) Firearms shall not be used for one hour after such proclamation has been read unless, in the meantime, the assembly or crowd actually causes serious damage to person or property.

(v) Before the crowd is actually fired upon the fullest warning shall be given.

(vi) The Magistrate or other civil or military officer responsible shall take all reasonable precautions to see that no more injury is inflicted on the crowd or assembly than is absolutely necessary.

(vii) The sanction of the Governor-General in Council should not be a condition precedent to the institution of a criminal prosecution against officers or other persons who have acted illegally in the suppression of riots.

(viii) Every such prosecution shall be instituted in and triable by the Sessions Court having territorial jurisdiction, with the previous leave of such Court or the High Court of the province.

Sir, in this resolution I separate the use of firearms from other means that the authorities commonly employ to put down riots or unlawful assemblies. It seems to me that, firearms being a deadly weapon, their use should be expressly sanctioned by the legislature and regulated carefully by its provisions. In England a long series of judicial decisions and a statute known as the Riot Act have placed this matter on an entirely legal basis, so that the law is definite and clear. In India, on the other hand, a few meagre sections of the Criminal Procedure Code embody all the provisions governing this matter. It is curious that in those provisions there is no mention at all of firearms. The words used in that connection are merely "force" and "military force." I do not mean at all to imply that "military force" or perhaps even the expression "force" may not include the use of firearms. That is not my point. My complaint is this,—that the use of such a weapon as a firearm in the suppression of a riot should not be expressly mentioned in a statute that purports to govern the matter, and regulated in detail in its provisions. It is to supply that defect that I have brought forward this resolution. I have taken the opportunity to supply what seem to me to be a few great gaps in the law of India—gaps the result of which we have seen too prominently every now and then in the action of the authorities when they are confronted with occurrences of this nature. Now I will try to show you that, although my resolution reads formidable on paper to those that are not familiar with the law on this subject and although it includes a great variety of provisions, it really is nothing more than the reproduction of either the existing practice in India or the existing practice in England. Every single point that I make here is taken either from the Indian practice to-day or from the English law.

Now to clause No. 1 of the resolution. No firearms should be used except on the written authority of a magistrate of the highest class that may be available on the spot. This is the provision in our own code. Now, whether the written authority of a magistrate is always procurable may be open to question, but I contend that in English law or rather the practice of it, the written authority is an important requirement. I will refer to that matter a little later.

No. 2. I require here the presence of a magistrate, or, if a magistrate be not available the chief police or military officer may take the necessary action. That also is a provision contained in our own Code. Only I make it clear in the latter half that the onus of proving the emergency and the impossibility of procuring the presence of a magistrate shall

lie on the officer so acting. Now this is merely a recognition of the fact that the suppression of a riot or unlawful assembly is primarily the duty of the civil authority of the locality. If, therefore, at any time the civil authority has got to be superseded and its functions assumed by another authority the authority so assuming the functions must be carefully protected. It is in order to protect them that we say that they must secure the presence of a magistrate. If they cannot, they must satisfy themselves that, when the matter is made the subject of a judicial proceeding or of a public inquiry, they should be able to show that they acted in an emergency which made the presence of a magistrate impossible.

No. 3. The magistrate or other civil authority should read or cause to be read a proclamation similar to that contained in the English Riot Act. Now, here at once, before I make the remarks appropriate to this head, I wish to state that the language of this particular sub-division of my resolution leaves something out. I have not said anything as to what should happen in case the situation should not allow of the proclamation being made, in case the riot or unlawful assembly should have been already committing excesses or should have got completely out of hand before the authority proposing to act arrives on the spot. I think therefore that a correction requires to be made and I regret that I left the language in an imperfect state. It would be remedied, if I said, for example, "the magistrate or other civil or military officer responsible shall, unless the situation has got out of hand in the meantime, read a proclamation," etc. I am not using exactly legal language, but I am only trying to make the substance of my amendment clear. Now, the reading of the Riot Act is a provision taken out of the English law which does not find mention in our books. Nevertheless, its object is simply to protect the authorities acting. Now, when life has to be taken and afterwards an inquiry or judicial proceeding takes place, it should not be possible for people who were excited at the time to come and say, "I do not know whether I did this or not." The requirement that a certain proclamation should be made is so clear and striking that no officer performing that operation would afterwards be in a position to plead that he forgot whether he did it or not. It is a landmark in the course of the proceedings, and it is quite desirable that the magistrate should, before he takes the extreme step, be compelled, if possible and if the situation allows it, to take that step. It is not my ingenious view of the matter. That is a view taken by great authorities. Lord Haldane giving evidence before a committee that went into the use of the military on such occasions expressly said that this was a protection. "The Riot Act in 99 cases out of 100 is read. It is for the protection of the magistrate and the military. It forms an additional protection."

Then, too, the reading of the Riot Act and the provision that follows, namely, that an hour should be allowed to elapse before firearms are actually used is also for the purpose of giving time for the riotous assembly to disperse. As a matter of fact, those who have been mixed up with such crowds will easily appreciate the difficulty of extricating themselves from such a place. A man may be perfectly willing to run away from the spot, but he would find it extremely difficult to do so unless he was very strong and very determined and had a number of comrades to help him in the escape. It is really for the separation of the guilty part of the assembly from the innocent part of the assembly that this time of one hour is generally given in the English law. I might say that this is not my view, but the view taken by high authorities. I would just read again the evidence of Viscount Haldane:

"I have known of no case of a riot in which it has not been known that the Riot Act is being read as the magistrate is seen with something in his hand, and they could not hear it if he read it ever so distinctly, but they see the document read, and they think they will be shot down at once, and the lawful part of them disperse; it is the riotous part that remains."

I will read a passage from another writer who says the same thing. He rejoices in the happy name of Wise. He says:—

"The timely warning given by the reading of the Riot Act brings many to a sense of their danger and, as far as possible, ensures the speedy vindication of the law, or at least the separation of the innocent from the guilty."

Now, it may be said, to allow an hour to elapse might be a very dangerous thing when the authorities are faced with a determined mob. It is perfectly true. Nobody says that this hour should in any and every case be allowed to elapse. I have provided, unless in the meantime the mob gets out of hand and perpetrates felonious crimes, in which case, even before the hour is over, the authorities are free to resort to the use of firearms and to adopt extreme measures.

Then the next thing that we come to is No. 5: "Before the crowd is actually fired upon, the fullest warning should be given." Now that is a provision already contained in our Police Manual. It is nothing new that the fullest warning should be given. Now the meaning of this warning has been somewhat misunderstood. People used to think some years ago that this warning consisted in the police at first discharging a few blank cartridges. That, however, is an idea that has now been absolutely exploded, and I will just read the reason which Viscount Haldane alleges as underlying this abandonment of the practice of using blank cartridges at first. He was asked:—

"Do not you think it desirable to use blank cartridge first of all, after the Riot Act is read?"—"It is most undesirable because the mob get it into their minds that you have nothing but blank cartridge, and they come on and get killed. The military authorities say, 'We are here, and if we use our firearms it is to kill.' That is why we demur to being called out except in the last and most perilous necessity. If the mob get the impression, we are there with only blank cartridge, and the result will be bloodshed galore."

This provision, that no blank cartridges should be used, has been adopted recently in all our Police and Drill Manuals. So that on that point the practice here has been brought into line with the English practice.

No. 6. "The magistrate or other civil or military officer responsible shall take all reasonable precautions to see that no more injury is inflicted on the crowd or assembly than is absolutely necessary." That is contained in our Code already. It is also in our Police Manual, and it is in entire conformity with the English practice.

Clause 7 says that the sanction of the Governor-General in Council should not be a condition precedent to the institution of criminal proceedings against officers or other persons who have acted illegally in the suppression of riots. This, too, is in conformity with the English practice. In England it is considered axiomatic that where a severe step of this kind has had to be taken by the authorities, the individuals aggrieved or the public should have it in their power to bring the proceedings under the scrutiny of a judicial tribunal; a judge and jury determine the matter and the individual subject who feels himself aggrieved has his remedy. I do not think the idea would be tolerated for a minute in England that these proceedings should not be made the subject of a scrutiny in a court of law. In fact, if I may read for one moment a great authority on the law of the constitution, Dicey, we see this:—

"Officers, magistrates, soldiers, policemen, ordinary citizens, all occupy in the eyes of the law the same position. They are, each and all of them, bound to withstand and put down breaches of the peace, such as riots and other disturbances. They are, each and all of them, authorised to employ so much force even to the taking of life, as may be necessary for that purpose, and they are, none of them, entitled to use more." Here follows the important part:—"They are, each and all of them, liable to be called to account before a jury for the use of excessive, that is, of unnecessary force."

Now, from the evidence from which I have been reading so often, from all text-books on the subject of English law, from the common law text-book written by that great authority, Odgers, passages could be cited, which, however, I will not do on this occasion, to show that the judicial tribunals are always open to receive complaints against the use of excessive or unnecessary force. It is only in India that it has been considered necessary practically to shut out all such inquiry from law courts. I use the word "practically," because our Code says that such proceedings may be instituted with the previous sanction of the Governor-General in Council. I do not know why. We know that in all provinces there have occurred riots and unlawful assemblies fairly frequently, riots and unlawful assemblies have had to be put down and lives have been lost. Nevertheless we have not got one reported case on the subject in our body of reports. In other words either the people have not applied for the sanction of the Governor-General in Council and sought a remedy in the courts or, where such application was made, it has not been granted. I do not know which the fact is. But one thing we know; we must not draw hastily any inference from this fact. You must not suppose that because there have been no published reports on this subject the public in India have always been quite satisfied that on every occasion that the authorities have employed firearms they employed them rightly and they employed them just to the extent required and no more. On the contrary, most of us know that immediately such a thing happens, lots of complaints appear in the papers and loud demands are made for a public inquiry; and I do not think I am exaggerating facts at all when I say that in nearly all these cases within my experience there has been left a soreness of feeling in the minds of the public that the law has not been vindicated. At any rate their minds are left in a state of great dissatisfaction. Now, I venture to think that it is absolutely necessary that we should place the Indian law in this matter on just the same footing as the English law and that we should allow people who feel themselves aggrieved to go to courts of law without let or hindrance. Sir James Fitz-James Stephen, that great authority on Indian law as on all law, has given a reason why in India this restriction is placed on the institution of judicial proceedings as a result of the suppression of riots or unlawful assemblies by force. The two chief reasons he gives are these that if that was permitted, a great number of law suits, both civil and criminal, would be launched against the officers acting and it would be impossible to deal with them. The second reason alleged is, that this particular evil will grow worse and worse as the Indian lawyer grows in strength and in efficiency. Now, I can understand executive officers sympathising with arguments of this kind. I can understand officers called upon to exercise these severe powers naturally shrinking from being called upon subsequently to account for the way in which they have been used. But I would ask fair-minded people to consider whether it is perfectly right that such extraordinary power as the taking of life should be given to the executive in any country without their being called upon subsequently to explain the circumstances in which they used that great power. It seems to me that the claim of the executive in this country to set up as their own judges is absolutely without justification. They cannot say, "If we have used firearms we will ourselves later on make an inquiry and then publish the information to the world that we have found everything satisfactory." If you entrusted mere money to an officer and asked him to spend it, you all require that somebody else should come and audit it, not that officer himself or his executive superior. The other day we were told by the Hon. the Finance Minister that we are going to have an Auditor-General who is going to examine the way in which all monies are spent by officers of the Government, and being himself independent of the Government of India, he is to report only to the Secretary of State. Now if that is the principle to be observed in matters where money is concerned, ought not the same principle to be applied where you have human life to deal with. People come and take away human life. They may have done so with every justification, but the public have got

the right to insist that matters should be inquired into. It is for the protection of the executive themselves. They must not be so self-righteous as to say "We are satisfied that everything was right; everybody else shall be satisfied as well." I think this is a position which the executive ought not any longer to take. Now, the essence of a good law, I have heard jurists explain, is not the mere enactment of substantive provisions, but the embodiment of suitable remedies at law. It is not enough to vest a right in a man. You must further provide that he has the power and unrestricted opportunity of exercising that right. It is not enough to impose an odious duty on the executive. You must further empower the law courts to see that the executive have used their power properly and with due regard to public safety. It is the presence of remedies rather than the presence of substantive provisions that constitute the merit of any law; and I am afraid the provisions of the Criminal Procedure Code on this subject judged by this test fail lamentably. There are no remedies. Now the two ways in which ordinarily this matter is satisfactorily settled are either by a judicial proceeding such as is so frequently reported in English Law Reports, or by means of public inquiry. Now I have already explained to the Council how the first remedy is practically shut against us. The requirement that the Governor-General in Council should previously sanction such a prosecution has effectually shut that remedy against us. What is the other remedy? A public inquiry which will satisfy the people concerned that everything has been done with due care and caution. Now what happens in India? It is remarkable; I cannot conceive of people being shot down in England without the ministers responsible being ready, at a moment's notice, to grant an inquiry should any one say he was not satisfied and he wanted an inquiry. In India, most extraordinary to think, you find that the public have to kick about and agitate and cry aloud and raise a hue and cry before a Government will appoint a public investigation. I think that is not as it should be. The authorities responsible should be ready, especially as they have shut out judicial courts from access, always to grant a public inquiry: "Here we are, we have done our duty, you come and examine matters." On the other hand, if after very great trouble we secure an inquiry, I have known a Government appoint the head of the district himself to conduct the inquiry—the head of the district whose conduct and whose mishandling of the situation had brought about the whole affair; he himself in one case sat to enquiry. In another case that I remember, the finding was that the firearm or the rifle went off by accident. Now this accidental firing is a thing with which we are fairly familiar in India. It is not only in the suppression of the riotous assembly. Even in judicial trials, when people have been shot down, we have often known a rifle to go off by accident. Now I do not wish to be very hard, but I think the military authorities would be well advised, if things go on like this hereafter, to require all manufacturers of rifles and all other firearms to label every item that they sell: "Warranted not to go off at its own will." Now, we do not want the firearms in the possession of the police or the military any longer to go off of themselves. Then in another case, that I know of (this quite recent), the Government promised an inquiry, but for some reason they laid themselves open to grave suspicion by subsequently refusing it, the suspicion being that, in the course of their own departmental inquiry, they came upon facts which they did not like the public to know and which a public inquiry would certainly have exposed. Now, things of that kind are intolerable in a well-developed system of jurisprudence. I venture to ask one question. This Honourable House may remember time after time when the executive came to us with requests for power, when the Press Act, for example, or the Rowlett Act was passed, and we called in question the provisions, the invariable answer from the executive was—"Why do you object to this? Are you ever going to offend against these salutary provisions? It is when a wicked person transgresses these necessary provisions that we are going to collar him by means of this law. Why do you object? You are a respect-

able man; why need the innocent be afraid of a measure of this kind?" Now, sir, in political controversies, it is an exceeding joy to be able to hoist people with their own petard. If I ask that judicial remedies should be made available, open and unrestricted after acts of this kind, why should the innocent officers care at all? Should they come forward...

Hon. the President:—I would remind the Honourable Member that his time is already up, and yet he has to develop head No. 8. I would ask him to do so as shortly as possible.

Hon. Mr. Sastri:—I will only say one word on No. 8 before I sit down. I am very thankful to the Hon. the President for allowing me to continue after my time is up.

In No. 8 I provide something like a half-way house between the unrestricted allowance of judicial proceedings which prevail in England and the very restricted manner in which that thing operates in India. Judicial proceedings shall be taken, I provide, only in courts of high standing, in sessions courts, and even in their case they should not be instituted as of course, but with previous leave obtained, because I understand that generally it would be a check on all frivolous prosecutions.

I move the resolution.

HON. MR. SASTRI'S REPLY.

In replying to the debate, Mr. Sastri said:—

Sir, I am rather saddened that the Government seem to have made up their minds to resist this attempt of mine to give them an opportunity of showing that their executive officers in the exercise of the severest powers that they have will be allowed to come under the domain of law. It is extraordinary that this resistance should be offered to an attempt to place the Indian law on a level with that system of jurisprudence which it is the pride of the British race to have evolved, after a struggle of centuries, after sacrifices made of an unparalleled character on the part of the people, after heroic defences conducted by the Bar and manful deliverances from the judges. It is extraordinary that an attempt should be made to resist this desire of mine to place the Indian law on an equal footing with that magnificent system of English law under which it is our privilege to have come. His Excellency the Commander-in-Chief, whose intervention in this debate I welcome for various reasons, told us that there were regulations already in existence and more regulations were being framed. Sir, I knew of these regulations. I knew there was no dearth of regulations. Our Police Manuals are quite full of them; our Drill Manuals are quite full of them. I have no objection to them at all. But they are not law and an aggrieved subject cannot make them the ground of an action at law. If the provisions were in a legal code, they could be made the ground of action.

Besides, an appeal was made to our sympathy—an appeal, strangely enough, on the part of the officer who shoots, not on behalf of the victims who suffer. But let that pass. I am not without sympathy for the officers concerned. Their duties are extraordinarily difficult; but those duties are difficult, not here only, but in England as well. Lord Haldane describes the condition of such an officer as that of "a man compelled to walk on the edge of two precipices." But he adds, law is a sensible institution after all. In 99 cases out of 100 the thing works out somehow well. People do not apply the rigour of the law, but they take into account all the attendant circumstances of the case, and where a concrete consideration is given, however, a theoretical study might raise difficulties, they somehow or other square out well in the end.

Now, let me read to you one extract from the Manual of Military Law which cannot be unfamiliar to the officers of Government. This point, that the officers called upon to exercise military force in the suppression of riots are placed in an extraordinarily difficult situation, has been allowed. The point was raised by no less a person than Sir Charles Napier. The answer is given in the summing up of Mr. Justice Littledale in the case *Rez. v. Pinney*:

"Now a person, whether a magistrate or a police officer, who has the duty of suppressing a riot, is placed in a difficult situation, for if by his acts he causes death, he is liable to be indicted for manslaughter or murder, and if he

does not act he is liable to an indictment or information for neglect. He is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be a matter for your consideration; but that, difficult as it may be, he is bound to do. Whether a man had sought a public situation, as is often the case with mayors and magistrates, or whether as a peace officer he has been compelled to take the office that he holds, the same rule applies, and if persons were not compelled to act according to law, there would be an end of society."

And then this Manual proceeds to say:

"At the same time the law has made liberal allowances for the difficulties of persons so circumstanced and persons whose intention is honest and upright and who act with firmness to the best of their judgment need seldom fear the results of inquiry into their conduct."

Now, that is the law that I seek to embody. I ask, is it fair to wish to have it all in favour of the officer who takes life, no doubt under a sense of duty? The Hon. Sir William Vincent made much capital of the fact that I asked for an hour before shooting should begin. I made it clear, I thought, at that time; even if I did not incorporate it here as I have, I made it clear that there may be cases where even during that hour a mob should get out of control and it may be necessary for the officers to start firing, that I did not object to it at all. In fact that is the English law; and as I seek to reproduce only the English law he need not have objected to it; and as I say the Hon. the Home Member made some capital out of the circumstance that I had failed to provide for it.

Now, there is one little circumstance which I might point out. The Hon. the Home Member and several others who spoke thought that I was demanding an extravagant requirement when I said that the permission of the magistrate should be in writing. This is from Odger's Common Law:—

"It is primarily the duty of the magistrate, if one be present, to decide whether the time has arrived to use deadly weapons; if he decides that it has, it is for him to instruct the officer 'to take action,' and he generally does so in writing."

I did not say it was the English law; I only said at that time that it was the English practice. I quite remember, because I knew it definitely. Now let me read another thing which may be interesting. There is a King's Regulation—I have not been able to verify it—to which Mr. Odgers refers: that is King's Regulation No. 963. Apparently this requirement of a written order is there, but I have not been able to verify it.* The Police Code in England, however, has this provision:

"If after the Riot Act has been read and an hour has been allowed the mob to disperse it is found necessary to adopt more forcible measures, to prevent further damage to property or danger to life, either by firing on the people or charging them either with drawn swords, fixed bayonets or drawn truncheons, the written order of the principal magistrate present should be *invariably* first obtained, either by an entry in the pocket book of the officer in command of the police or troops, or the signature of a pencil memorandum to this effect:—

"I authorise you to charge the mob with drawn swords or truncheons (or fixed bayonets) or to fire on the mob."

(Date and hour.)

(Signature.)

The very form of the written order is given. It was not then an extravagant thing that I was asking for, it was not an unimaginable thing.

Then about that important matter. The Hon. the Home Member said that if the Governor-General's sanction was required, it would be given in proper cases. The Hon. Mr. Dadabhai told us that the Governor-General's sanction is no longer required, but that the sanction the local Government would be enough. I do not know what is the present state of law; whatever it is, let us consider a little. A grave

* King's Regulation No. 963 does provide for a written authority. We have referred to it under "Topics of the Week."—Ed.

occurrence is the subject of a communication to the Governor in Council or the Governor-General in Council. His police officers, his magistrates, are accused of having used unnecessary force. His sanction is sought for a prosecution. We know how these things go in such cases. The Governor in Council has hitherto tried every means, even of avoiding a public inquiry. Is he likely to afford the sanction for a criminal prosecution? Is that the way in which things go on in England? When one officer errs and you wish to bring him to book, do you go and ask the permission of his immediate superior? Or do you go and sue him in a court of law? It is something that the Indian law cannot be proud of. It belongs, if I may say so, to a barbarous age. It ought to go out of the statute book. To require the sanction of the Governor-General in Council or the local Government to prosecute an officer for what would be murder or man slaughter is to ask, I think, for the impossible. The executive hang together, high and low. When an officer is accused, the whole of his department with all its moral force comes down, whether in a court of law or in the public or anywhere, to prove that the officer is in the right and the complainant is in the wrong. To make a prosecution conditional on that superior giving his previous sanction to it is effectually to close the jurisdiction of the court. Now I object to all legislation which shuts courts out of their natural and proper jurisdiction. There is too many a law on the Indian statute book of this character vesting the executive themselves with powers which ought properly to belong to a well-constituted and independent judiciary. I beseech Government not to stand by this requirement of the Governor-General's or the local Government's previous sanction. That is really, as H. E. the Commander-in-Chief pointed out, my principal complaint, the head and front of the offence of that chapter in the Criminal Procedure Code. That sanction has never been given. If you let it stand, it means you want for the executive in this country far greater powers than the executive in England possess. There they do not want *altogether* to be shielded from all prosecution. They are quite prepared to go and stand their trial. As I said before, not only every officer but every individual citizen stands in a difficult position. If I am called upon by a magistrate to help him in suppressing a riot and I do not assist him, I stand liable in law. If I assist him to do things which he ought not to have done, I stand liable also. This difficulty does not exist peculiarly in the case of the officer for whom so many piteous appeals are made, but it exists in every body's case. The officer has abundant facilities to protect himself from frivolous or vexatious prosecutions. The whole of his Government is behind him, the best legal talent will be engaged for him. Is he to be pitied or the private citizen who has been shot down or who has been maimed? Really, I am amazed that people should seriously sustain a provision which throws him entirely out of the protection of courts which are constituted for the protection of the poor and the needy just as well as for the protection of high-placed officers. It appears to me, Sir, that the Government will be well-advised to produce an impression by accepting my resolution, or at least by accepting my resolution in substance if not literally, and establishing the hope that future legislation will go on healthy and wholesome lines. At least I hope that this particular provision, which gives the executive in this country illegitimate protection,—protection to which they are not entitled in any enlightened system of jurisprudence,—that this provision will disappear.

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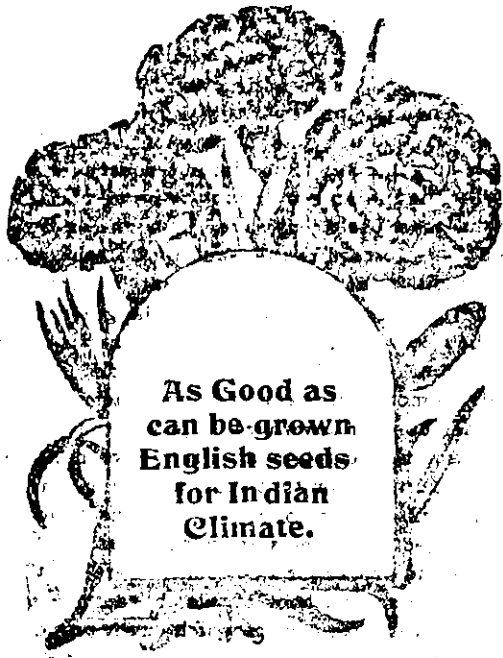
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