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[Confidential.]

No. 1319, dated 10th November 1893.

From—H. C. FANEHAWK, Esquire, Offg. Chief Secretary to Government, Punjab,

To—

I AM directed to forward for ^{the information of the Judges}_{your information} a copy of the correspondence noted in the margin, regarding the desirability of making certain amendments in the existing law with a view to more effectually controlling the agitation which has lately been caused by cow-protection societies and the disturbances of the peace which have arisen from these proceedings.

Letter from the Government of India, Home Department, No. 1463, dated the 6th of October 1893, and enclosures.

2. The Lieutenant-Governor will be glad to receive ^{the opinion of the Judges}_{your opinion} upon the matters noted in this correspondence and the amendments of law treated by the Government of India by a very early date, and I am further to invite your consideration to the following other suggestions which have been made in this connection :—

(1). It has been suggested that the proposed amendment of the Penal Code by the insertion of the two draft Sections 510 A and 510 B prepared by Mr. Deas would not go far enough for the object in view, and moreover that in the case of prosecutions under these sections it would be necessary to enter on difficult questions as to the constitution and rules of the caste to which the person, the "injury" to whom (see Section 44 of the Penal Code) would form the subject of investigation, might belong. It might be desirable if this is so to provide, instead of or in addition to Mr. Deas' sections, that it should be an offence to belong to a society or join in a conspiracy or attend a meeting if the objects of the society or conspiracy or meeting were to create such religious excitement or such antipathy between any persons of different religions or sects as might lead to a breach of the peace or the commission of an offence.

(2). Chapter IX of the Criminal Procedure Code, it is generally understood, notwithstanding its heading, gives a Magistrate power to forbid persons from attending a meeting if the meeting is likely to lead directly to a riot or affray. A doubt, however, has been suggested as to whether it gives a Magistrate a like power in a case when the meeting is merely likely by creating popular excitement to lead indirectly and perhaps after some interval of time to such a result; and if this is doubtful, it would seem desirable to amend the chapter so as clearly to give this power.

(3). Chapter XI, Criminal Procedure Code, does not contain any special provision like Section 140 in Chapter X providing a means of enforcing specific performance of an order issued under it. If the prohibition made by a Magistrate under Chapter XI is disregarded, it only remains to institute a prosecution under Section 188, Indian Penal Code, after the mischief has been done. Chapter IX of the Criminal Procedure Code gives power to disperse an assembly of four or more persons likely to cause a disturbance of the public peace, but this does not meet the case of its being generally desirable to prevent the collection of an assembly, and it is doubtful whether the difficulty raised under (2) does not apply here also. It would seem desirable therefore to empower a Magistrate under Chapter XI, Criminal Procedure Code, to arrest any person attempting to disobey his prohibition and to detain him in custody for any period not exceeding a short fixed term unless he meantime gave security for observing the prohibition.

(4). Chapter VIII of the Criminal Procedure Code (see in particular Sections 107 and 108) gives power to require security and in urgent cases to arrest a person who there is reason to believe is likely to do "any wrongful act that may probably occasion a breach of the peace." It would probably greatly strengthen the hands of Magistrates for the purposes under consideration if similar powers were given when there is reason to believe that a person is about to do ANY act which is likely to create such religious excitement or such antipathy between persons of different religions or sects as may lead to a breach of the peace or the commission of an offence.

Punjab Government Press, Lahore—20.1.94—20.

Sir M. Plowden's
note

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Dated Lahore, 25th November 1892.

From—F. L. BAILLY, Esquire, Offg. Registrar, Chief Court, Punjab.
To—The Chief Secretary to Government, Punjab.

I AM directed to forward confidentially the accompanying memorandum by Sir M. Plowden on the subject of your confidential letter No. 1219, dated 10th November, regarding amendments in the existing law with a view to controlling Cow Protection Societies.

Memorandum by Sir H. M. PLOWDEN on Secretary to Government's confidential letter No. 1219, dated the 10th November, and enclosures.

In discussing the proposals suggested in the correspondence forwarded by the Secretary to Government, Punjab, I regard them merely from the legal point of view, taking it for granted that the Executive Government are, from the administrative point of view, correct in saying that legislation is needed to bring the anti-kine-killing societies under control, and to give the Executive larger preventive powers in order to check an agitation which threatens to become a public danger.

I take exception to the form of the suggested measures so far as this involves alterations in, and extensions of, the general criminal codes of the country, the code of offences and the code of procedure in order to meet the exigencies of the assumed emergency.

In India, outside the Presidency towns, there is no common law as regards crimes as there is in England. The whole body of the substantive criminal law of India (except as above) is comprised in two large divisions—(1) the Penal Code, (2) Local and Special Laws.

In England the criminal law is comprised in the Common Law and Statute Law, and there is no Penal Code, nor anything which even resembles a Penal Code, so far as that code defines offences. If a combination of circumstances arises in England which is beyond the reach of the Common and Statute Law, which compose the criminal law, and which it is necessary to take powers to repress, the only means is an Act of Parliament which is added to the general body of the criminal law of the country, and in particular to the branch of it which consists of statute law.

In India under similar circumstances there arises a preliminary question which cannot arise in England, by reason of the difference in the criminal law of the two countries in point of form, and that question is, whether, in order to gain the object in view, the Penal Code needs alteration, or whether an addition shall be made to the body of special and local laws. It does not by any means follow, because the Penal Code, which is not, and was not intended by its designers to be, an exhaustive body of substantive criminal law, does not extend to a particular form of evil-doing which calls for penal repression, that therefore the Penal Code is defective.

In regard to many subjects this remark is a mere common-place: it is obvious that the proper remedy is by a local or special law, especially when the particular subject has already been treated in a special enactment. With some topics, however, not already the subject of specific enactment, it may easily be overlooked that there is such a preliminary question, especially as it cannot arise in England.

It is no doubt an easy thing to make an addition, especially when it seems to be a simple addition, to the Penal Code, and it may be a good deal easier to do this than to frame a special law. Nevertheless, the apparently easy and simple addition may be one that goes to the root of the principles upon which the Penal Code, as a complete structure, is based, and may extend the boundary line of the general scope of the Code, as deliberately laid down, after the maturest deliberations, by its authors and the Legislature.

An illustration, very intimately connected with the suggestions before us, may make my meaning clear.

The so-called English law of conspiracy is as indefinite as any branch of criminal law well can be, with the exception perhaps of the law as to spreading false news. In the English law conspiracy is always a distinct substantive offence. Up to a certain point the law is definite:—"When two or more persons agree to commit any crime, they are guilty of the misdemeanor called conspiracy, whether the crime is committed or not" (Stephen's Criminal Law, Article 148). Certain species of conspiracy are more or less precisely defined, such as seditious conspiracy (Articles 92, 93), conspiracy to defeat justice (Article 142) and some others, and for the present argument it may even be conceded without discussion that the law as to trade unions and conspiracies in restraint of trade is fairly precise (Articles 390, 392). But

then there remains the rest of the law of conspiracy, which is hopelessly indefinite, as any one will perceive upon reference to Chapter XVI of Sir FitzJames Stephen's work entitled "Undefined Misdemeanors," with the sub-head "Acts involving Public Mischief" (Article 160 and note).

In the Indian Penal Code conspiracy has a narrow and perfectly definite meaning. Conspiracy is not a distinct substantive offence; it is a mode of abetment; criminal conspiracy being in substance co-conspiracy (as defined in Section 107) to commit an offence (Section 108), that is, something punishable by law. Whether the commission of the offence is a means or an end is immaterial. Criminal conspiracy, thus defined, stands upon a truly scientific basis; for conspiracy in its nature is always a means to an end. The American Jurist, Bishop, views it as falling under the title "attempt," and regards conspiracy, truly viewed, as being "the corrupt agreeing of two or more persons to do by concerted action something unlawful either as a means or an end."—(3 Bishop, Section 171).

Nothing is easier than to frame a more extended definition of criminal conspiracy than is contained in the Penal Code, so as to include all acts or some particular classes of acts injurious to the public which are not offences, but to do so would be to disturb a fundamental provision of the Penal Code as an organic structure.

It is an organic portion of the Penal Code that conspiracy is a mode of abetment, and that criminal conspiracy is restricted to abetment of offences. The legitimate way of extending the operation of the law of conspiracy in conformity with the principles on which the Penal Code, as a structure, is founded would be to define a new offence, on which the definition of abetment by conspiracy will act automatically.

As to the English law of spreading false news, I need only refer to Article 95 of Stephen's Digest and Note to bear out the observation I have made upon it.

It is common knowledge that the Penal Code was framed after full consideration of the criminal law of England, and it is a perfectly legitimate inference that the authors of it, with full knowledge of that law, deliberately restricted the law of conspiracy in the code to conspiracies to commit offences, and the law of spreading false rumours, as provided in Section 505.

The avowed purpose of the proposals of Mr. Dens adopted by the Government of the North-Western Province is to bring the law of conspiracy in this country into agreement with the English law on the subject.

Omitting for the present the question whether the proposed Sections 510 A. and B. will effect this purpose, I desire to raise my voice earnestly against any attempt of the kind.

Considerations somewhat similar to those already instanced arise on a proposal to amend that portion of the Code of Criminal Procedure which gives the Executive powers of interference with the exercise by individuals and groups of individuals of the ordinary rights of personal liberty. I do not of course deny that it is, practically, necessary that the Executive should have some such powers, as in fact it has. My position is that the limits of this power of interference should be defined, as I believe they are, on some clear principle, and no extension should be made in the direction of abridging the sphere of liberty, without due consideration of the principle already adopted.

Chapter IX of the Criminal Procedure Code proceeds upon the principle that where there is an actual menace to the public tranquillity by an assembly of 5 or more persons, it is time for the Executive authority to interfere, whether the assembly be lawful or not, and the chapter confers powers on the Magistracy and Police in respect of measures to be taken to preserve the public peace. Chapter XI, as I understand it, supplements Chapter IX, as well as Chapter X, notwithstanding its title, which must give way to the specific provision in Section 144, if there is any apparent inconsistency.

By that section specified officers may, if immediate proceeding seems desirable, and in cases of emergency by an *ex parte* proceeding, issue an order in writing, directed to the public generally when frequenting or visiting a particular place, to abstain from a certain act, if such direction is considered to be likely to prevent or tends to prevent annoyance or injury to any persons lawfully employed, or a riot, or an affray.

Now, I do not think it is necessary to discuss, even generally, the limits of the power here conferred; my point is that great caution and careful consideration are needed before any alteration is made in Chapter IX or Chapter XI which might have the effect of abridging the liberty of public meeting, among any section of the community, in order to discuss in public and in a lawful manner any matter which is, or appears to them, a matter of public interest for the time being.

As I understand the existing general law, in the presence of a visible imminent danger to the public peace, the Executive is authorised to interfere. It is a very large question whether the authority should be extended to meet the case of prospective danger looming in the distance even if it be plainly discernible to the keen vision of the Executive Government, looking ahead for all approaching dangers. If there be anything in this view of the

matter, it is not necessary to consider whether a power of interference should be entrusted to Magistrates or even to a District Magistrate, on his own opinion of the probable results, more or less remote, of a lawful assemblage.

It is possible to conceive that the consequences, immediate or proximate, of any injudicious exercise of so large a power might be more fraught with danger than the assembly thereby prevented. Suppose, for example, that such a power already existed and a Presidency Magistrate had chosen to forbid a meeting of Europeans in Calcutta to discuss the Ilbert Bill, or the District Magistrate of Lahore had chosen to prohibit the recent visit of the Congress to Lahore? Only recently the Home Secretary in Parliament defended his action in abstaining from interference with Socialist meetings in Trafalgar Square on the ground that such meetings were in his opinion a safety-valve. Any general increase of power to the Executive which tends to stifle the public discussion of grievances, apparent or real, by reason of apprehension of creating popular excitement which may hereafter prove dangerous, seems to me a hazardous thing in itself, and it should not be undertaken without careful consideration.

Briefly, it appears to me that, granting the societies under notice must be watched, in all their movements, and even to be brought under control by making provision for that purpose in a legislative enactment, the first question, and a most serious one, is whether the present occasion justifies moulding with the general law of offences, and of Criminal Procedure, so far as that relates to the preventive powers of the Executive, or whether it cannot most appropriately and adequately be met by a special law including the amendment of existing special laws.

What is the particular case which is presented to the Government with a view to legislation?

These anti-kine-killing societies are ostensibly societies for a lawful purpose, and their legitimate objects are capable of being effected by lawful means. As a matter of fact some of the methods they employ lie in the border-land of lawful and unlawful or criminal acts. Any member who crosses the line and is guilty of criminal intimidation or extortion becomes amenable to the Penal Code. Among the means used to forward the objects of the society are threats of excommunication. Whether such threats are threats of injury (within the meaning of Penal Code) to the person, reputation, or property is deemed a debateable point. It seems more certain that Hindus prefer to submit to directions given and demands made by the officers and agents of these societies to complaining against them in Criminal Courts.

I venture to think that no case is made out here for the amendment of the general law of offences; and it seems to me that there is considerable danger if the Code is dealt with on the lines suggested of something being enacted which may be found at variance with its fundamental principles, and may cause other unintended results.

The definite proposals of the North-Western Government are contained in the draft Sections 510 A. and B. Let these be compared with existing law. If any person engages with one or more persons in any conspiracy to threaten another with any injury to his person, reputation or property with intent to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, every such person is guilty of the offence of abetment of criminal intimidation, if an act or illegal omission takes place in pursuance of that conspiracy. It is not necessary that the abettor should concert the offence with the person who commits it; it is sufficient if he engages in the conspiracy in pursuance of which the offence is committed; and it is not necessary that the act abetted should be committed (Section 107 and Section 108, ex. 2 and 5).

By the proposed sections, two or more persons whose common object is by causing injury or threats of injury to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do are an unlawful society, and every such person is punishable.

"Injury" has the same meaning throughout all these provisions, that is "harm illegally caused"; and whether exclusion from caste is or is not injury, it is or is not so equally for the purposes of Section 503 and of the draft sections. Assuming that it is, as seems to be assumed by Mr. Doss and the North-Western Provinces Government, I am inclined to think that proof which would establish that two or more persons had the common object described in the draft section would also in most cases establish against the same persons abetment by conspiracy of criminal intimidation.

If "injury" does not include excommunication the draft section does not effect its purpose. No one I suppose could venture to propose amending Section 44 of the Penal Code by the simple expedient of striking out the word "illegally" so as to extend "injury" to include excommunication.

In my opinion it would be better to frame a special Act, as appears to be suggested by the Advocate-General of Bengal, for the purpose of dealing with these or similar societies than to alter the Penal Code and the General Code of Procedure. In paragraph 5 of Mr. Das' note they are already styled "unlawful societies," but beyond reach of the law. One of the purposes, however, of his note, as it might be of any act dealing with them specifically, would be to define unlawful as distinguished from lawful societies, and the proposed definition does not seem of much value. If persons combine together in order to commit acts either as a means or an end which are an offence whether we call them an unlawful society or not, they are all liable to punishment if any act is done in pursuance of the combination. If they combine together to do acts which are not offences by means which are not offences and, whether by reason of the object of the conspiracy its methods of pursuing them (not being criminal) the confederacy is productive of danger to the public tranquillity and inconsistent with the maintenance of good Government, it may be justifiable for the legislature to describe it as an unlawful society and repress or control it by an act specially framed for the purpose. It may be a difficult as it certainly will be a delicate task to frame a special Act; but the whole subject is one of delicacy and therefore of difficulty. It would be equally difficult and delicate, I think, to frame a section to be added to Chapter XX of the Penal Code (offences relating to religion) or Chapter VIII (offences against public tranquillity) directed against societies or meetings of which the objects are to create religious excitement or such antipathy between persons of different religions, or such as might lead to a breach of the peace or commission of an offence. But if it is not possible to frame a satisfactory special Act directed against these societies, so far as they are a danger to the community, it would be to my mind a very strong argument against attempting to control their operations by any legislation supplementary to the existing law. It would be no argument for altering the general law.

I regret that it is impossible for me without undue delay to discuss more particularly the subjects of the present reference. I can add little to what I have already said. The least objectionable proposal in my opinion is that contained in paragraph 1 of Mr. Fanshawe's letter; but even that proposes an exception to the general rule that there must be reason to anticipate a wrongful act.

On the regulation of the Press I have only this observation to make, that I think the factless writing in some English papers, which are not organs of native opinion, has mischievous effects of the same inflammatory tendency (although not so direct) as writings in the Native Press upon to suspicion of the design. It may perhaps lend some weight to the arguments on the principal topic of this memorandum that no suggestion has yet been made to amend the Penal Code by a general provision as to the publication of writings on religious subjects which have a tendency to excite religious antipathies and thereby cause risk of danger to the public tranquillity.

Memorandum dated 27th November 1893, by A. H. BENTON, Esquire, Judge, Chief Court, Panjab, on the Chief Secretary to Government Panjab's Confidential No. 1219, dated 10th November 1893.

On receiving the letter from Government and its enclosures and seeing what the subject was before I had leisure to peruse them, I asked myself the question "Supposing I were a District Officer responsible for preserving the public peace, what legislative assistance beyond the law, as it stands, should I like to obtain?"

I came to conclusions which a perusal of these papers has served to confirm, that I would be satisfied with some slight additions to the Penal Code and a corresponding alteration of the Criminal Procedure Code, my chief dependance being on the latter.

I think it very desirable that any such alteration of the law should be introduced by a very decided declaration of the fixed policy of the Government in this matter and of its unwavering determination to uphold it, expressed in terms similar to those used in the Government proclamation of the 29th March 1849 on the annexation of the Punjab. This might be given in the preamble to the Act as briefly as possible; but I think it would be justifiable to make the preamble for this particular Act a good deal longer than is usual in the legislation of the present day. I do not think this is at all necessary for this Province, but I am of opinion that it might probably do much good elsewhere. The people of the Punjab have had an excellent object lesson in this matter since the days of annexation. They have seen or they have heard that the slaughter of kine was prohibited under the Sikh Government, and they know that that prohibition was removed and a system of toleration was introduced and maintained without faltering. There are very few I would hope who dream that any alteration of the policy need ever be thought of. As instances of the very beneficial effect of announcements of the policy of Government I would mention Sir Auckland Colvin's reply to Mr. Hume and Lord Dufferin's St. Andrew's Dinner Speech and the result on the Congress agitation, which has been waning ever since; and I would also refer to Sir Robert Egerton's circular with regard to the Sarangi processions, which have since been tolerated without demur and are now never heard of, although previously they gave constant trouble to all District Officers around Delhi and were frequently the cause of serious riots.

The amendment to the Penal Code I would propose is an addition to the definition of unlawful assembly in Section 141, which might run, using the language of paragraph 1 of the Government letter with slight alteration: 'Sixth. — To create religious excitement and antipathy between persons of different religions or sects, or to be present at the delivery of addresses made or at consultations held with this object.'

The objection may strike one that the proposed amendment is of doubtful expediency inasmuch as the objects which render an assembly unlawful according to the definition as it stands contemplate either the immediate commission of offences or the use of force for criminal or illegal purposes, while the addition only suggests a preparation which might or might not result in breaches of the public peace. I do not think that this is any serious objection, but that the enactment would be justified by the circumstances of this country, where we everywhere find rival religions and rival sects face to face.

The antipathy contemplated is of course a serious, a bitter antipathy; but I think that an antipathy which arises from religious excitement among people mostly ignorant must always be a grave danger to the public peace and that the explanatory words to be found in the Government letter may be omitted with advantage. It is quite possible I can see that Christian and other Missionaries might by their conduct render themselves liable to be dealt with under the Penal Code if amended as proposed, but I do not think this objection should carry much weight. It would probably be an advantage to their own cause to refrain from behaviour calculated to arouse very bitter feeling on the part of opponents. Most reasonable people would I think admit that such a person as the Mr. Murphy who occasioned the Murphy riots could not be checked too soon in his career, however good his intentions may have been. If the opinion be sound as regards a country like England, it applies with much greater force to a country like India.

The amendment to the Criminal Procedure Code I would propose in the insertion in Section 110 between the words 'fear of injury' and 'such Magistrate' of some such words as the following:—

'Habitually creates or attempts to create or abets the creation of religious excitement and antipathy between persons of different religions or sects.'

I would chiefly rely on action taken under the Criminal Procedure Code. Mild treatment, such as taking security, if applied in time would perhaps be quite sufficient to check the evil, and it would seldom be necessary to send people to jail.

I think it is undesirable to attempt to obtain any advantage from Chapter XI of the Criminal Procedure Code, either amended or unamended. It seems to me to deal with an entirely different matter. It would be very tedious work preventing a public meeting by

serving notices on individuals likely to attend, and any other means would only be available if it could be shown that the written notice could not be served. If the amendment of the Penal Code proposed were adopted, then Chapter IX of the Criminal Procedure Code would apply.

The proposed amendment of Section 505 of the Penal Code so as to cast the onus of proving good faith on the person who circulates false or mischievous reports seems reasonable and very desirable.

The two new sections proposed by Mr. Deas—510 A. and 510 B.—might also be enacted. His other proposals are, I think, to be commended, but need not be adopted in connection with the present subject.

I do not feel competent to offer any advice with regard to the Press.

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Memorandum dated 25th November 1893, by CHARLES ROE, Esquire, Judge, Chief Court, Punjab, on the Secretary to Government Punjab's Confidential No. 1219, dated 10th November 1893, and enclosures.

I UNDERSTAND the case as stated to be thus. Under the ostensible object of protecting cattle from ill-treatment an agitation has been carried on under the usual forms of Western political agitations, that is, with organized associations, public meetings, and speeches, lectures and writings, which has had the effect of creating intense general excitement, and setting different sections of the people against one another, and has in many instances led to serious riot and loss of life. A large portion of the Native Press, and some even of the English papers, have done much to create, or intensify, this excitement and ill-feeling by publishing—wantonly or without proper enquiry—false and alarming statements under the head of news, and by commenting on the action of Government, real or supposed, in a manner intended to excite animosity against it, and to weaken its authority. Although matters have quieted down for the present, there is much reason to fear a renewal of the same disturbances, or the breaking out of similar disturbances in connection with some other question. It is considered that the existing law is insufficient to enable the Government or the local Magistrates to prevent such disturbances, or to control the causes which may give rise to them, and it is proposed to strengthen their hands, (1) by extending the sections of the Penal Code which deal with the publication of false or alarming reports, (2) by extending the power of the Magistrate under the Criminal Procedure Code to bind over persons to keep the peace and to forbid or disperse public meetings.

The reality of the danger and the necessity for special legislation are perhaps not points on which my opinion is asked. But I think it right to state, as an officer of 30 years' service in India, that I am distinctly of opinion that a very real and serious danger exists and that some special measures are necessary.

But I am unable to approve of the remedy proposed. In the first place, the Penal and Criminal Procedure Codes are measures of which the general principles were fully considered when they were framed. I think it objectionable to "tinker" them by amendments intended to extend the Codes to particular cases that may arise periodically. In the second place, I do not think the remedy would be efficacious.

The defect complained of in the existing law is not that persons have been tried under it, and acquitted owing to the presence or absence of particular words in particular sections of the Codes, but that the whole machinery of enforcing the present law, which consists of the prosecution of individuals for definite acts in the ordinary courts, with the necessary consequence of protracted trials and proceedings in the Original and Appellate or Controlling Courts, and of violent public excitement, is utterly unadapted for dealing with the evil we have to face. Supposing the law to be amended as proposed, the procedure for enforcing it would continue the same as now, and would be open to the same objections.

I consider that the proper and only effectual remedy is special legislation giving the Executive Government power—

- (1) to declare any association or organization dangerous, and unlawful, and to make the belonging to it, or supporting it, after such a declaration had been made, an offence;
- (2) to punish by suspension or suppression any newspaper whose writings it considered dangerous;
- (3) to forbid public meetings.

Such measures would no doubt be extremely unpopular with the persons against whom they are directed. But I am convinced that they would be heartily welcomed by the great majority of the people who either take no interest whatever in political agitation, and desire nothing more than to be governed justly and quietly, or who are sincere well-wishers of British rule. The latter are perfectly unable to understand the action of the Government in allowing itself to be vilified in every possible way. The argument of the "safety-valve" makes no impression on them; they believe that the true reason of the inaction is fear, and the consequence of this belief is necessarily a diminution of their own respect and liking for the Government and a readiness to resort to unlawful means of redress instead of appealing to a Government too weak to protect either itself or its friends.

The objection to the measures I suggest is the undoubted fact that they would arouse opposition in certain quarters in England. I think the true way of meeting this opposition is to state plainly that the circumstances of England and India are so entirely different that general principles highly beneficial in the one may be most injurious in the other. Modern English ideas as to liberty of the Press, liberty of the subject, and the right of public meeting and agitation have been accepted from force of actual circumstances, and not because speeches and essays have proved their universal truth. It is obvious that in England, where the

Government is in practice little more than a Committee of Directors appointed by the people themselves to manage their affairs, and liable to constant control, and dismissal, by what is called "Public Opinion," and where a change of Government merely means the supplanting of one set of Directors by another taken from persons of the same race, education, and general ideas as their predecessors, the freest criticism and even denunciation of the Government must necessarily be permissible and may even be beneficial.

In India the facts are wholly different. The "People" consist, not of men of the same or kindred race, and of much the same general way of thinking, but of numerous wholly distinct races, with utterly antagonistic creeds and feelings. It is only the "Pax Britannica" that keeps these races from flying at each other's throat. The "Government" on the other hand is, and always has been, a power deriving its authority in no way from the "People," but from an entirely independent source. It is essential to its very existence, it is indeed the basis of its moral claim to exist at all, that it should be fully capable of effectually controlling any and all classes of the "People." A change of Government means a change from order to anarchy. If there is not the smallest intention on the part of the Government of India or the people of England to permit such a change of Government, it is obviously necessary to give the Government power to control or suppress agitation intended or found likely to bring such a change about. I believe political agitation to be at the root of cow-killing agitation. There is undoubtedly a party bent on bringing about by what in England might be considered legitimate means a change of Government,—a change from a British Government under British Officers to an extraordinary nondescript Government carried on in the British name by Bengali officials, supported by British bayonets. Such a programme would in itself excite little enthusiasm as in all agitations "a cry" has to be found, and for exciting the Hindus the cow is the most natural and certain cry. It is raised as readily as the cry of "No Popery" used to be raised in England. The agitation is conducted in the same way as is followed in Europe; at one end of the chain is the respectable, and probably well meaning, gentleman making speeches and advocating measures which are in themselves harmless. At the other end is the village ruffian committing outrages. The connection between the two is formed by such slender links that it may be most impossible to trace it. It is indeed quite possible and often probable that the respectable members are unaware of the connection and honestly deplore the acts of the ruffian as both bad in themselves and as bad policy. But they are powerless to restrain them.*

It is the almost imperceptible connection between the lawful and unlawful means of agitation that renders it necessary in my opinion to leave the question of repression to the Executive Government. I think that it must be accepted as a principle that associations threatening the stability of Government or the public tranquillity cannot be allowed in India. It appears to me quite impossible to define what acts or ostensible objects constitute such threats. To attempt to do this would almost certainly be to impose undue restraint on perfectly harmless movements, and at the same time to fail to control dangerous ones. It is also plain that a movement which may be quite innocent at the beginning may become after a time very dangerous indeed. To decide what movement is dangerous or when an innocent movement becomes dangerous is, I think, essentially the duty of the Executive Government. To leave the decision to courts of law and possibly even to juries seems to me wrong in principle, and to afford little real protection to "the liberty of the subject." If the decisions go against the Government, the latter will be driven to special legislation to prevent a recurrence of the decisions.

The necessity of conferring some such power on the Government has been repeatedly recognized in the case of Ireland, and I do not see why it should not be even more readily recognized in the case of India.

The question of the liberty of the Press is perhaps a more delicate one to deal with. The evil caused by much of the writing in the Native Press is patent; these writings do not contain a single useful criticism of the measures of Government; they are not directed to bringing to light real acts of oppression or real grievances; far from acting as a "safety-valve," they serve only to stimulate mischievous excitement and sedition. It may be doubted whether they even represent the genuine opinions of the writers themselves; they seem rather to be mere imitations of the lowest type of Western political journalism indulged in because the writer thinks the style fine, and because it is a delight to him to be able to insult with impunity persons entitled to respect. I think that any one capable of forming an independent judgment who has these writings before him would admit that they should be brought under executive control.

The chief difficulty arises from the English papers in India. In some of these the writing is actually, if not intentionally, mischievous, but whether this is so or not it would be necessary, if special legislation were adopted at all, to make it equally applicable to all

*NOTE.—I wish to explain clearly that I do not wish in any way to suggest that the leaders of the cow-killing agitation either organised disturbances or even Cow Protection Societies. But they did set to work to "stir up the people" generally; they employed agents for this purpose, and these agents employed the means which they knew to be most certain to excite the Hindus,—they raised the cow question. What followed was mere natural evolution.

(3)

classes of publications. It is, I think, possible that the English Press, recognizing the general necessity of restriction, would be content to submit to it. Should the measures I suggest be those which the Government of India itself approves, I do not think fear of English opposition would be a sufficient reason for abstaining from proposing them. It seems to be quite possible that this opposition would be overcome, if the true facts of the case were fully known in England. I think there is still greater danger in professing to accept as axioms principles of Government only applicable to England, and attempting to evade their logical consequences in practice.

But, whatever may be the measures that the Government may think it necessary or desirable to adopt, I am decidedly of opinion that they should be carried by a special Act dealing with the whole subject generally, and not by amending the existing law as contained in the Penal and Procedure Codes.

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(Confidential.)

Dated 18th November 1893.

From—C. M. RIVAZ, Esquire, Financial Commissioner, Punjab,
To—The Chief Secretary to Government, Punjab.

WITH reference to your confidential letter No. 1219 of the 10th instant, regarding the disturbances which have recently occurred in various parts of India out of the proceedings of Cow Protection Societies, I have the honor to state that the matter is unquestionably one of serious importance, and the adoption of early measures for enabling Government to deal with it more effectually than is practicable under the present law seems certainly very necessary. The amendments of law which have been proposed by the North-Western Provinces Government, together with the further suggestions made in your letter under reply, seem to me appropriate for securing the required control.

2. As regards paragraph 5 of the Government of India letter to your address, I have not the means of ascertaining to what extent the cow-protection movement has spread in this Province, but there is undoubtedly agitation on the subject, and consequent ill-feeling between Hindus and Muhammadans, and disturbances might arise at any movement somewhere or other in the Punjab, although at present there is probably no such widespread acute feeling in the matter as evidently prevails in parts of the North-Western Provinces and Bengal.

3. As regards the question raised in paragraph 6 of the Government of India letter, I am certainly of opinion that the circumstances of the case require the re-imposition of some effective control over the Press, both English and Vernacular, in addition to the proposed amendment of Section 505 of the Penal Code.

Punjab Government Press, Lahore—1-12-93-20.

(Confidential.)

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Note by G. M. COLLIER, Esquire, Offg. 2nd Financial Commissioner, Punjab, on the legal powers of Magistrates in connection with the subject of kine-slaughter.

In the Punjab we possess an excellent set of rules having the force of law under Section 43 of Act IV of 1872, regulating the powers and procedure of Magistrates in connection with the slaughter of kine. Those rules, together with the instructions contained in the confidential Circulars of Government with which they were issued, embody the true principles of policy which must guide a civilized Government in dealing with this matter. Possibly some points of minor importance may have been overlooked and have not been provided for in these rules; but if so their amendment and improvement in detail could be easily effected should defects or omissions be found by experience to exist.

In India two kinds of slaughter of kine must be recognized, —slaughter for food, and slaughter by Muhammadans for sacrifice. As regards the first kind of slaughter, the rules if properly worked ought to meet and overcome all difficulties. As regards slaughter of kine by Muhammadans for sacrifice, however, experience has shown that some powers in addition to those conferred on Magistrates by the rules are probably necessary for the preservation of the public peace.

My service has mostly been passed in parts of this Province where the majority of the population are Muhammadans; and in my experience whenever friction has occurred between the two classes of religionists, Hindus and Muhammadans, in connection with kine-slaughter, the provocation has almost invariably come from the side of the Muhammadans. This was naturally to be expected in parts of the country where the majority of the population are of that religion; but I think that events which have occurred elsewhere in India, such as the riots in Rangoon and Bombay, have proved that Muhammadans are prone to take provocative action even when in a numerical minority of the population. The provocation given by Muhammadans generally takes the form of the unnecessary *parading* of kine destined for sacrifice; and the Magistracy should possess such powers as may be required for effectively dealing with provocative acts of this kind.

On the other hand, recent events have disclosed the existence of a distinctly seditious conspiracy amongst the Hindu population, the object of which is to frustrate the beneficent policy of Government in this matter. This is a more serious evil than the aggressive attitude of the Muhammadans, and the law as it at present exists does not furnish the means for its effectual suppression.

The subject therefore may be divided under two heads:—

- (1) the powers of Magistrates to deal with acts tending to provoke a breach of the peace; and
- (2) the powers of Magistrates for the suppression of seditious conspiracies.

II.

The subject of the preventive jurisdiction of Magistrates in reference to breaches of the peace, as a whole, and as at present contained in the Code of Criminal Procedure, require careful reconsideration and revision.

Everything depends upon the length of time allowed by the circumstances of the case for taking preventive action.

(a). Chapter VIII, Section 107, of the Criminal Procedure Code empowers Magistrates to take security for keeping the peace.

But in order to take action under this section the Magistrate must know beforehand who the persons are who are likely to cause a breach of the peace, and he must also have time to comply with the procedure prescribed in Section 107,

Criminal Procedure Code. As regards the wording of this section, I think that the amendment proposed in clause 4, paragraph 2, of the Government letter now under reply is an excellent one. Magistrates should have power to take security from persons about to do any act which is likely to create such religious excitement as may lead to a breach of the peace.

This procedure for taking security for the prevention of breaches of the peace may be regarded as the *first stage* in the preventive proceedings of Magistrates.

(b). It must often happen that Magistrates receive information regarding the intention of persons to perform provocative acts at a time too late to admit of the procedure under Section 107 of the Criminal Procedure Code being adopted for the prevention of immediately impending riots.

I understand it to be held by authority that under such circumstances action may be taken by Magistrates under Chapter XI, Section 144, of the Criminal Procedure Code for the prevention of the anticipated breach of the peace. This section gives power to the Magistrate by a *written order* to direct persons to abstain from provocative acts. Such order may be addressed to individuals or to the public, and may be served in the same way as a summons, or may be notified by proclamation.

But I am not satisfied that Section 144 of the Criminal Procedure Code was intended by the Legislature to be applied to preventive action in cases of the kind now under consideration. Chapter XI is headed "Temporary orders in urgent cases of *Nuisance*." The term "public nuisance" is defined in Section 268 of the Indian Penal Code, and the *parading* of kine destined for sacrifice would *not* come under that definition. At all events the point should be put out of all question by the alteration of the heading of Section 144 of the Criminal Procedure Code and by such modification of the terms of the section as would clearly show that it was intended to apply to provocative acts calculated to cause breaches of the peace.

It is also manifest that in cases demanding immediate action there would often be no time for recording a "*written order stating the material facts of the case*" as is required by the section.

If the section were modified on the lines above indicated, it would provide a useful procedure for legalizing prompt and decisive action under urgent circumstances. Proceedings under this section may be regarded as the *second stage* of procedure for the prevention of riots.

(c). The third stage is arrived at when opposing crowds are collected and riots are about to commence. Chapter IX of the Criminal Procedure Code provides for the action of Magistrates under these circumstances, and these provisions are sufficient. As is rightly remarked by the Lieutenant-Governor of the North-West Provinces, the difficulty of dealing with actual disturbance of the peace is not one of law, but of the sufficiency of the force at the command of the Executive.

Whether any addition to the rules regulating the slaughter of kine is required, with a view to giving Magistrates power to prevent the parading of kine destined for sacrifice, and similar aggressive and provocative acts, is a question on which I am not prepared to give a decided opinion at present. But I feel no doubt regarding the expediency of amending the law relating to the preventive action of Magistrates in the two following points:—

- (1) By amending Section 107; and
- (2) By amending Section 144 of the Criminal Procedure Code on the lines above indicated.

III.

As regards the powers of Magistrates for the suppression of seditious conspiracies, no one who reads the note of the Legal Remembrancer of the North-West Provinces can doubt that an addition to the Penal Code so framed as to confer on Magistrates sufficient powers in this respect is absolutely necessary. It appears extraordinary that this defect in the law has not been previously rectified.

I can suggest nothing better in form than the two new sections proposed in these papers.

IV.

In conclusion, I have to offer the following remarks. The agitation against the slaughter of kine is, so far as the leaders are concerned, sedition under the disguise of religious fanaticism. It is a notable fact that the instigators of this agitation are very generally also agents of the so-called National Congress; many of the chief agitators are Pleaders, in whom as a class seditious feeling is strong. The motives of these men are obvious. They are the common motives of the professional demagogue. Government should not hesitate to put down this agitation with a strong hand. But with the masses the case is different.

The motive with them is mainly religious feeling. There is also undoubtedly a feeling in the minds of the Hindus that Government is inclined to treat the Muhammadans with more consideration than it extends to themselves. The spirit of Muhammadanism is far more aggressive than that of Hinduism, and we must not overlook the fact that although the Muhammadans may in some parts of the country appear to have ranged themselves on the side of the Government, their attitude in this matter is essentially just as much founded on religious fanaticism as is that of the Hindus.

It should therefore be the policy of Government, while firmly suppressing the seditious conspiracy of the Hindus, to show clearly that it will not tolerate any aggressive or provocative action on the part of the Muhammadans.

The facts of this matter prove that popular government in India at present would mean relapse into Oriental barbarism. I understand fully the political difficulties in the way of active interference with the Congress agitation; but we must not remain blind to the dangers arising from the fact that in India Western radicalism and Oriental fanaticism are running on parallel lines.

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(Confidential.)

No. $\frac{G}{X}$ (285), dated Delhi, 18th November 1893.

From—Colonel L. J. H. GAY, C.S.I., Commissioner and Superintendent, Delhi Division,
To—The Chief Secretary to Government, Punjab.

In reply to your No. 1219 (Confidential), dated 10th instant, I offer my opinion as follows.

I fully concur in the amendments proposed by the Government of the North-Western Provinces and Oudh in Section 505, Indian Penal Code. I also concur in the proposed additional Sections 510 A. and B., with the enhanced period of imprisonment suggested by Sir Charles Crosthwaite, and with the additional provisions indicated in paragraph 2 (1) of your letter.

2. The amendment of Chapter XI, Criminal Procedure Code, suggested in paragraph 2 (2) and (3) of your letter, seems to me to be necessary. I consider the amendment of Chapter VIII, in accordance with paragraph (4) of your letter, to be indispensable. It is for want of such powers as are there proposed that the device is adopted of enrolling dangerous persons as special constables.

3. I do not see much to be gained in this Province by the proposed additions to Section 45, Criminal Procedure Code. Patwaris and Lambardars can be dismissed under the rules for failure of duty, and this is wide enough to cover all that is wanted. Lambardari Rule 181 (b), Patwari Rule 21). It is not worth while to prosecute such officials.

4. The proposed amendments of the Police Act and the proposed addition to the penalties under the Cattle Trespass Act are both necessary. The defect pointed out by Sir Charles Crosthwaite in paragraph 15 of the former came into prominence in assessment of the cost of punitive police upon Delhi and Rohtak.

5. I do not think that the spread of Cow Protection Societies has yet reached a dangerous point. But the wave of Hindu fanaticism on this subject and the rising counter-fanaticism of the Muhammadans certainly threaten trouble; for any such movements eventually turn against the Government.

6. It therefore seems to me of the very highest urgency to deal with the spread of false reports and inflammatory comments by the Press.

7. In conclusion, I would emphatically endorse every word of the second section of Sir Charles Crosthwaite's paragraph 5. In the corporate responsibility of the members of urban and rural communities lies in my opinion the best remedy for offences against order, probably also for offences against property. It is true that the innocent suffer with the guilty, but such is the universal order of nature, and indeed innocent and guilty have to be confounded in most cases of legal punishment. For instance, in a family affray with manslaughter, half a dozen bread-winners undergo various long terms of imprisonment and the entire joint families suffer loss, often ruin.

Punjab Government Press, Lahore—11-15-94—20.

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(Confidential:)

Dated Camp Jullundur, 16th November 1898.

From—DENZIL IBBETSON, Esquire, Deputy Commissioner, Jullundur,
To—The Chief Secretary to Government, Punjab.

I HAVE the honor to reply to your confidential letter No. 1219, dated the 10th instant.

2. As regards the suggestion contained in paragraph 2 (1) of your letter, I am of opinion that it is far preferable in principle to that made by the North-Western Provinces Government. Mr. Deas' Sections 510 A. and 510 B. follow the principle already embodied in Sections 383 and 503 of the Indian Penal Code. It appears to me that that principle is a dangerous one in this country. The whole internal control of the castes, and the whole *panchayat* system so far as it enforces its penalties by threats of outcasting or of social injury, is a continual criminal offence under those sections, if I understand them rightly. We have no wish to interfere with that system so long as it does not tend to produce a serious disturbance of the public peace; and I would definitely confine our interference with it to that particular case. At the same time the wording suggested in your letter does not commend itself to me. The society would (in the case under consideration) answer that its "object" was simply to protect cows against slaughter. I would say "if the objects are likely to create such religious excitement," &c., &c.; or some such words. And I would allow no prosecution save with the sanction of the Magistrate of the District.

3. I entirely agree in the suggestions made in clauses (2), (3), (4) of your paragraph 2; but would confine the power proposed in clause (4) to the Magistrate of the District.

4. I agree generally with all the proposals of the North-Western Provinces Government, subject to the remarks in my paragraph 2 above, with the following one exception. I am very doubtful about the proposed amendment of Section 15, Act V of 1861, which confines the cost of additional police to that portion of the community to whose action the disturbed state is (*originally*) due; for it is clear from Sir Charles Crosthwaite's letter that that is his idea; and that, in the particular case of the recent riots, he would make the Hindus pay, and not the Muhammadans—see the last three sentences of paragraph 4 of his Secretary's letter. I doubt the wisdom of this. My feeling is, when there has been a riot, punish *both* parties. Punish the aggressor more severely if you like; but the others opposed force by force, and are also, if not equally, guilty. I am sure that this is the justest and the wisest plan. Any other action provokes the accusation of partiality. The only expression of feeling on this subject that I have heard, which came from a Sikh of very high position, was a bitter expression of this feeling; and I must say that I sympathised with him. What he said was, practically, "The Hindus may have been wrong first. But they can't make a riot unless the Muhammadans help. Why, then, exempt the Muhammadans from all blame?" I would have the Government to declare, by notification, from what classes the penalty (whether cost of police or fine) should be recovered, and in what proportions.

5. I am not sure that it would not be well to add participation in riots and affrays to the offences that are punishable by flogging, to be inflicted by order of a 1st Class Magistrate (or of the Magistrate of the District) after summary trial. When excitement had reached a certain pitch, it would doubtless be dangerous and unwise to attempt to flog. But I believe that a riot might often be stopped in its inception, by a few of the ring-leaders being flogged *coram populo*.

6. I am most *strongly* of opinion that some such strengthening of the Magistrate's hands as is contemplated is absolutely necessary. I cordially agree with every word of paragraph 5 of the North-Western Provinces Government letter. And if the recent riots lead to the establishment of an effective control over the Press, they will have done more good than harm. We are proposing to take precautionary measures against incitement to riot, while we allow incitement to rebellion to be distributed all over the country daily, in a most insidious form, through

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(Confidential.)

Dated Camp Shahpur, 14th November 1893.

From—J. WILSON, Esquire, Deputy Commissioner, Shahpur,

To—The Offg. Chief Secretary to Government, Punjab.

In compliance with your No. 1219, dated 10th November 1893, calling for an opinion on the proposed amendment of the criminal law in connection with Cow Protection Societies, I have the honor to report as follows.

2. In this district about five-sixths of the total population are Mussal-
mans, and the Hindus, who are chiefly found in
the towns and large villages, are much less
bigoted than they are in the east of the Province. So far as I have noticed,
there is no unusual excitement in this neighbourhood in connection with the
protection of cows, nor does there seem at present to be any unusual danger of
a disturbance of the public peace by any agitation of the kind.

3. At the same time, there is always a certain amount of religious
antipathy between the followers of the two reli-
gions, which might, among such an ignorant popu-
lation, be easily fanned into a flame if agitators of the type of those who have
recently infested the North-Western Provinces found their way here; and
should any agitation of the kind be commenced in this district, I should con-
sider it of the utmost importance, in the interests of the public peace, and of
the Hindus themselves, that the Magistracy should have much more effectual
power to control, and, if necessary, to check, it than is given them by the law
as it now stands.

4. Again, there is always considerable danger in these districts of the
West Punjab that the Mussalman peasantry
might be stirred up to rise against the Hindu
money-lenders, whether from a feeling of religious animosity or from the hatred
felt by debtors against unscrupulous creditors, or both combined, and for this
reason also I think it important that the Magistrates, on whose action, much
more than on that of the Police and Military, the internal peace of the country
depends, should be given as much power to check dangerous agitations of all
sorts as the Legislature can be persuaded to grant.

5. It is of course important that freedom of speech and action should
not be unduly interfered with, more especially as the
privilege of free speech acts as a sort of safety-valve
and also serves to indicate to Government the tendencies of popular feeling,
which otherwise might burst out unexpectedly and involve the country in dis-
aster; but in a country such as India, where the mass of the population are so
ignorant and easily influenced, especially by religious prejudices, and where the
consequences of an outbreak might be so serious to the ignorant masses them-
selves as well as to their more enlightened neighbours, it is very necessary that
the Executive Government should be armed with powers sufficient to enable
them to stop dangerous agitations at the outset, more especially when such
agitations have already led to serious outbreaks in different parts of the country.
It may with confidence be asserted that the present Executive Government
of India, including those Hindu and Muhammadan gentlemen who exercise
Magisterial powers under European control, may safely be invested with the
necessary powers, and that at all events the present danger to the public peace
is so great as to more than justify the possible interference with the public
liberty.

6. For the above reasons I am of opinion that the amendments proposed
are necessary, both those proposed by the North-
Western Provinces Government and those sug-
gested in your letter under reply.

Proposed amendments necessary.

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7. As regards the draft Sections 510 A. and 510 B., Indian Penal Code, I do not myself think that much difficulty would arise in proving "injury" under Section 44 of the Code, but the further provision suggested in paragraph 2 (1) of your letter is necessary to cover a different offence. It might, however, often be difficult to prove that the "object" of the society or meeting was to create religious excitement, &c., and I think we might go further and say "if it might reasonably be expected that the society, conspiracy or meeting would result in a breach of the peace or the commission of an offence." If a man has reason to believe that a society or meeting will result in a breach of the peace, he ought to stay away.

8. The proposed amendment of Section 505, Indian Penal Code, is also very much required, as it has become so common for persons to circulate rumours calculated to cause alarm, and it is difficult to prove technically that they knew the rumours to be false. Both the amendments suggested in paragraph 2 I (b) of the Government of India's letter are necessary, as proof of intention is also difficult. If a man hears a false and mischievous report, or one which he has no reason to believe is true, and knows that by publishing or circulating it he will tend to cause alarm or a breach of the peace, it is his duty, as a good subject, to hold his tongue, and he can fairly be punished for his undutiful conduct, even if a bad intent cannot be proved (*sic* in original). The clause is, however, wanted in order to enable Government to punish those men whose intent is really bad and mischievous, although it cannot be legally proved to be so.

9. The other proposed amendments I need not discuss in detail. Some of them may not at present be urgently required in the Punjab, but they do seem to be required in the North-Western Provinces, and, if this agitation spreads or others arise, may be at any time required in any part of India. The amendments suggested in Chapter XI of the Criminal Procedure Code by paragraph 2 (2) and (3) of your letter are also required to enable Magistrates not only to punish members of mischievous assemblies, but also to disperse them before the mischief has occurred.

10. With reference to paragraph 6 of the Government of India's letter, I am of opinion that it is high time that something were done to curb the license of the more virulent portion of the Press of this country, no distinction being made between papers conducted in English or Vernacular, by Europeans or Natives. Many of them systematically misrepresent the actions and intentions of Government and its officers in a way which must tend to a loosening of the bonds of society, and to a spread of lawlessness and crime. I do not think it advisable, especially with regard to the view likely to be taken in England, to take power to suppress any newspaper, but it should surely be possible to frame a section which would render punishable by severe fine and imprisonment the owner, printer and editor of a newspaper who wilfully or negligently allowed matter to appear in the paper which he by reasonable diligence might have known to be untrue and to be likely to prejudice his readers against Government or its officers to the danger of the public tranquillity. That the necessity for such control over the Press is sufficiently grave to justify such legislation must be clear to any reasonable man who reads the extracts from the various newspapers whose rôle is to oppose the Government and abuse its Executive officers, and who watches the progress of the feeling of disquiet which is certainly fanned by these utterances, and which certainly leads to dangerous disturbances in different parts of the country.

11. I conclude by repeating that, in my opinion, the maintenance of the public tranquillity urgently demands legislation such as is proposed in this correspondence, and that the several amendments suggested seem suitable, and not more stringent than the necessity of the case requires.

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(Confidential.)

No. 1024, dated 18th November 1893.

From—ALEXANDER ANDERSON, Esquire, Deputy Commissioner, Delhi,
To—The Offg. Chief Secretary to Government, Punjab.

I HAVE the honor to reply to your Confidential No. 1219, dated 10th November 1893, with regard to legislation to meet the agitation caused by Cow Protection Societies.

2. I thoroughly approve of the amendments of Section 505 of the Indian Penal Code; but it would be an improvement to have it distinctly stated that the *onus* of proving good faith will be on the person circulating the report. Under the section amended, as proposed by Mr. Deas, would it not be necessary for the prosecution to prove that the report was circulated otherwise than in good faith, that is, practically to prove *mala-fides*—see Section 105 of the Evidence Act. The clear enunciation of this responsibility would in my opinion be a distinct gain, for many of the offenders are men with some legal education who will understand that there is no legal quibble by which they can get free.

The second amendment of this section will be a decided improvement, and will strengthen the hands of the Executive.

There is to my knowledge a feeling of exasperation in Delhi at the apparent indifference which we show to false reports and charges in newspaper articles, and there is a tension which would relax in part if it was known that Government intended to act. The mere amendment of the Penal Code will have a decided effect, but actual prosecution of offenders will be necessary and must be undertaken.

3. I approve also of Sections 510A and 510B, but with the addition suggested in your paragraph 2 (1). In my opinion we should legislate with direct reference to the emergencies we have to meet, and not try to conceal our object in language so general that it applies only vaguely to the cases we have before us. The people at large will appreciate and approve of our motives if we make it understood that our object is to put a stop to the agitator. There are many natives who are driven to take part in these agitations who will welcome a distinct declaration in the Penal Code, to which they can appeal against religious fanatics and interested agitators.

4. The cow-protection agitation is certainly spreading, and, in the form it now tends to assume, it will be a serious danger if our agricultural communities take part in it. The Congress movement has scarcely, if at all, touched the villages, but this agitation comes home to the Jats, and the professional agitators are certainly directing their attention to the agriculturists. I am not sure that in this direction it is yet necessary to have the powers which the changes in Section 45, Criminal Procedure Code, would confer on us, but the time may come, and it is well that the powers should be at hand.

5. The changes in the Police Act are distinctly required: the necessity for them has arisen in other cases. It is only by enforcing the joint responsibility of village communities that we hope to meet the agitators.

6. The addition of the new clause in the Trespass Act in the Chapter on Penalties will meet the case. I have not heard that in this district the Cow-Protection Societies have established pounds.

7. The amendments in the Criminal Procedure Code suggested in paragraphs 2 (2) and 2 (3) and 2 (4) of your letter will much strengthen the hands of Magistrates. Recently in Delhi, while the excitement following the Bombay riots was at its height, I found it necessary to prevent a Maulvi from collecting and addressing a crowd of people at a particular temple. He had fixed a time and place, and issued printed notices, which were stuck up all over the town.

Fortunately I was able to bring pressure to bear on him, and he agreed not to hold the meeting, which, though outwardly called for the purpose of reconciliation, was really intended to set fire to the combustible material ready to hand. Had he persisted, a notice was to be served under Chapter XI, and if the notice was disregarded, he would have been arrested. This may not have all been legal, but in the emergency I saw no other course open to me to prevent a riot in the city.

The proposed change in Chapter VIII is, in my opinion, of great importance, and would be of immense use in a place like Delhi, where we have not only Hindus and Muhammadans, but sects of Hindus and sects of Muhammadans, which are ever ready to break out. The Saraogi and Baishnu disturbances are fortunately not likely to recur; but we have the *mukallid* and *ghair-mukallid* Muhammadans ready at this moment to break out when a good opportunity is presented.

The change suggested in your paragraph 2 (4) would enable us to deal with such cases more satisfactorily than at present.

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(Confidential.)

Dated Sialkot, 6th December 1893.

From—Lieutenant-Colonel J. A. L. MONTGOMERY, Deputy Commissioner, Sialkot.
To—The Offg. Chief Secretary to Government, Punjab.

I HAVE the honor to reply to your Confidential letter No. 1219, dated the 10th November, asking my opinion on certain proposed amendments in the law in order to more effectually control the agitation caused by the recently formed Cow Protection Societies. I apologise for the delay in sending my reply. I did not notice that an answer was required as early as possible, and before sending it I wished to ascertain quietly whether the agitation had in any form extended to the Sialkot District.

2. So far as I have been able to find out (the enquiries have not been completed), we have not yet been affected by an extension of the organization to this district; and as the majority of the inhabitants are Muhammadans, the Hindus and Sikhs not exclusively occupying any large tract, it is probable that we shall not be troubled with it.

3. The papers forwarded with your letter disclose an alarming state of things in the North-Western Provinces. The secrecy and completeness of the cow protection organization are not unlike the events which preceded the Mutiny. The time has certainly come for firm and fearless action, and I agree that the amendments proposed in the law are necessary. I fear I have not a sufficient legal training to be able to criticise in a useful manner the alterations which are suggested. I can only say that they appear to be all necessary. The agitation has for its real object the weakening, if not the overthrow, of the British Government, and we cannot afford to temporise with it. It would be a bad day for us if the Sikhs of the Manjha were affected by the agitation.

4. I hope this opportunity may be taken to establish some sort of control over the Press: no distinction should be made between the English and Vernacular Press. A step of this nature is fraught with great difficulties. The liberty of the Press is a principle so engrained in the minds of the British people, that it is difficult to convince those who are unacquainted with the natives of this country how totally different are the conditions in this country. Here we have an alien power ruling over millions of people still very ignorant, the majority of whom firmly believe that whatever is published in a newspaper must be true. Most of the editors of the vernacular papers are men of very small principle. Unless they have an object to gain by a display of loyalty, they will go as far as they can in the direction of disaffection, knowing how seldom such disloyalty is prosecuted to conviction. The dissemination of disloyal sentiments among the people should by all means be checked.

5. In conclusion, I beg to endorse most emphatically the views of Sir Charles Crosthwaite in paragraph 5 of his letter: "The true way of administering India is by enforcing village responsibility. * * * We have attempted to keep order and suppress crime by means of an outside Police who seem yearly to become more feeble and corrupt, and are hated by the people. * * * By enforcing the responsibility of landowners and of villagers as a body we should get much better results in a more merciful and less costly manner."

Punjab Government Press, Lahore—16-12-93—20.

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[STRICTLY CONFIDENTIAL.]

Note by Sir DENNIS FRIDRICK, Lieutenant-Governor of the Punjab, on the Government of India letters Nos. 1—5 C. and dated 29th August 1893 and 4th October 1893, regarding the movement against the slaughter of kine.

1. The information and opinions of local officers called for by the above letters are being collected and will be transmitted to the Government of India in due course, but I think it will be convenient if I meantime set down for the information of that Government the views which I myself have formed provisionally and subject to correction when the results of the inquiry now being made are before me, and indeed I should have done this before now were it not that I knew there would be nothing in the way of legislation until the Legislative Council met in Calcutta and that I was anxious to observe the progress of the agitation a little further in the Punjab and in particular to see how we should get over the Dasehra festival.

2. As the Government of India are aware, I have for many years past regarded the cow-killing dispute as a very formidable danger ahead both for the Muhammadans and Hindús and for our administration, and I have of late been much troubled with apprehension as to the results that might follow from that dispute being inflamed to the extent that it has been by the system of organized agitation in the newspapers and in societies and meetings which the more advanced Indians, Mussalmáns as well as Hindús, but especially the latter, have borrowed from us. I lately treated this matter so fully in a note which I wrote in another connection and which has been submitted to the Government of India that it is unnecessary to go over the ground again, and I therefore merely append for facility of reference an extract from that note.

3. It was, of course, to be expected that the disturbances which

* As stated in the postscript, this note was written just at the end of the last Dasehra.

have taken place within the last few months in various parts of India would create a considerable amount of excitement in the minds of the people of some parts of this Province where the cow-killing question has always been a particularly burning one. We have indeed heard little of meetings or subscriptions lately, but there has been a great deal of pernicious agitation in the press. It is only fair to say that some of the Native papers have endeavoured to do what they could, which is but little, to pour oil on the troubled waters, but others on the contrary seem to have laid themselves out to do their utmost, which is a good deal, to embitter the feelings of the rival sects, and the charge to which I refer in the appended extract, and which seems to me fraught with such serious peril to our administration, that we ourselves as eaters of beef have taken a side with the Mussalmáns and have encouraged them to kill cows in order to excite dissension between them and the Hindús, has been freely made.

We have had scares or threats of disturbance at Delhi, Lahore, Amritsar and Ludhiána. At Delhi the military had to be warned to be ready, and at Ludhiána elaborate arrangements had to be made for the Dasehra, but everywhere the Deputy Commissioner has succeeded, with the co-operation of the loyal and well-disposed among the leading men, in keeping things quiet. I think the comparative quietness of things in the Punjab at a time like the present is due in a great measure to the Province being less advanced and to the leading men looking more to the Government officers and carrying their troubles more readily to those officers than they do in other parts of India; but I think it is also due to our rules regarding the slaughter of kine framed under the Punjab Laws Act, which to a great extent settle what may and may not be done, and thus diminish the danger of actual conflicts. At the same time we are very far indeed from being "out of the wood," and so long as the present exacerbation of feeling lasts, we are liable at any moment to an outbreak of disturbance.

4. To turn now to the methods of agitation against cow-killing, apart from writings in newspapers (to which I will refer later on), I think that unless the

inquiries now being made bring out something new, it may be said that though our records for the last ten years teem with reports of meetings, lectures, subscriptions, boycottings, and so forth, directed against cow-killing, there has been no such elaborate organization here as is described in the papers from the North-Western Provinces received with the Government of India letter. We have no doubt Gaurakhshani Sabhás; but the agitation seems, so far as I can judge, to be carried on not so much in them as at meetings convened on special occasions of all persons interested in the subject who can be got together, and at meetings of bodies or societies which have an existence independent of the cow-killing agitation—at meetings, *e. g.*, of Kúkás, at meetings of the Singh Sabha, at Congress meetings, and above all at meetings of the Arya Samáj.*

We have therefore to deal not only with agitation carried on by societies having the prevention of cow-killing for their object like the Gaurakhshani Sabhás referred to in the North-Western Provinces papers, but also with agitation carried on at meetings of every description, and we have, I should add, also to deal with agitations carried on by persons travelling about the country and starting anti-cow-killing movements of various sorts which it might be difficult to connect with any society or meeting.

5. Mr. Deas' proposal is to amend the Penal Code so as to make "membership in an unlawful society or conspiracy" an offence, but when he comes to drafting his new Sections §10 A and §10 B, he omits all reference to a conspiracy. I presume, however, that if his sections were to be adopted, they would be made applicable to a conspiracy not connected with any society, and also, unless this was considered to be sufficiently covered by Section 141 of the Code, which it probably would not be, to attendance at a meeting; and I shall therefore assume that this would be done. Assuming this, the proposed law would make it an offence to be a member of a society, or join in a conspiracy or

* The above was written on the information afforded by the record of several years ending with 1891 and on what had come under my own notice. The most recent information (received since it was written) would, assuming it to be complete, go to show that neither the Arya Samáj nor any other of the societies or bodies mentioned is concerning itself much with the cow question at this moment.

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attend a meeting if the "common object" of the society or conspiracy or meeting was "by causing injury or by threats of injury to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do."

6. This proposed law is spoken of in the North-Western Provinces Government letter as one which would "bring the law of this country as regards conspiracy into agreement with the English law on the subject;" and though I cannot venture to give an opinion on a point of law out in the jungle and without the means of referring to books, I am inclined to think that if the proposed law did that, it would suffice for our purpose, for, speaking merely from such recollection as I have of those matters, I have little doubt that persons conspiring to intimidate others in the way described in the North-Western Provinces papers and persons conspiring to do even things falling far short of that could be readily convicted under the English law of conspiracy, if it could be bodily imported into this country. But the truth is the proposed law would be something widely different from the English law of conspiracy. From the way the matter is put in the North-Western Provinces papers, it might be supposed that the difference between our law of conspiracy and the English common law relating to conspiracy was merely that under our law it would be necessary to prove some act done in pursuance of the conspiracy and that under the English law that would not be necessary. This would not, I should think, be a very great difference in practice, for I fancy there would rarely be a prosecution for conspiracy when there was not evidence of such acts; but, however that may be, the great difference between our law of conspiracy and the English common law relating to conspiracy, so far as my memory serves me, lies in something altogether different and far more important, *vis.*, that the only conspiracy punishable under our law is a conspiracy to commit an offence (Sections 107 and 121 A of the Penal Code), whereas the English law makes a conspiracy punishable not only when it is a conspiracy to commit an offence, but also when it is a conspiracy to do any one of a great variety of things which perhaps could only be defined by saying that they are so bad that in the opinion of the Court

people ought to be punished for conspiring to do them. Now Mr. Deas does not propose for India a law of conspiracy resembling the English law of conspiracy in this important point, and indeed for several reasons it is obvious that he could not venture to do so. What he proposes is simply to make it an offence to conspire to do certain definite things of the nature of criminal intimidation as defined in Section 503 of the Penal Code.

7. Now I am quite ready to support Mr. Deas' proposal so far as the legal aspects of the position are concerned, for it is a very reasonable one, and I dare say there would be cases in which a conviction would be readily obtainable under his new sections; but I am afraid that in most cases a prosecution under those sections would give rise to an immense amount of discussion in the Court of first instance and on appeal and in revision, and that, even if in the end it succeeded, there would be a considerable set off against the success in the shape of popular excitement. You would have to show that the object of the conspiracy or society was to bring pressure to bear upon people "by causing injury or threats of injury," and the defence would of course be that which we have already seen put forward in substance in the Native papers, *vis.*, that the so-called "injury" was not an "injury" within the meaning of the Penal Code (see Section 44), but a penalty which it was in the discretion of the caste to impose, and then would arise a discussion as to the constitution and rules of the caste which, as we know from the experience of similar cases in this country and the somewhat analogous cases arising out of disputes in voluntary societies in England, would be a difficult and protracted one.

8. I think we ought if possible to avoid this, and what I would suggest in order to do so is to provide either instead of, or in addition to, Mr. Deas' sections that it should be an offence to belong to a society or join in a conspiracy or attend a meeting if the objects of the society, or conspiracy, or meeting were likely to create such religious excitement or such antipathy between any persons of different religions or sects as might lead to a breach of the peace or the commission of an offence.

9. I of course see that in thus proposing to simplify the draft I at the sam

time largely extend its scope for the purpose before us; but this seems to me to be no objection, but the reverse. I think it would be only common prudence to provide a means of stopping all organized agitation on the subject of cow-killing even though it might not involve the criminal intimidation against which Mr. Deas' draft is directed. We cannot of course prevent the Hindús establishing gaushálas and subscribing to ransom cows and put them into their gaushálas if they think it a meritorious act to do so. Further, I do not think we can prevent them holding quiet meetings as they would have done in a similar case long ago to collect money for these gaushálas or arrange for their administration, and I don't think the Mussalmáns would in the least object to all this. But this new-fashioned organized agitation with public meetings, speech-making, missionaries sent about the country, and all that sort of thing is certain at times of great excitement to lead to a great deal being said and done, which, though it is not illegal under our present law, is calculated to inflame the feelings of people on both sides to a degree which is extremely dangerous, and when that is the case there ought to be some means of stopping it altogether. I think most people in India will understand this. It may be somewhat difficult to get some people in England, if the question should come to be discussed there, to understand it; but I trust they will, to some extent at least, take our word for it when we tell them that the difference between England and India and the difference between the position of the government in England and the British administration in India are far greater than they can realize. The most serious consequences to be apprehended from the worst outbreak of religious dissension which one could conceive to arise in any part of the United Kingdom in the present day would be comparatively trifling. A few places of worship might be wrecked, and a couple of hundred people killed in the riots, and possibly Mr. A would take advantage of the occasion to turn the Duke of B out of office. For the rest things would go on pretty much as usual. In India, on the other hand, the possible—indeed it may be said the probable—results of a really intense and widespread outburst of animosity between the Hindús and Mussalmáns—the disasters it might entail on both the contending parties and

on the Government interposing between them—would be such that in comparison with them the results that could follow from anything analogous in England or Ireland would be a mere tempest in a tea-cup.

10. There is, I need hardly add, another point to be borne in mind in this connection, namely, that Mr. Deas' proposed law is drawn to meet the peculiar position which has arisen in certain districts of the North-Western Provinces, where the Hindús have been the chief aggressors and have resorted to the particular modes of procedure against which Mr. Deas' law is directed. But in other places the Muhammadans have been the chief aggressors, and it is impossible to say which of the two may be the chief aggressors in any further disturbances we may have before us in other parts of the country, or what modes of procedure they may adopt. The particular modes of procedure against which Mr. Deas' draft is directed are not, I may observe, such as could be adopted with the same effect by Mussalmáns as by Hindús. Hence, in order to do what may be necessary, we want some law of more general application; and there is this further advantage in proposing such a law that neither sect will have any reason to complain that it has been specially marked down by us for repressive treatment, while if we were to propose for British India generally a law like Mr. Deas' obviously directed against the practices adopted by the Hindús in the North-Western Provinces, it would look as if we had made up our minds from what we have seen in the North-Western Provinces that the Hindús were everywhere going to be the aggressors, and to resort to the practices in question, and this, especially after all that has been said about our siding with the Mussalmáns, would have the worst effect.

11. I quite see that the working of a law like that which I have suggested would have to be carefully guarded, otherwise you might have Hindús and Mussalmáns bringing criminal charges against one another or against Christians in connection with every conceivable religious controversy. I would therefore propose that the law should not take effect in any district unless it was specially extended by the Government to that district, and that no prosecution should be instituted under it without the previous

sanction of some high officer or perhaps of the Local Government.

I think that safeguarded in this way a law of the nature and extent I propose would be free from objection; but if it is thought inexpedient to propose so wide a measure, it would be quite possible by the introduction of a few additional words to limit its operation to the particular case of the cow-killing quarrels. We might confine it to societies, conspiracies and meetings concerned with the promotion or repression of the killing of kine, and the objects of which were likely to create such religious excitement or such antipathy between any persons of different religions or sects as might lead to a breach of the peace or the commission of an offence.

12. So much for the North-Western Provinces proposals on this point; but besides the power of punishment we need also a direct power of prevention, and where we have a chance of exercising this latter power it is of course the best to use.

Now I believe it is generally understood that Chapter XI of the Criminal Procedure Code, notwithstanding its heading, gives a Magistrate power to forbid persons from attending a meeting if the meeting is likely to lead *directly* to a riot or affray; but I do not know, and I have at this moment no means of ascertaining, whether it is held to give a Magistrate a like power in a case when the meeting is merely likely by creating popular excitement to lead indirectly and perhaps after some interval of time to such a result. If there is any doubt on this point the chapter should be amended so as clearly to give the power. Further, Chapter XI of the Code is defective in this that it empowers the Magistrate to do no more than issue a prohibition; and if the prohibition is disregarded, as it would be very likely to be by some of the persons who are most active in the agitations here in question (legal practitioners and such like), his only course would be to institute a prosecution under Section 188 of the Penal Code after the mischief had been done. In this respect Chapter XI of the Code presents a contrast to the preceding chapter, the penultimate clause of Section 140 of which provides a means of enforcing specific performance of an order. What would be required for our purpose in Chapter XI is a clause empowering the Magistrate,

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in the event of any person attempting to disobey his prohibition, to arrest such person and to detain him in custody for any period not exceeding a certain short fixed term unless he meantime gives security for observing the prohibition. I have not in making these suggestions overlooked Chapter IX of the Criminal Procedure Code, which gives a power to disperse "an assembly of four or more persons likely to cause a disturbance of the public peace;" but in the first place it is clearly better in most cases to prevent the collection of the assembly than to wait until it has collected and then disperse it, and in the next place there is room for a doubt here similar to that to which I have just referred as to whether the power could be used when the assembly was not likely to cause a breach of the peace directly, but only indirectly, and possibly after the lapse of some time by causing popular excitement.

By the way, if this doubt of mine is considered to be well founded, it would be well to remove it here as well as in Chapter XI.

13. There is another amendment of the Criminal Procedure Code which would give much help in this connection. Chapter VIII of the Code (see in particular Sections 107 and 108) gives a power to require security from, and in urgent case to arrest, a person who there is reason to believe is likely to do "any wrongful act that may probably occasion a breach of the peace." What I would suggest is that similar powers should be given when there is reason to believe that a person is about to do *any* act which is likely to create such religious excitement or such antipathy between any persons of different religions or sects as might lead to a breach of the peace or the commission of an offence. Such a power would of course have to be used with discretion, but as its exercise would be subject to the revisional jurisdiction of the High Court, it might I think be safely given.

14. To take next the amendments of Section 505 of the Penal Code proposed by Sir Charles Crosthwaite and the question raised in the 6th paragraph of the Government of India letter of the 4th October as to the desirability and possibility of taking any action to impose restrictions on the newspaper press in their treatment of this subject of

cow-killing.—I entirely approve of the amendments of Section 505 of the Code proposed by Sir Charles Crosthwaite, and indeed I myself had before the receipt of the letter just referred to determined to propose similar amendments. I do not apprehend that those amendments would seem to the proprietors and editors of Native newspapers unreasonable. Whatever opposition to them there may be, I should expect rather to come from the proprietors and editors of European newspapers; but from whatever quarter opposition to them may come, the answer to it would be that the reports in question are of such a nature that we are bound in the interests of the public peace in this country to insist on the highest degree of caution and circumspection on the part of writers for the press in dealing with them.

15. At the same time I have to say that these amendments of Section 505 of the Code, however necessary they may be, touch but a small portion of the evil. The most serious danger arises not from actual misstatements of fact, which are comparatively speaking rare, and the mischief of which can at least to some small extent be repaired by contradiction, but from the colouring and comment and suggestion of a highly inflammatory character with which the newspapers daily teem. In the extract appended to this note, and to which I have already referred, I dwelt only on the mischief done in this way by the Native Press, English and Vernacular; but it is not from the Native Press alone that danger is to be apprehended in this connection. It is sometimes to be apprehended from the European Press as well. It is true that the European papers having any circulation to speak of are commonly conducted by men of a superior class, who stand clear at all events of the religious dispute between the Hindús and Mussalmáns and who are not likely to go to the pitch of extravagance in which the native papers commonly indulge. But the subject with which we are here concerned is one on which even what would ordinarily be called legitimate discussion is fraught with serious danger at a time like the present. An illustration of this is afforded by the charges made by some of the European papers against the Congress at an early stage of the newspaper discussions now going on. Those papers charged the Congress with having worked up the cow-killing

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dispute to its present pitch of exacerbation. Now whether this charge was well-founded or ill-founded is in no way material for the purpose of the particular question to which I am now referring. What I wish to say is that assuming the charge to be in the fullest sense true it was one that, when put forward in European newspapers in this country, which to a great extent represent European opinion and are supposed by the natives to represent the opinion of the Government too, was calculated to have the most mischievous effects; and as a matter of fact it evoked a more aggravated exacerbation of feeling on the part of the Hindu Press, which is to a great extent under the influence of the Congress men, turned the full tide of its animosity against the Government, and led to the counter-charge made against the Government, of taking the side of the Muhammadans against the Hindús and deliberately encouraging the former to kill cows, being given the dangerous prominence it at present holds in the minds of the Hindu population.

Another illustration of the danger of any discussion at all on such a subject at a time like the present is afforded by something that occurred the other day at Amritsar, and, though it is a comparatively small matter, it is worth mentioning. A most scurrilous paper published at Amritsar and called the *Singh Sahái* issued two articles of a violent description—one in which it argued in favour of the lawfulness of forcibly opposing cow-killing, and another in which it abused the Mussalmáns. These articles gave rise to so much excitement that for two or three days a serious disturbance was apprehended, but the strange circumstance about the case, and that on account of which I refer to it, is that the particular matter in these articles which most infuriated the Mussalmáns was one, which no Mussalmán of ordinary sense and temper and free from preternatural excitement would for a moment think of resenting. The writer in arguing against the view that a man who owned any article of property could deal with it as he pleased, and that accordingly a Mussalmán owning a cow could if he wished kill it, said in effect: "If this holds good and I own a copy of the Korán, I may beat it with a shoe." It was not much of an argument to use, but, however insulting the rest of his article might have been, he

had obviously no intention of insulting here. His argument was of the nature of a *reductio ad absurdum* and could have no force at all except on the hypothesis that the idea of a Hindu being allowed to treat a copy of the Korán with disrespect would be absurd, and yet this was the one point of the article above all others by which the Mussalmáns considered that their feelings were outraged.*

16. The fact is that what is required in order to avert the most disastrous consequences at a time like this in India is not merely a power to stop the publication of false news or comments conceived in an unfair spirit or with a deliberate desire to irritate, but a power to stop everything good, bad and indifferent in any paper, English or Vernacular, European or Native, which is likely to excite irritation in the minds even of unreasonable and fanatical persons.

17. We want in the first place to have it made an offence for a newspaper to publish anything likely to create such religious excitement or such antipathy between any persons of different religions or sects as might lead to a breach of the peace or the commission of an offence. This might be provided for in the Penal Code as part of our ordinary law, but as a prosecution for such an offence ought not to be instituted except after very careful consideration, I would make the sanction of the Local Government a condition precedent to the institution of such a prosecution.

18. A penal provision of this sort, however, would not be enough.

To institute a prosecution under such a law at a time of intense excitement might prove to be a remedy worse than the disease. The people themselves are quite alive to this. Last year, when a publication appeared vilifying a name revered by the members of a certain sect, a deputation waited on me asking for my interposition in the matter, and

* It must be remembered that even educated people in this province display at times a childishness that is quite surprising. Since the above was written a native paper published a letter purporting to be written by the present Viceroy and which was so obviously and palpably a "skit" that any ordinary English boy of 16 years of age would see that it was such, and yet it was taken as genuine by a number of other native papers. This week's report shows those other papers upbraiding their contemporary for having published the letter without making proper enquiries.

among other things they said to me was that they were advised that they had a remedy in the Courts, but that it seemed to them that they could not avail themselves of it because, bad as the things were that had been said in the publication in question, far worse things would be said in conducting the defence if a prosecution were instituted; and there was very much the same feeling the other day at Amritsar when the *Singh Sahdi* published the articles to which I have already referred.

When religious disputes in this country have reached such a point that the institution of what is likely to turn out a *cause célèbre* running its course from court to court is pretty certain to add fuel to the flames, what we want is a power to issue a summary order prohibiting a newspaper from publishing articles relating to the matter in dispute, to be followed in the event of disobedience by a further summary order suspending the publication of the newspaper for a certain term, together with all ancillary powers needed to enforce those orders.

These powers would be similar to some of those conferred by the Vernacular Press Act of 1878, but of a milder description and limited to the particular matter of religious quarrels, and the enactment conferring them would not be made part of our general criminal law, but would be a special temporary law applying only in those places to which, having regard to the intensity of the quarrels in question, the Governor-General in Council might from time to time think fit to extend it. Further, the powers conferred by it would be exercisable only with the previous sanction of the Local Government.

19. It would be premature at this moment to set about drafting it, but my idea is that its leading provision should be to the effect that when the Magistrate of a district considers that the discussion of a religious question in the newspapers is likely to create such religious excitement or such antipathy between any persons of different religions or sects as might lead to a breach of the peace or the commission of an offence, he may, with the previous sanction of the Local Government, issue an order to the printer or publisher of any newspaper published in his district directing him to abstain from publishing for such time as may be

specified in the order any matter (other than mere *bond fide* and uncoloured statements of events that have occurred) relating to such question. I think it would be wise to make the exception which I have put in a parenthesis because I think, no matter how intense the excitement might be, it would be best that facts should be freely published, as otherwise you would leave an opening for rumours and surmises of all descriptions.

20. The other amendments of the law that have been suggested can be more readily disposed of. The prohibition of unauthorized pounds is a measure to which no objection can be taken, and it is one that was proposed some years ago in Assam to prevent evils of a very different description from those here in question.

21. The power of appointing a village headman (where there is none) for the purposes of Section 45 of the Code of Criminal Procedure is one which I believe will not be needed in the Punjab, as we have, I think, village headmen practically speaking in every village, and I am not in a position to offer any opinion on it as applied to villages in other parts of India. For the rest, I see no objection to the amendments of Section 45 proposed, and they would undoubtedly be useful in connection with the matter under consideration.

22. I also approve of the amendments proposed in the Police Act, V of 1861, with a view to giving additional powers in connection with the levying of the cost of additional police and of sums to be paid by way of compensation to persons injured. I may mention that the power to levy the cost of additional police from a particular class of the inhabitants of the locality instead of, as the present law requires, from all the inhabitants, is one of which I much felt the want at the time the notorious Tantia Bhil was the terror of some of the western districts of the Central Provinces. It was found impossible under the law as it now stands to levy the cost of additional police from those who harboured or countenanced him without making his victims also pay a share, and I have within the last few months experienced a somewhat similar difficulty in the case of a tract of country in the Punjab.

The only one of the amendments proposed in the Police Act regarding which any question could arise is that

which gives a power to make non-resident land-holders contribute. This power would have to be used with great caution and discrimination, but I quite agree with Sir Charles Crosthwaite that non-resident land-holders sometimes encourage crime and derive profit from it one way or the other, and I accordingly think the power should be given. I may mention that in the Provinces which I have administered up to this every detail of any action proposed under Section 15 of the Police Act has in all cases been submitted to and carefully scrutinized by the Local Government, and there would be no difficulty about providing in the Act that this should always be done, as there is never any very great urgency about completing the arrangements.

23. I have now, as requested by the Government of India, stated the amendments in the law which I think desirable, but I am by no means sure that, if the Punjab alone had to be considered, I would ask that legislation should be undertaken in the Legislative Council at this moment to effect them. As the Government of India are aware, I was anxious when the newspaper controversy about this cow business first started to see some steps taken at once to stop it, for there was then no saying to what it might lead; but by what I cannot but regard as a singular piece of good fortune, we in the Punjab have somehow or other tided over the danger up to this, and I am not without hope that the excitement may now have nearly spent itself. This being the position, I should say, looking to the Punjab alone, that it is a question whether it would be desirable at this moment to introduce a big Bill in the Legislative Council to deal with this cow-killing dispute. There is no doubt that, however we might put the thing, some of the educated Hindus would in their present frame of mind take it as directed against them, would raise a great agitation about it in their societies and newspapers, and would spare no effort to make their more ignorant co-religionists believe that their religion was in danger. Now it is possible that this might create a recrudescence of excitement throughout the country which would be a considerable set-off against the advantages to be looked for from the legislation. On the other hand, it is probable that in another direction the fact of our showing publicly a

firm resolve to put down these religious quarrels would have a highly beneficial effect. It would probably frighten many people into keeping quiet and give many people an excuse for keeping quiet. There are always a certain number of old-fashioned people, bunniahs and such like, whose co-operation and whose money is eagerly sought by the agitators, but who in their heart of hearts have not the courage to refuse to join it. To such the fact that the Government had set itself decidedly against the thing would serve as what the frontier tribes call a "pardah,"—a sort of pretext for not joining. What the net result of all this would be it is not easy to predict, but on the whole, unless the next few weeks bring in worse news, I would, if the question was only one for the Punjab, say that it would be enough* that a draft law should be at once prepared and merely kept ready, so that it could be passed at once as an ordinance of the Governor-General in Executive Council if things suddenly got worse, and could be held back if things remained quiet and then passed bit by bit as favourable opportunities presented themselves. If, however, legislation of the sort in question has to be undertaken at once in the Legislative Council for the North-Western Provinces or any other Province, it should certainly be made applicable to all Provinces alike. Such legislation is in my opinion much required everywhere, and if we are to face whatever possible drawbacks there may be about introducing it in the Legislative Council at this moment, it would be absolute folly to confine it to one Province with the prospect of having to face similar drawbacks over again before long for another Province.

D. FITZPATRICK.

P.S.—The above note was written just at the end of the Dasehra. I have since read the opinions of the officers consulted on this matter, and find nothing in them to lead me to modify it. I accordingly allow it to stand, making no material alteration in it, but have added two or three foot-notes to supplement it.

10-1-94.

D. F.

* The news that has come in since this was written has been decidedly good. The excitement seems to be dying down, and I am now, so far as the Punjab is concerned, decidedly in favour of the course here indicated.

Punjab Government Press, Lahore—18-1-94—20

Extract paragraphs 13 to 18 and 22 from a note by Sir DENNIS FITZPATRICK, Lieutenant-Governor of the Punjab, on the proposal for an examination in India for admission to the Civil Service.

PARA. 13. In his despatch No. 3 of the 8th April 1869 the Secretary of State, speaking of the possibility of employing Indians in the higher offices, wrote: "It should never be forgotten and there should never be any hesitation in laying down the principle that it is one of our first duties towards the people of India to guard the safety of our own dominion." That is, I need not say, true, but it seems to me to be a somewhat inadequate statement of the position. There are of course certain moral obligations which are so obvious and so stringent that no question can ever arise regarding them and which in everything we do in this world must have the first place, but next after them comes the obligation to maintain British rule, inasmuch as it is the condition precedent to the performance of all the other duties we owe to India. It is no doubt possible by an effort of the imagination to conceive a time when India would be able to stand alone, and when it would be our duty to withdraw and allow it to do so; but about such matters it is unnecessary to speculate at this moment. It is enough to say that as things now stand, and as they will stand for any time worth taking into consideration, our first and paramount duty is to maintain British rule in India with a strong hand.

British rule brought this country out of a state of chaos the horrors of which it would be difficult for a stay-at-home resident of Europe in the 19th century adequately to realize, and if the grasp of the British power were relaxed even for a brief period over any part of the country, chaos with all its horrors would come again.

Englishmen, even Englishmen who spend their lives in India, are not given to reflecting much on this: and I doubt whether many natives of the country nowadays think of it, though it was a good deal present to the minds of the people of the Punjab when I first came to India.

The fact is that we have now had 35 years of internal peace unbroken except by petty local disturbances, and we have begun to flatter ourselves into the belief that our position in this country is absolutely unassailable; but as a matter of fact it is not so. It is, and always will be, liable to disastrous shocks from which it might take a long time to recover; and though this is not a pleasant subject of reflection to us with our national vanity and our tendency to optimism, the more completely we realize it the better.

14. It must not be supposed when I say this that I am writing merely under the influence of an alarm raised by the events of the last few weeks.

I am not saying it for the first time.

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In a note which I recorded more than six years ago I find I wrote as follows:—

"Even putting aside all question of an attack from outside, it would be sheer folly to assume that things will for any very long period go on as quietly as they have been going on since the suppression of the Mutiny. I do not see the smallest shadow of a ground for apprehending anything like an organized attempt at resistance. Our rule is as popular as the rule of any power, native or foreign, could be with the mass of the people—indeed the only hostility to it displayed anywhere comes from a very insignificant sect of extreme Muhammadans and a small portion of the Hindu educated class, and I fully accept the declarations repeatedly made by both these factions that nothing is further from their ideas (*i. e.*, from their present ideas) than resistance to our authority. But we must remember that the mass of the people of this country are subject to vehement and uncontrollable impulses, which may spring into operation without a moment's warning and drive them to lengths to which looking at them in their every-day mood one would suppose them to be utterly incapable of going.

"A panic like that regarding the greased cartridges or a cry against cow-killing might spring up to-morrow and within one month set a whole province in a blaze."

Further on I find I said—

"It may be thought that with the advance of civilization there would be an improvement in this respect, and, after some generations, that will doubtless prove to be the case; but there is no sign of it yet: indeed there has been something like an exacerbation of hostile feeling between certain rival sects of late years which I find many intelligent natives attribute to the development of the press, the post and the telegraph. A quarrel between Hindús and Mussalmáns at Salem or Delhi, which formerly would have been a purely local affair, is now within a few hours the subject of discussion all over the country and thus the evil multiplies itself."

15. The disturbances which have just occurred in the Benares Division, in certain parts of Behar, in Rangoon and Bombay, and the excitement which has followed throughout the whole country, illustrate to some extent the danger to which I referred on that occasion, but when I spoke of that danger being aggravated by the press, I confess I was far from anticipating the extent to which it might become aggravated by the operations of the new-fashioned agitating classes, both Hindu and Mussalmán, not only through their newspapers, but also by their organized associations and public meetings.

The classes to which I refer form but small fractions of the population, and the subjects which they ordinarily discuss have no more interest for the masses than Irish Home Rule or the doctrine of the "filioque." The danger

to be apprehended from them lies in this that they may at any time take up some subject which would come home to the minds of a large mass of people, and by working it through their newspapers and at public meetings according to the organized methods of agitation which have of late come into fashion here may succeed in stirring up a perilous amount of popular excitement over extensive tracts of country.

16. This is a new danger added to our position in this country, and we can get some idea of its very serious nature from what has lately been going on about the cow-killing quarrels. I trust it will not be supposed from my saying this that I am putting forward by way of insinuation against the body known as the Congress the charge made in some of the Muhammadan and English newspapers against that body of being mainly responsible for the cow-killing riots. If I meant to make such a charge, I would make it in plain and unmistakable language. There are no doubt many Congress men and many Congress organs at work in the cow-killing dispute, but the Congress is only one of many agitating bodies in the same predicament in this respect, and not, I believe, the largest or most influential; and it is only fair to remember that nothing could be more opposed to the views of the principal leaders in it than any idea of stirring up strife between Hindús and Mussalmáns. What I refer to is the whole system of agitation through the medium of newspapers and public meetings, whether by Hindús or Mussalmáns, whether by Congress people or anti-Congress people or by people who are not concerned with the Congress one way or the other, and what I mean to say is that that system of agitation has done much to aggravate the present cow-killing quarrels and spread them to places to which they would otherwise not have extended.

17. The worst feature of the whole case is the assertion now being put forward by the Hindu newspapers that we are responsible for these cow-killing riots, that it is our policy at this moment to stimulate dissensions between Hindús and Mussalmáns in order to prevent the Mussalmáns joining the Congress, and that in accordance with that policy we, being ourselves eaters of beef, are encouraging the Mussalmáns to kill cows in order to irritate the Hindús.

I need not say that to any reasonable person who reflects on the terrible danger to British rule and the extreme peril to Europeans in isolated stations which the cow-killing dispute would entail if it really made head a charge of this sort is on the face of it ludicrously absurd. The cow-killing question is the question of all others which, at least for the last 20 years, has been regarded by us all as the gravest danger that threatens us in India. If it spread, as it might, to our Native Army and Police, it is not too much to say that over large tracts of country British rule would be for a time,

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wiped out, and that in many districts our two or three British officers would be like so many black ants that by some accident had got between the upper and the nether millstone. To suggest that we would stimulate a quarrel of that sort, and with the object alleged, is as absurd as it would be to suggest that we would set fire to our house in order to get rid of a few mosquitoes, and I cannot conceive it possible that some of those who put forward the suggestion—men so far educated as to be able to produce an excellently written English article—can really believe it to be true.

Perhaps the best excuse that charity could suggest for them is that their charge is merely a political stroke thoughtlessly delivered in the heat of argument much in the same way as a Home Rule Irish Secretary might accuse a Conservative Irish Secretary, or *vice versa*, of stirring up one religious party in Ireland against the other. But, however this may be, whether the charge is made with a deliberate design, or whether it is made thoughtlessly and recklessly, the fact remains that it is now spread broadcast over the whole of India, and that we must be prepared for the consequences.

18. I may say that I believe the charge is one which it would never occur to the masses of the people to make. Of course when there was a riot between Hindús and Mussalmáns, whichever party was adjudged to be most to blame and got the heaviest sentences would contend that they had been unfairly treated. What they usually say in such a case when a European Magistrate is concerned is that the Magistrate was mistaken or misled by their enemies, that he was young or new to the district, or was prejudiced against them or account of some previous affair, or something of that sort. I don't think they would be at all likely to urge that the Magistrate was a man who was against Hindús generally or against Muhammadans generally; and as to the idea that European officers generally were siding either with Hindús or Mussalmáns, I feel certain it would never enter into their heads, for it is always to the European officer that they look as the arbiter of their disputes.

But now that the charge has been made and disseminated all over the country by the native newspapers, who can say that in a time of excitement like the present it will not gain credence among the ignorant masses, set the Hindús and Sikhs against us, and involve us in most serious troubles?

This illustrates what I mean when I say that a new danger has been of late years added to our position in India.

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22. From what has been said above it will have been seen that the immediate effect of the general progress of the country is, contrary to what might have been expected, not to diminish the bitterness of these disputes but to increase it. I have explained to a certain extent how this comes about, but

there is one other feature in the progress of Indian society to which I ought to refer as to some extent accounting for it. I mean the sense of liberty, equality and individual right which a regular administration of justice and the development of political ideas has introduced. A few days ago I asked a Sikh gentlemen holding a high position in an important Native State what was the cause of the present disturbances, and he answered that it was the "azadi," the liberty, or perhaps, as he used the word in a dyslogistic sense, I should translate it "license," which we allow to our people. Long ago "dastūr" or "riwāj" (custom) and the views of the more steady and sensible members of a class generally prevailed. There were of course many exceptions, but I speak of the general tendency. If the members of a sect had been in the habit of doing a certain thing in a particular place, the general feeling among other sects was that they should be allowed to continue doing it there: on the other hand, if the members of a sect had not been in the habit of doing a certain thing in a particular place, they would probably not think of doing it there; and in either case individuals would not usually venture to set themselves up against the opinion of the mass. This was the way of the people, and it seemed to the Government so good a way that when I first came to the Punjab there was actually a clause in the short Penal Code, compiled for our use by, I think, Sir Robert Montgomery and Sir Richard Temple, providing a punishment for what was somewhat quaintly termed "wrongful innovation," which was understood to mean doing something that had not been done before and which would be likely to lead to a quarrel. Now we have changed all that. People are perpetually asking themselves why should not we do this and why should our neighbours be allowed to do that, and they always find the petty-fogging legal practitioner and professional agitator ready at their elbow to help them to think out the question, and some party newspaper available for discussing it.

I have had one single Mussalman after me for months, who quotes constitutional principles to me, and wants to know why I won't upset an order of the District Magistrate refusing him leave to kill cows in a place where no one else wants them to be killed; and we have recently been in danger of having a renewal of the riots at Rohtak owing to the handful of butchers there striking out a line of their own, declining to accept a settlement effected by the Deputy Commissioner between the other Mussalmans and the Hindus, and refusing to do their part in the Id-ul-zuha sacrifices, with the result that last year there were no sacrifices at all, and the decent Mussalmans suffered for their loyalty and desire to avoid a breach of the peace.*

* This year the butchers have given in, the Deputy Commissioner's settlement has had full effect given to it, and all has gone well.