

**TWO MEMORABLE TRIALS
OF
MAHATMA GANDHI**

Compiled and Edited by
R. K. PRABHU

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**NAVAJIVAN PUBLISHING HOUSE
AHMEDABAD-14**

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PREFACE

Mahatma Gandhi's political career as such might be said to have begun with the founding of the Natal Indian Congress, at his instance and with his active co-operation, in Durban in May 1894, following his decision to stay on in South Africa, where he had proceeded a year earlier to conduct a legal suit on behalf of an Indian mercantile firm there. His championship of the cause of his down-trodden countrymen in that White Colony resulted in his being thrice clapped in jail, before he returned to his motherland in January 1915.

During the three decades and three years of the span of life left to him thereafter, he was thrice called upon to face regular trials before courts of law—first, before a District Magistrate in Behar, secondly before a Bench of the Bombay High Court and thridly before the Sessions Judge of Ahmedabad—convictions following in each case, and Gandhiji asking for the heaviest punishments that could be awarded to him, since he was pleading guilty to the charges brought against him.

In the first case, when he appeared in Court to receive his sentence, he was told that the case against him had been withdrawn unconditionally.

In the second case, he was charged with “contempt of court”, and then told that he would be pardoned if he tendered an apology to the Court

in terms drafted by the Court; but Gandhiji declined, with every due respect to the High Court, to accept the advice offered. Placed on the horns of a dilemma, Chief Justice Marten and his two colleagues decided to administer a 'severe reprimand' to Gandhiji and to 'caution him as to his future conduct', and let him off. Gandhiji, however, viewed the result of the trial as "an almost complete vindication of Civil Disobedience."

The third trial, which was before the Sessions Judge of Ahmedabad, and in which the charge against Gandhiji was one of promoting "sedition", was the most memorable of all the three trials, perhaps the most memorable in the political history of India under British rule, barring that of Lokamanya Tilak, with which the Judge himself likened it, in sentencing Gandhiji to a like term of imprisonment, namely six years, as was awarded to the Lokamanya.

In addition to the ordeals mentioned above, Gandhiji had to undergo 'detentions' without any trial whatsoever, for short or long periods, in jails and other places of confinement, five times, the last being during World War II.

It is somewhat strange that, while his trial for "sedition" before the Sessions Judge of Ahmedabad, has received due prominence in all the biographies of Gandhiji, there is not so much as a hint even, let alone any report, in any of them, of his trial for "contempt of court" in the Bombay High Court in Feb.-March 1920, though the full text of the elaborate judgment of Chief Justice Marten and Justices Hayward and Kajiji was published at the time in *The Bombay*

Chronicle. In view of this fact and in view also of the memorable character of both this trial and the one at Ahmedabad in March 1922, an attempt has been made in this booklet to give the fullest possible reports of these two trials. These reports are based on reports which had appeared in the issues of *Young India*, *The Bombay Chronicle*, the *Bombay Law Reporter* and *Mahatma*, to all of which our thankful acknowledgments are made here.

R. K. PRABHU

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OF
MAHATMA GANDHI

TO THE READER

I would like to say to the diligent reader of my writings and to others who are interested in them that I am not at all concerned with appearing to be consistent. In my search after Truth I have discarded many ideas and learnt many new things. Old as I am in age, I have no feeling that I have ceased to grow inwardly or that my growth will stop at the dissolution of the flesh. What I am concerned with is my readiness to obey the call of Truth, my God, from moment to moment, and, therefore, when anybody finds any inconsistency between any two writings of mine, if he has still faith in my sanity, he would do well to choose the later of the two on the same subject.

M. K. GANDHI

Harijan, 29-4-'33, p. 2

INTRODUCTION

Story of Britain's Betrayal of India and Gandhiji's Disillusionment

Putting full faith in the declared aims of Britain and her Allies during World War I, that they were fighting "to make the world safe for democracy", to protect weak nationalities and confer the blessings of self-determination on all peoples, India had magnificently responded to the call of the British Empire. She had made a total combatant contribution of 9,85,000 men, of whom 5,52,000 were sent overseas, and of whom no less than 7,91,000 were enlisted during the War. Of non-combatants India had contributed 4,72,000, of whom 3,91,000 were sent overseas and no less than 4,27,000 were enrolled during the War. The total contribution of Indian personnel was thus 14,57,000, of whom 9,43,000 served overseas and no less than 1,06,594 suffered casualties. The contributions in money by India were estimated roughly at 130 million pounds sterling or nearly 200 crores of rupees.

When in August, 1917, the Secretary of State for India, Mr. E. S. Montagu, made a declaration in Parliament promising "full responsible government to India within the British Empire" by a gradual transference of power to popular control and larger association of Indians in the administration of the country, fond hopes were raised in the Indian breast that as a result of the unparalleled sacrifices of her

people India would be elevated to the status of an equal partner in the British Commonwealth. Gandhiji was invited to and participated in the War Conference held at Delhi on 27th April, 1918, at which the British King-Emperor's message was read declaring that "the need of the Empire is India's opportunity", and Gandhiji even supported the resolution about loyalty to the British Crown. He also engaged himself actively, and even at serious risk to his health, in recruiting volunteers for the Army from Kheda District.

New Fetters for India

But the British rulers of India had no real intention of fulfilling any of their war-time pledges to Indians, which had been, as usual, couched in specious phraseology calculated to hoodwink the latter. They were determined to keep the British grip on India at any cost without the least slackening. Realizing that when the war ended and the Indian intelligentsia got disillusioned and found themselves grossly betrayed, their resentment against their rulers would be deep and widespread and might explode in acts of violent protests, the British bureaucracy planned in secret, when the war was coming to a close, to stem the rising tide of nationalism in the country and to forestall public manifestations of resentment against the rulers, by keeping in full force, even after the end of the war, the provisions of the Defence of India Act severely curtailing the liberties of the people. The Government appointed a Committee under the chairmanship of Sir Sidney Rowlett, to report on the growth of the revolutionary movement in India and to suggest remedies to curb it effectively. Simultaneously, a campaign was begun to get out of the

way inconvenient critics of the Government by internment without any trial. Mrs. Annie Besant and Mr. B. P. Wadia were among the first victims of this policy. A large number of others too all over the country were similarly interned.

When the report of the Rowlatt Committee was published on 19th January, 1919, the nation discovered to its dismay that the Committee had recommended practically the perpetuation of the provisions of the Defence of India Act, taking away trials by juries and assessors in cases of seditious crimes, taking away the preliminary proceedings of commitment on the one hand and the right of appeal after conviction on the other, authorizing trials *in camera* and admission of evidence not subjected to cross-examination and not recorded by the trial court under certain circumstances and, above all, reserving to the Executive the right and power, not only to restrict the liberty of the individual by demanding securities with or without sureties, by restricting his residence or requiring notification of change of residence and demanding abstention from certain acts, such as engaging in journalism, distributing leaflets, attending meetings, etc., but also to deprive him of it by arresting and confining him.

Gandhiji Draws up Satyagraha Pledge

There was widespread indignation all over the country at this black treachery towards a nation which had rallied to the defence of the British Empire in its hour of supreme crisis and which had practically saved the Empire from destruction. When on 6th February 1919 the Rowlatt Bills, embodying the recommendations of the Committee, were introduced in the Imperial Legislative Council at Delhi, the

country rose like a man against this "black" legislation and crowded protest meetings began to be held everywhere to demand its immediate withdrawal. The gross betrayal of the Indian people and the unwarranted insult levelled at their manhood completely disillusioned Gandhiji regarding the "benevolent" character of the British Empire and its real attitude towards India and he decided on immediately launching a campaign of Satyagraha or firm, but non-violent and peaceful resistance against the Rowlatt legislation. A Satyagraha pledge of such civil resistance was drawn up by him for all self-respecting Indians to sign and the 6th of April, 1919, was fixed for an all-India *hartal* and as "a day of fasting, prayer and penance". Thousands signed the pledge and the *hartal* was an unparalleled success as a manifestation of the determination of the people of the country to defy the British bureaucracy to do its worst towards them. When Gandhiji, who had been hearing ominous reports from the Punjab, was proceeding to that province, he was arrested near Mathura on the 10th April and sent back to Bombay under police escort. Report of his arrest led to disturbances and outbreaks of violence in Bombay, Ahmedabad, and several other towns. Martial Law was declared in Ahmedabad, but it was withdrawn after Gandhiji reached the place and helped restore peace there. When from Ahmedabad he proceeded to Nadiad and saw the actual state of things there, he began to realize that he had committed a grave mistake in calling upon people to launch civil disobedience prematurely. "Himalayan miscalculation" was how he described at Nadiad his mistake. He suspended Satyagraha on the 18th April.

Jalianwala Bagh Massacre

In the meanwhile, on 10th April Sir Michael O'Dwyer, Governor of the Punjab, had let loose repression in that province by deporting Drs. Kitchlu and Satyapal and Pt. Rambhaji Dutt Chaudhuri, top Punjab leaders. On 13th April the Jalianwala Bagh massacre, at the hands of General Dyer and his myrmidons, took place at Amritsar, in which some five hundred men, women and children, who had peacefully gathered there, were killed outright and three times that number were wounded as a result of indiscriminate firing. Martial Law was declared in several towns in the Punjab and a large number of people were arrested and clapped in jail. Several persons were publicly flogged and made to crawl on their bellies and unarmed crowds were bombed by aeroplanes.

These horrors were not allowed to be known outside the Punjab, a strict censorship being imposed and movements of persons being severely restricted by the authorities. When some months later Martial Law was lifted from the province and the news of the tragic happenings began to leak out, the Government of India appointed a Commission of enquiry with Lord Hunter as Chairman, to report on the happenings in the Punjab; but the Congress was not satisfied that the full truth about the official excesses would be exposed by this officially sponsored body and, therefore, appointed a Committee of its own, with Gandhiji as Chairman, to make a searching and thorough investigation into the happenings in the Punjab. The reports of both these Committees revealed to the nation the frightful extent of the atrocities

perpetrated under official auspices in the province and there was widespread indignation against the official attempts to whitewash the crimes committed by the soldiery and the police in that province.

Gandhiji Returns British Decorations

As Gandhiji saw no signs of the least repentance in official circles and no inclination to undo the wrongs done to his countrymen, the realization appears to have begun to dawn on him that his country's emancipation from the oppressive alien thralldom could be achieved only by means of complete and countrywide non-violent non-co-operation. With this end in view, on 1st August, 1920, he addressed a letter to the Viceroy returning the Kaiser-i-Hind Gold Medal presented to him for his humanitarian work in South Africa, the Zulu War Medal, conferred on him for his services as officer in charge of the Indian Volunteer Ambulance Corps in 1906, and the Boer War Medal, given to him for his services as Assistant Superintendent of the Indian Volunteer Stretcher-Bearer Corps during the Boer War (1899-1900). In his letter Gandhiji stated that the events of the past months had confirmed him in his opinion that the Imperial Government was "moving from wrong to wrong" and that he could retain "neither respect nor affection for such a Government". Referring to the events in the Punjab and the campaign of repression undertaken by the Government, Gandhiji went on to say, "Your Excellency's light-hearted treatment of the official crime, your exoneration of Sir Michael O'Dwyer, Mr. Montagu's despatch and above all, the shameful ignorance of the Punjab events and callous disregard of the feelings

of Indians betrayed by the House of Lords, have filled me with the greatest misgivings regarding the future of the Empire, have estranged me completely from the present Government, and have disabled me from rendering, as I have hitherto wholeheartedly tendered, my loyal co-operation.”

Trial for Contempt of Court

Among those who took the Satyagraha pledge earlier in the year were three pleaders and two barristers practising in the Court of the District Judge of Ahmedabad, Mr. B. C. Kennedy. Coming to know of this, Mr. Kennedy demanded a satisfactory explanation of their conduct from them, and failing to be satisfied with the furnished explanation, he addressed on 22nd April, 1919, a letter to the Registrar of the Bombay High Court, seeking guidance from the High Court as to how the Satyagrahi lawyers should be dealt with. Proceedings were then instituted against the lawyers and the High Court supplied a copy of Mr. Kennedy's letter to one of the lawyers' counsel for defence purposes. The counsel passed on the copy of the letter to his client—one of the lawyers in question—and the latter showed it to Gandhiji, who immediately decided to publish the letter of Mr. Kennedy in *Young India*, since, in his opinion, the District Judge had exceeded the legitimate bounds of his position as a judge in expressing, in his letter, opinions about the Satyagraha movement and the Satyagrahi lawyers which were offensive and uncalled for. Mr. Kennedy's letter was published in *Young India* of 6th August, 1919, under the title "O'Dwyerism in Ahmedabad". In the same issue of *Young India* Gandhiji published editorial comments

with the caption "Shaking Civil Resisters", in which Mr. Kennedy was severely criticized for his remarks about the lawyers and the Satyagraha movement.

As the publication of the District Judge's letter and comments thereon appeared in *Young India* while proceedings against the lawyers were in progress, both Gandhiji as editor and Mahadev Desai as printer and publisher of the journal were proceeded against for contempt of Court and their trial took place on 3rd March, 1920, before a bench of the Bombay High Court consisting of Chief Justice Marten, and Justices Hayward and Kajiji. Gandhiji, while disclaiming any intention to lower the dignity of the Court—for which he said, he had the highest respect—maintained that he, as a journalist, had published Mr. Kennedy's letter and commented on it as a matter of public duty. He had refused to tender an apology to the Court in the form suggested to him by the Court, since it would be dishonest on his part to do so when he believed that he was right in what he had done. He was prepared to suffer whatever penalty the Court might impose on him. The Judges, however, held that contempt had been committed by him and his colleague, and the Court's order was that they be 'severely reprimanded' and 'cautioned as to their future conduct'. Gandhiji's comment on the outcome of the trial was that it was "an almost complete vindication of Civil Disobedience". A full report of this strange trial will be found by the reader on page 23 and succeeding pages of this booklet. The report of the proceedings in this trial is based on the reports appearing in *Young India* and the *Bombay Chronicle* and the *Bombay Law Reporter* (1922).

Non-co-operation Movement Launched

Towards the middle of the year 1920, as more and more distressing information relating to the official atrocities in the Punjab began to come, Gandhiji bestirred himself and visited Amritsar and Delhi and at the latter place a joint Hindu-Muslim conference was held at which boycott of foreign cloth was decided upon and the idea of countrywide non-co-operation with the Government was mooted. At a similar conference held at Allahabad shortly after, non-co-operation was formally adopted. When a special session of the Indian National Congress was convened at Calcutta in September, 1920, Gandhiji moved a lengthy resolution recommending the adoption by the country of the policy of "progressive non-violent non-co-operation" until the Khilafat and Punjab wrongs were righted and Swaraj was established. The non-co-operation outlined by Gandhiji included surrender of titles and honorary offices and resignation from nominated seats in local bodies, refusal to attend official and semi-official functions, withdrawal of children from schools and colleges owned, aided or controlled by Government, and in the place of such institutions the establishment of national schools and colleges; gradual boycott of courts by lawyers and litigants and establishment of private arbitration courts; withdrawal of candidature for elections to the so-called "reformed" councils and the refusal to vote at such elections and refusal to become recruits for service in Mesopotamia. The resolution was adopted by a large majority.

As a result of the decision of the Congress, hundreds of lawyers throughout the country suspended

practice in the law courts, thousands of college and school students ceased to attend government-controlled educational institutions, and quite a number of new national schools and colleges came into existence. In less than four months, the Jamia Millia or National Muslim University of Aligarh, the Gujarat Vidyapeeth at Ahmedabad, the Bihar Vidyalyaya, the Banaras Vidyapeeth, the Bengal National University and the Tilak Maharashtra Vidyapeeth were set up. The Swadeshi and Khaddar movements received a fillip as never before. Hundreds of title-holders gave up the badges of slavery to alien rulers. The anti-drink campaign also was vigorously pushed forward. On Gandhiji's advice, successful boycott of the visit to the country, of the Duke of Connaught, who had been summoned by the rulers to inaugurate some of the newly "reformed" legislative councils, was carried out. Gandhiji also issued a stirring appeal to the country to subscribe a crore of rupees for Tilak Swaraj Fund to finance the programme of non-co-operation, and for enrolment of a crore of members in the Congress and the setting up of 20 lakhs of Charkhas in the country within one month and the country's response was magnificent, both the needed amount and the prescribed enrolment of Congress members materializing before the close of the month.

Muslim's Ultimatum to Britain

In the meanwhile, the mounting indignation among the Indian Muslims at the dismemberment of the Turkish empire and the indignities heaped on the Khalifate by Britain and her Allies, led to the adoption by the All-India Khilafat Conference held

at Karachi in July 1921, under the presidentship of Maulana Mahomed Ali, of a resolution declaring that "it is in every way religiously unlawful for the Muslims at the present moment to continue in the British Army or induce others to join the army, and . . . if no settlement is arrived at before Christmas, the Indian Republic will be declared at the Ahmedabad session of the Congress." Gandhiji, however, advised the Muslims to hasten slowly.

On July 31 Gandhiji lit a huge bonfire of foreign cloth in Bombay before a lakh of people and all over the country similar bonfires and boycott of foreign cloth became the order of the day. As the movement began to spread like wild fire, the British bureaucracy tried to stem it by arresting both Maulana Mahomed Ali and his brother Maulana Shaukat Ali, as well as the Shankaracharya of Sharadapeth, Swami Bharati Krishna Theertha, who had supported the Karachi resolution. This step on the part of the Government added fuel to the fire of popular indignation.

Leaders' Manifesto

At a meeting of Hindu and Muslim leaders convened by Gandhiji in Bombay on October 4, a resolution was adopted declaring that "it is contrary to national dignity for any Indian to serve as a civilian, and more especially as a soldier, under a system of government, which has brought about India's economic, moral and political degradation and which has used the soldiery and the police for repressing national aspirations, as for instance, at the time of the Rowlatt Act agitation, and which has used the soldiery for crushing the liberty of the Arabs, the

Egyptians, the Turks and other nations who have done no harm to India. We are also of the opinion that it is the duty of every Indian soldier and civilian to sever his connection with the Government and find some other means of livelihood." Gandhiji, Pandits Motilal and Jawaharlal Nehru, Maulana Abul Kalam Azad, Hakim Ajmal Khan, Lala Lajpatrai, Smt. Sarojini Naidu, M. R. Jayakar, C. Rajagopalachari, Rajendra Prasad, Vitthalbhai Patel and Vallabhbhai Patel, N. C. Kelkar, Jammalal Bajaj, and Dr. M. A. Ansari were among the fifty leaders who signed the manifesto. On October 5, the Congress Working Committee met in Bombay and passed a resolution supporting the manifesto.

Gandhiji as Sole Congress Executive

The Prince of Wales was brought over to India in November on a "visit", with a view to rally to the side of the rulers the loyally inclined among the Indian intelligentsia, but the visit was everywhere boycotted by the masses. As the bureaucracy saw that things were getting out of their hands, they decided on intensifying the repression. Mass arrest of Congress volunteers and of prominent leaders like Deshbandhu C. R. Das, Lala Lajpat Rai, Pandits Motilal and Jawaharlal Nehru, Maulana Abul Kalam Azad and others, tried, so to say, to keep pace with the popular revolt against the Government, but Gandhiji was let alone. When the Congress met at Ahmedabad in December (1921) under the temporary presidency of Hakim Ajmal Khan, in the absence of Deshbandhu Das who had been elected to preside, a resolution sanctioning the launching of a country-wide civil disobedience movement and appointing

Gandhiji as the sole executive authority of the Congress and investing him with the full powers of the All-India Congress Committee was passed by an overwhelming majority of votes.

Bardoli and Chauri Chaura

As the popular enthusiasm for the C. D. movement was steadily gaining in momentum, Gandhiji decided to make Bardoli taluka the field of his first experiment in mass civil disobedience. He toured the villages of the taluka and impressed on the people the need not only for a total sacrifice but also for strictest discipline and complete non-violence. When he was satisfied that to a man the people of the taluka would fulfil the test of ideal Satyagrahis, he had a day fixed to launch the movement, the sanction of the Working Committee of the Congress for starting the campaign having been obtained on 31st January, 1922. On 1st February he sent an ultimatum, so to say, to the Viceroy demanding the redress of the Khilafat and Punjab wrongs, and the freeing of all non-co-operating Congress prisoners and also of the press from all administrative control. These demands were summarily rejected by Lord Reading's Government in a communique dated Feb. 6. On February 7 Gandhiji sent a rejoinder to Government, cataloguing "facts beyond challenge" of official lawlessness and brutal repression. Gandhiji had proceeded to Bardoli to lead the campaign and the situation in the country had become "electrical"—when news of awful happenings at Chauri Chaura, a U. P. village, was flashed forth all over India. As a result of a clash between a procession of non-co-operators and the police, the mob there had got out

of hand on 5th February and burnt alive 21 constables and one sub-inspector of police in front of the police *thana*. The tragedy greatly shocked Gandhiji and he immediately decided to call off the mass civil disobedience campaign in Bardoli taluka. He also went on a fast for five days as a penance. The Working Committee of the Congress which met at Bardoli on February 11 endorsed Gandhiji's decision to cancel the programme of mass C.D.

Tory Call for Gandhiji's Arrest

The happenings in India and the open defiance of British Raj by the masses under the leadership of Gandhiji had begun to cause serious concern in British political circles, and in the House of Commons and the Tory press bitter attacks were made on the Secretary of State for India, Mr. E. S. Montagu, and also on the Viceroy for their "complaisance" and "leniency" towards the Indian "seditionists", and in particular towards Gandhiji, whose immediate arrest was incessantly called for. This Tory campaign against him led Mr. Montagu to declare, in the course of the debate in the House of Commons on 14th February, that "if the existence of our Empire were challenged, the discharge of the responsibilities of the British Government to India prevented, and demands were made in the very mistaken belief that we contemplated a retreat from India, then India would not challenge with success the most determined people in the world who would once again answer the challenge with all the vigour and determination at its command".

The British Premier, Mr. Lloyd George, too, was reported by Reuter to have assured the House

that the authority of the Government of India would be maintained unchallenged, and that the Imperial Government welcomed the Viceroy's declaration that civil disobedience was fraught with danger to the State and must be met sternly and severely. He declared emphatically that the Imperial Government wished to make it clear that in no circumstances was it proposed to withdraw or impair the full sovereignty of the King-Emperor. (*Cheers*). They could not divest themselves of the great trust they had accepted in India without shams and dishonour. He asked, "What would be left if we departed? Would Mr. Gandhi govern and protect from inevitable pillage and ruin even one million Indians? We had only to see what happened in the Moplah rising, even with the British authority there. India could not be treated as one people. The only unity created in India had been by British rule, and the effect of Britain's withdrawal would be chaos, confusion and desolation indescribable. It was right that that should be brought home in India as well as here."

Elsewhere, Lord Birkenhead too was reported to have reminded Indians that Britain had lost none of her "hard fibre". Commenting on the debate, the London *Times* wrote in its issue of 15th February as follows: "Neither Mr. Montagu's evasions nor Mr. Gandhi's sham retractions will satisfy the British public, who are greatly alarmed of the condition of India. The Government of India has acted with unpardonable weakness. The Indian Empire cannot be left dependent upon the unstable mentality of Mr. Gandhi. Lord Reading must grasp the nettle. If there is any further hesitation then the people of India will be confirmed in the belief that the

British Raj is afraid to act. India must be governed by acts as well as by words lest the worst comes."

"If I Am Arrested"

From the 8th of March the rumours of Gandhiji's imminent arrest had begun to thicken. He wrote as follows in *Young India* of 9th March under the caption "If I Am Arrested":

"The rumour has been revived that my arrest is imminent. It is said to be regarded as a mistake by some officials that I was not arrested when I was to be, i.e. on the 11th or 12th of February, and that the Bardoli decision ought not to have been allowed to affect the Government's programme. It is said, too, that it is now no longer possible for the Government to withstand the ever-rising agitation in London for my arrest and deportation. I myself cannot see how the Government can avoid arresting me, if they want a permanent abandonment of civil disobedience, whether individual or mass.

I advised the Working Committee to suspend mass civil disobedience at Bardoli, because that disobedience would not have been civil, and if I am now advising all provincial workers to suspend even individual civil disobedience, it is because I know that any disobedience at the present stage will not be civil but criminal. A tranquil atmosphere is an indispensable condition of civil disobedience....

It is a matter of no pride or pleasure to me but one of humiliation that the Government refrain from arresting me for fear of an outbreak of universal violence and awful slaughter that any such outbreak must involve. It would be a sad commentary upon my preaching of, and upon the Congress and Khilafat

pledge of, non-violence, if my incarceration was to be a signal for a storm all over the country. Surely, it would be a demonstration of India's unreadiness for a peaceful rebellion. It would be a triumph for the bureaucracy, and it would be almost a final proof of the correctness of the position taken up by the Moderate friends, *viz.*, that India can never be prepared for non-violent disobedience. I hope, therefore, that the Congress and Khilafat workers will strain every nerve and show that all the fears entertained by the Government and their supporters were totally wrong. I promise that such act of self-restraint will take us many a mile towards our triple goal.

There should, therefore, be no *hartals*, no noisy demonstrations, no processions. I would regard the observance of perfect peace on my arrest as a mark of high honour paid to me by my countrymen....

I do not know if my removal from their midst will not be a benefit to the people. In the first instance, the superstition about the possession of supernatural powers by me will be demolished. Secondly, the belief that people have accepted the non-co-operation programme only under my influence and that they have no independent faith in it will be disproved. Thirdly, our capacity for Swaraj will be proved by our ability to conduct our activities in spite of the withdrawal even of the originators of the current programme. Fourthly and selfishly, it will give me a quiet and physical rest, which perhaps I deserve."

Arrest

Gandhiji left the Sabarmati Ashram for Ajmer on 8th March on an urgent invitation from Mr. Chhotani and it was even whispered that he might

be arrested on the way. A suspicious telegram from Ajmer made Shrimati Kasturba Gandhi and some others to run up to the Sabarmati station to see him safely return. Nothing, however, happened either that day or the next. Gandhiji returned to Sabarmati in the afternoon of the 10th. At the Ashram the rumours of the last two days had been received with calmness and indifference, for there had been so many partings since Gandhiji had decided to start civil disobedience in November last that the idea of his arrest and imprisonment had become quite familiar. So, the daily routine of work was not disturbed in the least by these rumours. On the 10th, after Gandhiji's arrival, when the day wore on and the evening came and the bell rang out the hour of prayer, there was a sudden hush all round as all the inmates of the Ashram proceeded with anxious and hasty steps to join their *Bapu* in his last prayer, perhaps for a long time to come. He was seen to be unusually light-hearted and happy and played with the children like one of their own, spreading the contagion of light-heartedness and happiness all round. After the prayer, he returned to his work as usual and dictated replies to some correspondence. During this time, friends from the city continued to come to see him, bringing titbits of news, which went to confirm the prevailing rumour.

At night, Gandhiji arose about quarter to ten for his last ablutions before retiring and the small assembly that had all this time surrounded him began to disperse. Mr. Shankarlal Banker, who had come with Mr. Shwaib Qureshi and Anasuyabahen Sarabhai to confirm the strength of the rumour of his impending arrest, also departed at that time. A few

minutes after, Mr. Shwaib returned with Anasuya-bahen and brought the news that Mr. Banker had been put under arrest and that the District Superintendent of Police was waiting on the road for Gandhiji's arrest. The news spread in a minute throughout the Ashram quarters and almost all the inmates, men, women, and children, hastened to Gandhiji to bid him farewell and have his blessings. At his desire, his favourite Gujarati hymn, *Vaishnavajana to*, which describes the qualities of a true Vaishnava, was sung in chorus. After this he accosted each one of the Ashramites in suitable terms, and prepared to surrender himself. While proceeding from his residence to the police officer on the road, he expressed himself several times that he felt very happy and gratified over his arrest. Both Gandhiji and Mr. Banker were taken to the Sabarmati jail. Smt. Kasturba Gandhi with a small company of four or five was allowed to accompany them and see them lodged in their quarters.

Committed to Sessions

The next day, i.e., on the 11th of March, Gandhiji and Banker were produced before the trying Magistrate, Mr. Allan Brown, I.C.S., who held his court at the Commissioner's Office, outside the city proper and under the shelter of the cantonment. Five witnesses, consisting of the District Superintendent of Police, Mr. Healey, the Registrar of the Bombay High Court, Mr. Dinshaw Garda, the District Magistrate of Ahmedabad, Mr. Chatfield, a sub-inspector and a C.I.D. subordinate of police were examined by the Prosecutor on the Government side. The D.S.P., who was the first

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witness, produced the Government's authority to lodge a complaint in respect of four articles which had appeared on different dates in *Young India*, which was edited by Gandhiji and printed and published by Banker.

In reply to a question put by the Magistrate, Gandhiji, describing himself as a farmer and weaver by profession living at the Sabarmati Ashram, said:

“I simply wish to state that when the proper time comes, I shall plead guilty so far as disaffection towards the Government is concerned. It is quite true that I am the editor of *Young India* and that the articles read in my presence were written by me and the proprietors and publishers had permitted me to control the whole policy of the paper.”

The Magistrate having decided to commit both the accused to take their trial at the Sessions, they were removed to the Sabarmati Jail.

The trial at the Sessions, which turned out to be a memorable one, began and ended on 18th March, 1922, before Mr. C. N. Broomfield, I.C.S., District and Sessions Judge, Ahmedabad, Gandhiji being sentenced to six years' imprisonment and Banker to simple imprisonment for one year and a fine of a thousand rupees. A full report of the trial will be found on page 56 and succeeding pages of this booklet.

R. K. PRABHU

TRIAL FOR 'CONTEMPT OF COURT'

On 11th December, 1919 an application was argued by Mr. D. N. Bahadurji, Acting Advocate-General, before Justices Shah and Crump in the Bombay High Court, for issuing a rule for contempt of Court by Mr. Mohandas Karamchand Gandhi and Mr. Mahadev Haribhai Desai, the Editor, and the Printer and Publisher respectively of the weekly journal *Young India*.

THE ADVOCATE-GENERAL: I should be allowed special leave to move for a rule against Mr. M. K. Gandhi, the Editor of *Young India*, and Mr. M. H. Desai, the Printer and Publisher of the said paper, for contempt of Court arising out of the disciplinary jurisdiction proceedings instituted against certain barristers and pleaders of Ahmedabad which were lately heard by a Special Bench of this Hon. High Court.

The affidavit of Mr. N. D. Garda, Registrar of the High Court on the Appellate side, narrated the circumstances under which the alleged contempt took place. The affidavit *inter alia* stated that on 22nd April, 1919, Mr. B. C. Kennedy, the District Judge of Ahmedabad, had addressed a letter to the Registrar, Appellate side High Court, submitting for the determination of the High Court certain questions regarding the conduct of two barristers and three pleaders who had taken Satyagraha pledge.

In consequence of Mr. Kennedy's letter, on the 12th July notices were issued by the High Court in its disciplinary jurisdiction to the barristers and pleaders mentioned in the letter.

Sessions Judge's Letter

During the pendency of the proceedings a copy of the letter from Mr. Kennedy was given to Mr. H. V. Divetia, pleader for one of the respondents, Mr. J. V. Desai. Mr. J. V. Desai gave the copy to Mr. Kalidas J. Jhaveri, another of the pleaders to whom notices had been issued. Mr. Jhaveri handed over the copy to Mr. M. K. Gandhi. Mr. Gandhi, as the Editor of *Young India*, published the letter in his journal on 6th August 1919 under the heading "O'Dwyerism in Ahmedabad" as follows:

O'DWYERISM IN AHMEDABAD

No. 1079 of 1919
District Court,
Ahmedabad, 22nd April 1919

To

The Registrar, His Majesty's Court of
Judicature, Bombay

Sir,

I have the honour to submit for the determination of their Lordships the question of the pleaders of this Court who have signed what is known as Satyagrahi pledges. The following are the Pleaders practising here and have given in their names as members of the Satyagrahi League:

Mr. Gopalrao Ramchandra Dabholkar, Mr. Krishnalal Narsilal Desai, High Court pleader, Mr. Manilal Vallabhram Kothari, Mr. Kalidas Jaskaran Zaveri.

There are others who have not yet given in their names to me.

2. I had a interview with the above gentlemen on the 16th and expressed my sentiments and elicited theirs. I asked for some sort of satisfactory explanation of the sense in which they took the Satyagrahi oath. They have furnished an explanation which I do not think is satisfactory. I therefore submit the case for orders, as I suppose the question is general to all districts.

3. As I understand the Satyagrahi oath, it binds the signatories not only to oppose the Rowlatt Bills and cognate legislation, but to break all laws of whatever kind which a committee may decide should be broken. I gather also from the papers that some illegal acts have been already ordered. I cannot myself see that the public adherence to a body which has that rule binding on it, is consistent with the duty of a pleader and the terms of his Sanad. And I think the explanation furnished by the pleaders leaves matters much where they are.

4. I am not in any way impressed by the temporary suspension of the illegal activities of the League. There can be no doubt (at least I have none) that the suspension is merely a device to avoid the possibility of punishment falling on the Satyagrahis in respect of acts, directly or indirectly due to their teaching and

influence, the actual perpetrators of which and the direct instigators of which are likely to meet with condign punishment.

5. I am of the belief that the above gentlemen are sincerely and conscientiously under the impression that the Rowlatt Bill legislation is a crime and as they have that impression, I would not blame them for going to the edge of the law to oppose it. They are all men for whom I have considerable esteem and I have known them and appreciated them for some years, and it is very painful for me to raise their case; but I am of opinion that they are unfit to practise until they have severed their connection with this league, in the same public way in which they have joined it.

6. There are also at least two Barristers who have joined and who are prominent members of the Local League:

Mr. Jivanlal Vrajlal Desai

Mr. Vallabhbai Zaverbhai Patel

But I have no power to deal with them and very likely recent events in Ahmedabad may make it unnecessary to proceed against them. I enclose a copy of the Satyagrahi Oath and of the explanation and covering letter of three of the pleaders concerned. No one would have been more pleased than myself if it could be found that the explanation was satisfactory.

I have the honour to be,
Sir,

Your most obedient servant,
(Sd.) B. C. Kennedy
District Judge

Comments of "Young India"

In the same issue of *Young India* the following comments appeared on the then pending proceedings in the High Court under its disciplinary jurisdiction:

SHAKING CIVIL RESISTERS

“. . . But an echo of the spirit is heard nearer Bombay also. We now know more fully than we did before the cause of the High Court notice served upon some of the Satyagrahi lawyers of Ahmedabad. The notice was prompted by a letter addressed by the District Judge of Ahmedabad to the Registrar of the Bombay High Court. We give the full text of the letter elsewhere. It remains to be seen what action the High Court will take when the case is argued before it on the 25th instant. But it is curious the way the District Judge has prejudiced the issue. He considers the activities of the 'League'—we suppose he means the Satyagrahi Sabha—to be illegal. He does not hesitate to make the impudent suggestion that 'there can be no doubt that the suspension is merely a device to avoid the possibility of punishment falling on the Satyagrahis in respect of acts directly or indirectly due to their teaching and influence'. We use the adjective 'impudent' advisedly, for the very next paragraph of the precious letter states the belief of the writer that 'the above gentlemen are sincerely and conscientiously under the impression that the Rowlatt legislation is a crime. As they have that impression, I would not blame them for going to the edge of the law to oppose it.' The imputation of an unworthy motive to such men would be ungentlemanly in a stranger, it is unpardonable in one who

claims to have the high opinion that the learned District Judge claims to have of the lawyers in question. The last paragraph of the letter clearly discloses the feelings of the District Judge in the matter. He says he has 'no power to deal with the two barristers', and adds, 'very likely recent events in Ahmedabad may make it unnecessary to proceed against them', meaning, we presume, that they would be charged and convicted by the Special Tribunal. They have not been charged and convicted by the Special Tribunal. They have not been charged, it is true. But that was no fault of the District Judge. He had made up his mind that they had committed a criminal breach of the law of the land.

"Thus we see that the attempts are being made with more or less vigour to suppress civil resisters. Those who are making the attempt are beating against the wind. The spirit of civil resistance thrives under suffering. Here and there a civil resister so-called may succumb and under the pressure of suffering deny his doctrine. But once kindled it is impossible to kill the spirit of civil resistance. The only pity of it is that these traducers of civil resistance and civil resisters are consciously or unconsciously becoming the instruments for propagating Bolshevism as it is interpreted to us in India, i.e. the spirit of lawlessness accompanied with violence. Bolshevism is nothing but an extension of the present method of forcibly imposing one's doctrine or will upon others. The Government of Burma, the Government of the Punjab, the District Judge of Ahmedabad are all in their own way endeavouring forcibly to impose their will upon others, in this case, civil resisters. But they forget that the essence of civil resistance is

to resist the will of the wrong-doer by patient endurance of the penalty of resistance. Civil resistance is, therefore, a most powerful antidote against Bolshevism and those who are trying to crush the spirit of civil resistance are but fanning the fire of Bolshevism.”

Proceedings against Lawyers

The proceedings against the three pleaders of Ahmedabad were not disposed of when the above matter was published in *Young India* and they were finally disposed of on the 15th October 1919.*

*Separate but concurring judgments were delivered by the Chief Justice and Justices Heaton and Kajiji of the Bombay High Court in the case of the Satyagrahi lawyers of Ahmedabad on 15th October, 1919. In summing up, the Chief Justice in his judgment said:

“I wish to make it perfectly clear that apart from any other considerations those who are enrolled as advocates or pleaders of this High Court or of the District Courts cannot serve two masters. It may be that after due consideration of this expression of our opinion, the respondents may see the force of it. We have no desire to deal harshly with them and for the present we shall content ourselves with giving them the warning. We do so because we are told that the Satyagraha Sabha since the riots of April has been quiescent. Whether we shall take any further action depends entirely on the development, if any, of the Satyagraha movement; so that these notices will be adjourned with leave to the Advocate-General and the respondents to move for their restoration to the Board should occasion arise.”

Young India, 22-10-1919

“Young India’s” Comments

The following editorial note by Gandhiji appeared in *Young India* dated 22nd October, 1919:

On 18th October, 1919, the Registrar, High Court, wrote to Mr. Gandhi:

“I am directed by the Honourable the Chief Justice to request you to attend His Lordship’s Chamber on Monday the 20th instant at 11 o’clock a.m. so that you may have opportunity of giving an explanation regarding the

THE SATYAGRAHI LAWYERS

“The judgment of the High Court in the case of the Satyagrahi Lawyers is, to say the least, highly unsatisfactory. It has shirked the issue. The logical outcome of the judgment should have been punishment and not a postponement of it. The lawyers in question had shown no repentance. So far as the public know, they will be ready to offer civil disobedience should the occasion arise. The issue having been raised, the lawyers did not ask for mercy but a clear decision. As it is they do not know where they are.

The learned Judges have laid down principles of legal conduct which in our humble opinion are open to question. For instance, what is the meaning of “those who live by the law must keep the law”. If it means that no lawyer may commit a civil breach without incurring the displeasure of the Court, it means utter stagnation. Lawyers are persons most able to appreciate the dangers of bad legislation and it must be with them a sacred duty by committing civil breach to prevent a criminal breach. Lawyers should be guardians of law and liberty and as such are interested in keeping the statute book of the country ‘pure and undefiled’. But the Judges of the Bombay High Court have presented to them a mercenary view of their profession and have even confounded the functions of Judges and lawyers. The only escape from the intolerable situation created by the judgment is for the respondents to have the case restored to the board, reargued and to ask for a final decision. Fortunately the Judges have left the course open to the Satyagrahi lawyers.”

publication in *Young India* on the 6th August of a private letter addressed by Mr. Kennedy, District Judge of Ahmedabad, to the Registrar, Bombay High Court, together with certain comments thereon."

To this Mr. Gandhi wired saying that he was unable to attend as he was going to the Punjab and asked whether an explanation in writing would do.

On 20th October 1919, the Registrar, High Court, wrote to Mr. Gandhi:

"With reference to your telegram of the 20th instant, I am directed by the Honourable the Chief Justice to say that His Lordship does not want to interfere with your preparations for going to the Punjab. His Lordship is therefore willing for the present to receive a written explanation. The point I am directed to state is that the letter and the comments thereon were published without the permission of this Court at a time when proceedings were pending in the Court in connection with the said letter."

On 22nd October, 1919, Mr. Gandhi replied:

"I am in receipt of your letter of the 20th instant regarding the "publication in *Young India* on the 6th August of a private letter addressed by Mr. Kennedy, District Judge of Ahmedabad", and comments thereon in *Young India*.

I am grateful to the Honourable the Chief Justice for not interrupting my preparations for going to the Punjab. The letter in question was in no way understood by me to be private nor did the contents lead me to think so. It came into my possession in the ordinary course, and I decided to publish it only

after I understood that it was received in a proper, regular and open manner. In my humble opinion I was within the rights of a journalist in publishing the letter in question and making comments thereon. I believe the letter to be of great public importance and one that called for public criticism.

I trust that His Lordship will be satisfied with the explanation submitted by me."

Suggested Apology "Not Acceptable"

On 31st October, 1919, the Registrar, High Court, wrote to Mr. Gandhi:

"I am directed to acknowledge the receipt of your letter of the 22nd instant and to inform you that the Hon'ble the Chief Justice regrets that he cannot regard your explanation as satisfactory. However His Lordship is willing to concede that you were unaware that you were exceeding the privilege of a journalist provided that you publish in the next issue of *Young India* an apology in the accompanying form."

The apology ran as follows:

"Whereas on the 6th August 1919 we published in *Young India* a private letter written by Mr. Kennedy, District Judge of Ahmedabad, to the Registrar of the High Court of Justice at Bombay, and whereas on the same date we also published certain comments on the said letter and whereas it has been pointed out to us that pending certain proceedings in the said High Court in connection with the said letter we were not justified in publishing the said letter or in commenting thereon. Now we do hereby express our regret and apologies to the Hon'ble the

Chief Justice and Judges of the said High Court for the publication of the said letter and the comments thereon.”

On 7th November, 1919, Mr. Gandhi wired to the Registrar:

“Letter 31st ultimo just received, Lahore. Regret explanation unsatisfactory. Am referring matter to counsel. Hope address on receipt counsel’s opinion.”

On 11th December, 1919, Mr. Gandhi wrote to the Registrar:

“With reference to your letter regarding the publication of the letter of the District Judge, Ahmedabad, in the matter of the Satyagrahi lawyers, I beg to state that I have now consulted legal friends and given much anxious consideration to the apology suggested by His Lordship the Chief Justice. But I regret to state that I find myself unable to publish the suggested apology. The document in question came into my possession in the ordinary course and being of great public importance I decided to publish and comment upon it. In doing so I performed in my humble opinion a useful public duty at a time when there was great tension and when even the judiciary was being affected by the popular prejudice. I need hardly say that I had no desire whatsoever to prejudge the issues that Their Lordships had to decide.

I am anxious to assure His Lordship the Chief Justice that at the time I decided to publish the document in question, I had fully in mind the honour of journalism as also the fact that I was a member of the Bombay Bar and as such expected to be aware of the traditions thereof. But thinking of my action in the

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light of what has happened, I am unable to say that in similar circumstances I would act differently from what I did, when I decided to publish and comment upon Mr. Kennedy's letter. Much, therefore, as I would have liked to act upon His Lordship's suggestion, I feel that I could not conscientiously offer any apology for my action. Should this explanation be not considered sufficient by His Lordship, I shall respectfully suffer the penalty that Their Lordships may be pleased to impose upon me. I beg to apologize for the delay caused in replying to your letter. I have been touring continuously in the Punjab, and am not likely to be free before the beginning of the next month."

Rule Granted

On 11th December, 1919, before the receipt of the above letter, the Registrar, as already mentioned, *suo moto* applied for a rule *nisi* calling upon Messrs. Gandhi and Desai to show cause why they should not be committed or otherwise dealt with according to law for contempt of Court in respect of the publication of the said letter. The application was granted by Justices Shah and Crump on that day, but the rule itself was not actually issued till the 19th December. Subsequently, at the request of the respondents the hearing of the rule *nisi* was postponed.

On 27th February, 1920, Mr. Gandhi wrote to the Registrar:

"I enclose herewith the statement I wish to read or submit to the Court on the 3rd proximo, the date fixed for taking the rule *nisi* issued against me. I enclose also Mahadev H. Desai's statement."

[The statements will be found reproduced below in the Judgment of Mr. Justice Marten.]

The Trial

On 3rd March the rule *nisi* came up for hearing before Chief Justice Sir Amberton Marten and Justices Hayward and Kajiji. Sir Thomas Strangman, Advocate-General, and Mr. D. N. Bahadurji, instructed by Messrs. Little & Co., appeared in support of the rule. Messrs M. K. Gandhi and Mahadev Desai appeared in person.

The Advocate-General, in opening the case, said: "The publication of the letter and the comment on it in *Young India* constituted contempt of Court in two respects: firstly, in scandalizing Mr. Kennedy, and secondly, as an attempt to interfere with the course of justice in the High Court: see *Reg v. Gray*. The High Court could punish for contempt of inferior Courts. If anything was done in the face of the Court which amounted to contempt, the Court (i.e. the District Court) could take action, but if anything was done outside the District Court and which the High Court thought would amount to contempt of that Court, then the High Court could punish for such contempt of the inferior Court: see *Rex v. Davies*. Publication of the letter while the matter was *subjudice* amounted to contempt of Court: see *Rex v. Parke*. Publication after trial was different from publication before trial."

Mr. Gandhi, in his reply, stated that he was not prepared to say anything beyond what he had said in his reply to the Chief Justice. He was told by several friends that he was obstinate, but with respect to

Their Lordships he submitted that he was not obstinate in not tendering an apology. He had considered the matter over and over again and nothing could be further from his thought than being obstinate. He had hoped that he would hear something convincing from the Advocate-General, but he had remained unconvinced.

MARTEN J.: We are concerned with a point of law, Mr. Gandhi.

MR. GANDHI: I differ from the Advocate-General. But, I do not wish to argue the legal points because I do not rest my case, such as it is, on a point of law. The Court has many undefended cases and I wish to be considered as undefended. I would be entirely content with Your Lordships' findings on points of law. Yet I would say that the arguments of the Advocate-General have not convinced me. What I felt was that I had not prejudiced any party. I have commented on the District Judge not as a Judge but as an individual.

MARTEN J.: Take the case of a sensational murder trial. Suppose the Press commented on the events while the case was going on. What would happen?

MR. GANDHI: There is a distinction, as a layman would find, between these two cases. The District Judge wrote that letter as a complainant and was not sitting in Court to decide an action. The whole law of contempt was that one ought not to do anything, or comment on the proceedings in Court, while the matter was *sub judice*. But here the District Judge did something in his private capacity. I have not endeavoured to prejudice in any shape or form the decision of the High Court.

MARTEN J.: If the Press made comments during pendency of proceedings, it would be dangerous.

MR. GANDHI: If a son brought a suit against his father and if a journalist thought that his action was wrong, the journalist would be justified in holding the son up to public ridicule in the public Press, notwithstanding that the suit was still undecided. Did our Courts prevent public men from inducing litigants to settle their claims outside? There was not an iota of disrespect shown to the Judge or the Judges in comments on this letter. I have not endeavoured to prejudice in any shape or form the course of justice.

Mr. Mahadev Desai associated himself with all that was said by Mr. Gandhi and submitted that he would cheerfully and respectfully abide by the orders of the Court.

Their Lordships reserved judgment.

JUDGMENT

Separate but concurring judgments were delivered by the Judges on the 12th March. Mr. Justice Marten in his judgment said:

The respondents Mohandas Karamchand Gandhi and Mahadev Haribhai Desai are the editor and publisher respectively of a newspaper called *Young India*. They are charged with contempt of Court in publishing in that newspaper, on the 6th August 1919, a letter dated the 22nd April 1919 and written by the District Judge of Ahmedabad (Mr. B. C. Kennedy) to the Registrar of this Court, and also with publishing comments on that letter. The gist of the charge is that the letter in question was a private official letter forming part of certain proceedings

then pending in this Court, and that the comments which the respondents made in their newspaper were comments on that pending case.

The facts are not in dispute, and may be stated briefly. The case which I have referred to is in re. Jivanlal Vrajlal Desai. It arose under the disciplinary jurisdiction of this Court, in consequence of the above letter from the District Judge, whereby he submitted for the determination of this Court the question of the pleaders of the Ahmedabad Court who had signed what is known as the "Satyagraha pledge", whereby they undertook (amongst other things) "to refuse civilly to obey these laws (viz. the Rowlatt Act) and such other laws as a committee to be hereafter appointed may think fit". The learned District Judge also mentioned the names of two barristers who had signed the pledge. The point was whether that pledge was consistent with their duties as advocates and pleaders. The result of that letter was that notices were issued by this Court, on the 12th July, 1919, against the advocates and pleaders in question, and it was eventually held, on the 15th October 1919, by a Bench of this Court consisting of My Lord the Chief Justice and Mr. Justice Heaton and Mr. Justice Kajiji that the Satyagraha pledge which these advocates and pleaders had taken was not consistent with the performance of their duties as such to the Court and the public. Meanwhile, viz. on the 6th August 1919, the present respondents had published the letter in question in *Young India*, and made there the comments complained of. They had obtained the letter in this way. For the purposes of the defence to the charge, a copy of the District Judge's letter had been supplied by the High Court

to Jivanlal V. Desai, one of the counsel in question. He gave a copy to another respondent Kalidas J. Jhaveri, and the latter handed it to the editor of *Young India*, who is reputed to be the author of the Satyagraha pledge. For this conduct in so doing, Mr. Kalidas J. Jhaveri was severely reprimanded by the Chief Justice and Mr. Heaton on the 10th November 1919: See in re. Kalidas J. Jhaveri.

"O'Dwyerism in Ahmedabad"

I may now turn to the newspaper itself. On page 1 under the heading "O'Dwyerism in Ahmedabad", the District Judge's letter to this Court is set out in full. On page 2 there is a leading article headed "Shaking Civil Resisters". We have read the whole of it and I need only refer to some of its more salient features. At the outset, I mention an alleged declaration by Sir Michael O'Dwyer of his intention of taking note of the anti-Rowlatt legislation agitation and passive resistance demonstration before there was any disturbance of the peace. It then states that Sir Michael had succeeded to an eminent degree in disturbing the peace of the Punjab, and that "the O'Dwyerean spirit" had travelled to Burma. Then follows a comment on the local government there. The article then proceeds to say that an echo of the spirit is heard nearer Bombay, and mentions the above High Court notice to the Ahmedabad lawyers, and that it was prompted by the above letter from the District Judge, and that it remains to be seen what action will be taken by the High Court when the case is argued before it. The article then states that the District Judge has prejudiced the issue: that he has made an impudent suggestion which is then quoted:

that the adjective "impudent" is used advisedly: that his imputation would be ungentlemanly in a stranger and is unpardonable in his case. The article then suggests that the last paragraph of the letter means that the two barristers would be charged and convicted by the Special Bench, and that it was not the fault of the District Judge that they had not been so charged, and that the District Judge had made up his mind that they had committed a criminal breach of the law of the land. Then in the concluding portion, the article states that these traducers of civil resistance and civil resisters are becoming the instruments for propagating Bolshevism, i.e. the spirit of lawlessness accompanied with violence, and that the Government of Burma, the Government of the Punjab and the District Judge of Ahmedabad, are all in their own way endeavouring forcibly to impose their will upon civil resisters, but that those who are trying to crush the spirit of civil resistance are but fanning the fire of Bolshevism. It will be noticed that this article shows on the face of it that the proceedings were then *sub judice*, and it nowhere mentions Mr. Kennedy's name, but refers to him throughout as the District Judge of Ahmedabad.

Correspondence with Gandhi

After the proceedings against the pleaders had been disposed of, the editor of *Young India* was asked, on the 18th October 1919, to give an explanation regarding the publication of the letter and the above comments. Certain correspondence thereupon passed between him and the Registrar of this Court acting under the directions of the Chief Justice. We have read all this correspondence, and I need not repeat

it in full. In his letter of the 22nd October, the respondent Gandhi wrote:

“In my humble opinion I was within the rights of a journalist in publishing the letter in question and making comments thereon. I believed the letter to be of great public importance and one that called for public criticism.”

The reply of the 31st October was that this could not be regarded as a satisfactory explanation, but that the Chief Justice was willing to concede that the editor was unaware that he was exceeding the privilege of a journalist, provided he would publish in *Young India* an apology in the form therewith enclosed.

On the 7th November, the respondent Gandhi telegraphed that he was referring the matter to counsel.

On the 11th December, the Acting Advocate-General initiated the present proceedings by applying for a rule *nisi* against the respondents.

The application was granted by Mr. Justice Shah and Mr. Justice Crump on that day, but the rule itself was not actually issued till the 19th December, and it bears the latter date. Meanwhile, a further letter, dated the 11th December, had been received from the respondent Gandhi. The writer expressed his inability to publish the suggested apology, and stated that in publishing and commenting on the letter, he had performed a useful public duty at a time when there was great tension and when even the judiciary was being affected by the popular prejudice, but that he had no desire whatever to prejudge the issues which Their Lordships had had to

decide. Then, after referring to the honour of journalism and to his membership of the Bombay Bar and its traditions, the writer stated that in similar circumstances he would not act differently, and that he could not conscientiously offer any apology, and that, if that explanation was not considered sufficient, he would respectfully suffer the penalty.

Statements of Gandhi and Desai

Subsequently at the respondents' request, the hearing of the rule was postponed, and on the 27th February 1920 they made the following statements:

The respondent Gandhi stated:

“With reference to the rule *nisi* issued against me I beg to state as follows: Before the issue of the rule certain correspondence passed between the Registrar of the Honourable Court and myself. On the 11th December, I addressed to the Registrar a letter which sufficiently explains my conduct. I therefore attach a copy of the same letter. I regret that I have not found it possible to accept the advice given by His Lordship the Chief Justice. Moreover, I have been unable to accept the advice because I do not consider that I have committed either a legal or a moral breach by publishing Mr. Kennedy's letter or by commenting on the contents thereof. I am sure that this Honourable Court would not want me to tender an apology unless it be sincere and express regret for an action which I have held to be the privilege and duty of a journalist. I shall therefore cheerfully and respectfully accept the punishment that this Honourable Court may be pleased to impose upon me for the vindication of the majesty of law.

I wish to say, with reference to the notice served on Mr. Mahadev Desai, the publisher, that he published it simply upon my request and advice."

The respondent Desai stated:

"With reference to the rule *nisi* served upon me, I beg to state that I have read the statement made by the editor of *Young India* and associate myself with the reasoning adopted by him in justification of his action. I shall therefore cheerfully and respectfully abide by any penalty that this Honourable Court may be pleased to inflict on me."

At the hearing before us, both the respondents appeared in person. The respondent Gandhi stated (*inter alia*) that he did not want to go beyond the above statements already made by him: that he would accept any ruling of law laid down by this Court, and that while submitting that he had not committed any contempt of Court, he did not want to argue the point. The respondent Desai stated that he associated himself with his co-respondent.

Principles of Law Examined

As to the general principles of law to be applied to this case, there can, I think, be no doubt. Speaking generally, it is not permissible to publish comments on or extracts from any pending proceedings in this Court, unless the leave of the Court be first obtained. Many good reasons may be advanced for this but the underlying principle is, I think, that of the due administration of justice for the public benefit, one incident of which demands that, as a matter of common fairness, both parties shall be heard at the same time and in the presence of each other on proper evidence by an independent and unprejudiced

tribunal. That object would be frustrated if newspapers were free to comment on or to make extracts from proceedings which were still *sub judice*. It matters not if those comments and extracts favour prosecutor or accused, plaintiff or defendant. The vice is the interference with what is the Court's duty and not a newspaper's, viz. the decision of the pending case.

In *Rex v. Parke*, Mr. Justice Wills in delivering the judgment of the Court (the other members of which were Lord Alverstone and Mr. Justice Channell) said at pp. 436-37 as follows:

“The reason why the publication of articles like those with which we have to deal is treated as a contempt of Court is because their tendency and sometimes their object is to deprive the Court of the power of doing that which is the end for which it exists—namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the Court which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned. It is difficult to conceive an apter description of such conduct than is conveyed by the expression ‘contempt of Court.’”

In *Rex v. Davies*, Mr. Justice Wills again delivered the Judgment of the Court. At page 40 the learned Judge says:

“What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders? It will be found to be not the purpose of protecting either the Court as a whole or the individual judges of the Court from a repetition of them, but of protecting the public, and especially those who either

voluntarily or by compulsion, are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired."

Lower down on the same page, the learned Judge refers with approval to the undelivered judgment of Wilmot C. J. in 1765 which shewed that:

"The real offence is the wrong done to the public by weakening the authority and influence of a tribunal which exists for their good alone."

"Interference with Administration of Justice"

So, too, in *Helmore v. Smith*, Lord Justice Bowen says:

"The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the judge, but to prevent undue interference with the administration of justice."

In *Reg. v. Gray*, Lord Russell of Killowen, in speaking of one class of contempt, said at p. 40:

"Any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court is a contempt of Court."

Within this class come the personal scurrilous abuse of a judge as a Judge, which was the case the Court there had to deal with. It was this class of contempt which Lord Hardwicke characterized in 1742 as "scandalizing a Court or a Judge". Speaking for myself, I do not think that the expression is a happy one as it is open to misconstruction and I doubt whether it is much used by modern lawyers. At any rate I personally prefer Lord Russell's own description of this particular class of contempt.

It makes no difference, I think, that the alleged abuse here was of a District and not of a High Court Judge. *Rex v. Davies* shews that in England the High Court has power to protect Courts of inferior jurisdiction and that in a proper case it should do so. I think the same power exists in India, and that subject to the precautions which Lord Russell mentions on pp. 40 and 41 this Court should extend its protection to all Courts in the mofussil over which it exercises supervision.

“Liberty of the Press”

As regards the premature publication of documents, the law is thus stated in *Oswald on Contempt*, 3rd Edn., p. 95:

“Printing, even without comments, and circulating the brief, pleadings, petition, or evidence of one side only, is a contempt.”

So, too, in Halsbury's *Laws of England*, Vol. VII, p. 287, it is stated:

“It is contempt to publish copies of the pleadings or evidence in a cause, while proceedings are pending.”

For these propositions, cases beginning from 1754 are cited and they include instances of affidavits, winding-up petitions and statements of claim which latter correspond to plaints in this country. One can easily see the evils which would arise if it were permissible to publish a plaint containing (say) charges of fraud against some respectable man before he could even put in his answer, and long before the charges could be judicially determined.

I may refer to one more case, not because it lays down any new law, but because it brings the English

authorities down to date, and illustrates the restrictions imposed there on the liberty of the Press, which, as pointed out by Lord Russell in *Reg. v. Gray*, is in these matters "no greater and no less than the liberty of every subject of the King". The case is *Rex v. Empire News Ltd.* and was heard by the Lord Chief Justice of England and Mr. Justice Avory and Mr. Justice Sankey. There the newspaper had commented on a pending murder case, but did not attempt to justify its action in so doing, and the proprietors and editor expressed their deepest regret and contrition to the Court. In delivering judgment, the Earl of Reading said:

"The Court could not permit the investigation of murder to be taken out of the hands of the proper authorities and to be carried on by newspapers. The liberty of the individual even when he was suspected of crime and indeed even more so when he was charged with crime must be protected and it was the function of that Court to prevent the publication of articles which were likely to cause prejudice. The only doubt in the case was whether the Court ought to commit the editor to prison.

"The Court has come to the conclusion that in the circumstances it must mark its sense of the offence committed which was an offence both by the proprietors and editor by imposing a fine of £1000."

"Publication — a Contempt of Court"

The principles of law then being clear, how ought they to be applied to the facts of this particular case? In my judgment those principles prohibited the publication of the District Judge's letter pending the hearing of the notices issued by the High Court. It was contended by the respondent Gandhi

that that letter was written by Mr. Kennedy in his private capacity, and not as District Judge. I think that contention is erroneous. The letter is an official letter written by the District Judge in the exercise of his duties as such, and submitting the case to the High Court for orders. As my brother Hayward has pointed out to me, the letter follows the procedure laid down in the Civil Circulars of this Court in cases of alleged misconduct by a pleader. It very properly sets out what the learned Judge considers to be the facts both for and against the pleaders, and gives his reasons for bringing the matter before the High Court. Indeed if he had not done so, he would presumably have been asked by the High Court for further particulars before they took any action. The letter is on lines quite familiar to this Court in other cases where the Sessions Judge in the exercise of his duties as such brings some matter before this Court with a view to the exercise of its exceptional powers. I may instance criminal references where the Sessions Judge, for the reasons given in his official letter, recommends the revision of some illegal or inadequate sentence which has been passed by a subordinate Court, and which the High Court alone can alter in such contingencies. If in the present case the District Judge's letter contained any statements which the respondent pleaders or barristers contended were inaccurate, that would be a matter for decision at the hearing of the notices, when all they had to say would be considered.

But even if the letter was written by Mr. Kennedy in his private capacity, I do not think it would make any substantial difference as regards mere publication. The letter would still form part, and a most important part, of the pending proceedings and the record

thereof, and I do not think that any substantial difference can be drawn between it and the other classes of documents mentioned in the authorities cited in Oswald and in Halsbury to which I have already referred.

In my judgment, therefore, the publication of this letter was a contempt of Court.

That brings me to the comments made in the newspaper including the heading "O'Dwyerism in Ahmedabad" under which the letter was published. These comments are not only comments on pending proceedings, but are of a particularly intemperate and reprehensible character. They prejudge the case and tend to undermine any decision which the High Court may come to at the trial. They also amount in my opinion to what Lord Russell describes as "scurrilous abuse of the Judge as such". In this latter connection, the question whether the letter was written by Mr. Kennedy in his private or in his judicial capacity becomes material, but as I have already stated it was in my judgment written in his judicial capacity.

Accordingly, on the authorities which I have already referred to, these comments are clearly a contempt of Court and come within both the classes to which Lord Russell refers, and in my judgment they constitute a serious contempt of Court.

"A Strange Misconception"

We have carefully considered the various statements made by the respondents, and invited them at the hearing to give any intelligible explanation of excuse for their conduct. None such was forthcoming. In his letter of the 11th December 1919 the respondent

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Gandhi contends that in publishing and commenting on the letter he “performed a useful public duty at a time when there was great tension and when even the judiciary was being affected by the popular prejudice”. Common sense would answer that if that tension and popular prejudice existed, it would be increased rather than diminished by abuse of the local Judge, and that that could not be the public duty of any good citizen.

But there would seem to be some strange misconceptions in the minds of the respondents as to the legitimate liberties of a journalist. Otherwise the respondent Gandhi could hardly have contended before us—as he in fact did—that if a son brought a suit against a father, and if a journalist thought that the son’s action was wrong, the journalist would be justified in holding the son up to public ridicule in the public press, notwithstanding that the suit was still undecided. I need hardly say that this contention is quite erroneous. It may however be that principles which are quite familiar in England are imperfectly known or understood in India, and that the respondents have paid more attention to the liberty of the Press than to the duties which accompany that and every other liberty.

“Question of Penalties”

This has much weighed with me in considering what order the Court ought to pass in this case. We have large powers and in appropriate cases can commit offenders to prison for such period as we think fit and can impose fines of such amount as we may judge right. But just as our powers are large, so ought we, I think, to use them with discretion and with

moderation, remembering that the only object we have in view is to enforce the due administration of justice for the public benefit.

In the present case, the Court has very seriously considered whether it ought not to impose a substantial fine on one, if not both, of the respondents. But on the whole, I think it sufficient for the Court to state the law in terms which I hope will leave no room for doubt in future, and to confine our order to severely reprimanding the respondents and cautioning them both as to their future conduct. That accordingly is the order I think we should pass in the present case.

Justice Hayward & Kajji Concur

HAYWARD J.: I concur. A contempt of Court was, in my opinion, committed in the mere publication of the letter of Mr. Kennedy before the trial of the matter by this Court. It might not have been realized but the reasons for the rule have been explained by my brother Marten and shown to rest on numerous precedents quoted under para 615 at p. 287 of Vol. VII of Halsbury's *Laws of England*.

A contempt of Court of a more serious nature was, in my opinion, committed in commenting in the particular manner on that letter. It amounted clearly to "scandalizing" Mr. Kennedy as District Judge within the dicta of Lord Hardwicke quoted by Lord Russell in *Reg. v. Gray*. It was Mr. Kennedy's duty, according to established practice, to report the matter in question as District Judge for the orders of the High Court. It was in my opinion his duty under the general powers of superintendence vested in him as District Judge under s. 9 of the Bombay Civil Court

Act, 1869, and the duty was moreover expressly prescribed as follows:—

“The Judge who notices the misconduct of the pleader should charge the pleader therewith and, after such preliminary enquiry as he may think fit to make, should write to the Registrar requesting him to lay the charge before the Honourable the Chief Justice and Judges, who, if necessary, will call on the pleader for any further explanation he may wish to make. The Judges will then consider the whole matter in Chambers after which the matter will be determined by a chamber Resolution or, where necessary, by formal proceedings in Court.”

by para 14 of Chapter XVIII at p. 259 of the Civil Circulars Manual of the High Court. It has therefore become our duty to protect the proceedings of the District Judge under the powers shown by the precedents of *Rex v. Parke* and *Rex v. Davies* to be vested in us as Judges of the High Court.

A contempt of Court of an even more serious nature was, in my opinion, further committed in that the comments tended to interfere with a fair trial and to prejudice public justice. They tended to substitute what has been termed a newspaper trial for the regular proceedings before the established tribunal, the High Court. The precedents for the position include those already quoted as well as the later cases of *Higgins v. Richards* and *Rex v. Empire News Ltd.* quoted by brother Marten. The respondents have not denied the facts nor seriously disputed the law. They have expressed their readiness in their replies to submit to whatever punishment might be imposed on them for what they have termed “the vindication of the majesty of law” by the High Court.

It is difficult to appreciate the position taken up by the respondents. They have expressed their inability to apologize formally but have at the same time represented their readiness to submit to any punishment meted out to them.

It is probable that the Editor, the respondent Gandhi, did not realize that he was breaking the law and there would be no doubt, if that were so, that it was not realized by his publisher, the respondent Desai. The respondents seem to have posed not as law-breakers but rather as passive resisters of the law. It would, therefore, be sufficient, in my opinion, to enunciate unmistakably for them the law in these matters, to severely reprimand them for their proceedings and to warn them of the penalties imposable by the High Court.

KAJJI J.: I concur.

Rule Made Absolute

(After Mr. Justice Hayward and Mr. Justice Kajiji delivered their judgments, Mr. Justice Marten said as follows:)

The order of the Court will therefore be: "The Court finds the charges proved, it severely reprimands the respondents and cautions them both as to their future conduct."

Rule made absolute

* * *

Gandhiji Draws a Moral

[In the issue of *Young India* dated the 24th March, 1920, Gandhiji wrote as follows editorially on the outcome of the trial:]

The long expected hearing of the case against the editor and the publisher of *Young India* in connection with the publication of a letter of the District Judge of Ahmedabad regarding Satyagrahi Lawyers and my comments thereon has been heard and judgment has been pronounced. Both the editor and the publisher have been severely reprimanded. But the Court did not see its way to pass any sentence upon either of us. If I dwell upon the judgment it is only because I am anxious as a Satyagrahi to draw a moral from it. I wish to assure those friends who out of pure friendliness advised us to tender the required apology, that I refused to accept their advice, not out of obstinacy, but because there was a great principle at stake. I had to conserve a journalist's independence and yet respect the law. My own reading of the law was that there was no contempt committed by me. But my defence rested more upon the fact that I could not offer an apology if I was not prepared not to repeat the offence on a similar occasion. Because I hold that an apology tendered to a Court, to be true, has to be as sincere as a private apology. At the same time, I owed a duty to the Court. It was no light thing for me to refuse to accept the advice of the Chief Justice, especially when the Chief Justice was so very considerate in the correspondence with me. I was on the horns of a dilemma. I therefore decided not to offer any defence but simply to make a statement frankly and fully defining my position, leaving it to the Court to pass any sentence if it thought fit in the event of an adverse decision. In order to show that I meant no disrespect of the Court and that I did not desire to advertise the case, I took extraordinary precautions to prevent publicity and I

venture to think that I succeeded eminently in convincing the Court that beyond my disobedience, if it was disobedience, there was no defiance but perfect resignation, there was no anger or ill-will but perfect restraint and respect; that, if I did not apologize, I did not, because an insincere apology would have been contrary to my conscience. I hold that it was about as perfect an instance of Civil Disobedience as it ever has been my privilege to offer. And I feel that the Court reciprocated in a most handsome manner and recognized the spirit of civility that lay behind my so-called disobedience. The luminous judgment of Justice Marten lays down the law, and decides against me. But I feel thankful that it does not question the propriety of my action. Justice Hayward's judgment recognizes it as an instance of Passive, i.e. Civil Resistance and practically makes it the reason for not awarding any sentence. Here, then, we have an almost complete vindication of Civil Disobedience. Disobedience to be civil must be sincere, respectful, restrained, never defiant, must be based upon some well understood principle, must not be capricious and, above all, must have no ill-will or hatred behind it. I submit that the disobedience offered by Mr. Desai and myself contained all these ingredients.

II

TRIAL FOR 'SEDITION'

Memorable Scenes in Court

The historical trial of Mahatma Gandhi and Shri Shankarlal Ghelabhai Banker, editor, and printer and publisher respectively of *Young India*, on charges under Section 124 A of the Indian Penal Code, was held on Saturday, 18th March, 1922, before Mr. C. N. Broomfield, I.C.S., District and Sessions Judge, Ahmedabad.

Sir J. T. Strangman, Advocate-General, with Rao Bahadur Girdharlal Uttamram, Public Prosecutor of Ahmedabad, appeared for the Crown. Mr. A. C. Wild, Remembrancer of Legal Affairs, was also present. Mr. M. K. Gandhi and Mr. Shankarlal Banker were undefended.

Among the members of the public who were present on the occasion were: Shrimati Kasturba Gandhi, Smt. Sarojini Naidu, Pandit M. M. Malaviya, Mr. N. C. Kelkar, Smt. J. B. Petit, and Smt. Anasuyabai Sarabhai.

The Judge, who took his seat at 12 noon, said that there was a slight mistake in the charges framed, which he corrected. The charges were then read out by the Registrar. These charges were of "bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards His Majesty's Government established by law in British India, and thereby committing offences punishable under Section 124A of the Indian Penal Code," the offences being in three articles published in *Young*

India of September 29 and December 15 of 1921, and February 23 of 1922. The offending articles were then read out: first of them was, "Tampering with Loyalty"; the second, "The Puzzle and Its Solution", and the last was "Shaking the Manes". [These articles are published in Appendix IV on pp. 77-86.]

The Judge said the law required that the charges should not only be read out, but explained. In this case it would not be necessary for him to say much by way of explanation. The charge in each case was that of bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards His Majesty's Government, established by law in British India. Both the accused were charged with the three offences under Section 124 A, contained in the articles read out, written by Mr. Gandhi and printed by Mr. Banker. The words 'hatred' and 'contempt' were words the meaning of which was sufficiently obvious. The word 'disaffection' was defined under the section, where they were told that disaffection included disloyalty and feelings of enmity, and the word used in the section had also been interpreted by the High Court of Bombay in a reported case as meaning political alienation or discontent, a spirit of disloyalty to Government or existing authority.

The charges having been read out, the Judge called upon the accused to plead to the charges. He asked Mr. Gandhi whether he pleaded guilty or claimed to be tried.

"I Plead Guilty"

MR. GANDHI: I plead guilty to all the charges. I observe that the King's name has been omitted from the charge, and it has been properly omitted.

THE JUDGE: Mr. Banker, do you plead guilty, or do you claim to be tried?

MR. BANKER: I plead guilty.

Sir J. T. Strangman then wanted the Judge to proceed with the trial fully.

The Judge said he did not agree with what had been said by the counsel. He said he had undoubtedly a full discretion to convict the accused on their pleas, if he thought proper to do it, and in this particular case he could not see what advantage could be gained by going once more through the evidence that was recorded before the Committing Magistrate. As regards the point that the charges should be investigated as fully as possible, the evidence recorded before the Committing Magistrate—and as far as he knew nothing more would be recorded on the present occasion—would be evidence going to show that Mr. Gandhi was responsible for those particular articles. And in the face of his plea it seemed to the Judge that it would be futile to record further evidence on that point. As regards the question of sentence, it went without saying that from the time that he had known that he should have to try the case he had thought very carefully over the matter of sentence in case of a conviction and although he was, of course, prepared to hear everything that the counsel and Mr. Gandhi might have to say, he honestly did not believe that the mere recording of all the evidence and proceedings with the trial would make any difference to the sentence one way or the other. He, therefore, proposed to accept the plea of the accused.

Mr. Gandhi smiled at this decision.

The Judge said that nothing further remained but to pass sentence and before doing so, he liked

to hear Sir J. T. Strangman. He was entitled to base his general remarks on the charges against the accused and on their pleas.

The Advocate-General said that it would be difficult to do so. He asked the Court that the whole matter be properly considered. If he stated what had happened before the Committing Magistrate, then he could show that there were many things which were material to the question of the sentence. The first point, he said, he wanted to make out was that the matter which formed the subject of the present charges formed a part of the campaign to spread disaffection openly and systematically to render Government impossible and to overthrow it. The earliest article that was put in from *Young India* was dated 25th May, 1921, which said that it was the duty of a non-co-operator to create disaffection towards the Government. The counsel then read out portions of the articles written by Mr. Gandhi in *Young India*.

The Judge said, nevertheless, it seemed to him that the Court could accept plea on the materials of which the sentence had to be based.

Advocate-General's Plea

The Advocate-General said the question of sentence was entirely for the Court to decide. The Court was always entitled to deal in a more general manner in regard to the question of the sentence, than the particular matter resulting in the conviction. He asked leave to refer to articles before the Court, and what result might have been produced, if the trial had proceeded in order to ascertain what the facts were. He was not going into any matter which involved dispute.

The Judge said that there was not the least objection.

The Advocate-General said he wanted to show that these articles were not isolated. They formed part of an organized campaign, but so far as *Young India* was concerned, they would show that from the year 1921. The counsel then read out extracts from the paper, dated June 8, on the duty of a non-co-operator, which was to preach disaffection towards the existing Government and preparing the country for Civil Disobedience. Then, in the same number, there was an article on disobedience. Then in the same number there was an article on "Disaffection—a Virtue" or something to that effect. Then there was an article on the 28th of July, 1921, in which it was stated that "we have to destroy the system". Again, on September 30, 1921, there was an article headed, "Punjab Prosecutions", where it was stated that a non-co-operator worth his name should preach disaffection. That was all so far as *Young India* was concerned. They were earlier in date than the article, "Tampering with Loyalty".

Continuing, the Advocate-General said that the accused was a man of high educational qualifications and evidently from his writings a recognized leader. The harm that was likely to be caused was considerable. They were the writings of an educated man, and not the writings of an obscure man, and the Court must consider to what the results of a campaign of the nature disclosed in the writings must inevitably lead. They had examples before them in the last few months. He referred to the occurrences in Bombay last November and Chauri Chaura, leading to

murder and destruction of property, involving many people in misery and misfortune. It was true that in the course of those articles they would find non-violence was insisted upon as an item of the campaign and as an item of the creed. But what was the use of preaching non-violence when he preached disaffection towards Government or openly instigated others to overthrow it? The answer to that question appeared to him to come from Chauri Chaura, Madras and Bombay. These were circumstances which he asked the Court to take into account in sentencing the accused, and it would be for the Court to consider those circumstances which involve sentences of severity.

As regards the second accused, said the Advocate-General, his offence was lesser. He did the publication and he did not write. His offence nevertheless was a serious one. His instructions were that he was a man of means and he asked the Court to impose a substantial fine in addition to such term of imprisonment as might be inflicted upon. He quoted Section 10 of the Press Act as bearing on the question of fine. When making a fresh declaration, he said a deposit of Rs. 1,000 to Rs. 10,000 was asked in many cases.

THE JUDGE: Mr. Gandhi, do you wish to make a statement on the question of sentence?

MR. GANDHI: I would like to make a statement.

THE JUDGE: Could you give me in writing to put it on record?

MR. GANDHI: I shall give it as soon as I finish it.

Preliminary Statement by Gandhi

Before reading his written statement Mr. Gandhi spoke a few words as introductory remarks to it. He said:

“Before I read this statement, I would like to state that I entirely endorse the learned Advocate-General’s remarks in connection with my humble self. I think that he was entirely fair to me in all the statements that he has made, because it is very true that I have no desire whatsoever to conceal from this Court the fact that to preach disaffection towards the existing system of Government has become almost a passion with me, and the learned Advocate-General is also entirely in the right when he says that my preaching of disaffection did not commence with my connection with *Young India*, but that it commenced much earlier; and in the statement that I am about to read, it will be my painful duty to admit before this Court that it commenced much earlier than the period stated by the Advocate-General. It is the most painful duty with me, but I have to discharge that duty knowing the responsibility that rests upon my shoulders, and I wish to endorse all the blame that the learned Advocate-General has thrown on my shoulders in connection with the Bombay occurrences, Madras occurrences and the Chauri Chaura occurrences. Thinking over these deeply and sleeping over them night after night, it is impossible for me to dissociate myself from the diabolical crimes of Chauri Chaura or the mad outrages of Bombay. He is quite right when he says that as a man of responsibility, a man having received a fair share of education, having had a fair share of experience of this world, I should have

known the consequences of every one of my acts. I knew that I was playing with fire. I ran the risk, and if I was set free, I would still do the same. I have felt it this morning that I would have failed in my duty, if I did not say what I said here just now.

"I Had to Make My Choice"

I wanted to avoid violence. I want to avoid violence. Non-violence is the first article of my faith. It is also the last article of my creed. But I had to make my choice. I had either to submit to a system which I considered had done irreparable harm to my country, or incur the risk of the mad fury of my people bursting forth, when they understood the truth from my lips. I know that my people have sometimes gone mad. I am deeply sorry for it, and I am, therefore, here to submit not to a light penalty but to the highest penalty. I do not ask for mercy. I do not plead any extenuating act. I am here, therefore, to invite and cheerfully submit to the highest penalty that can be inflicted upon me, for what in law is a deliberate crime and what appears to me to be the highest duty of a citizen. The only course open to you, the Judge, is, as I am just going to say in my statement, either to resign your post, or inflict on me the severest penalty, if you believe that the system and the law you are assisting to administer are good for the people. I do not expect that kind of conversion, but by the time I have finished with my statement, you will perhaps have a glimpse of what is raging within my breast, to run this maddest risk which a sane man can run."

Written Statement of Gandhi

He then read out his written statement:

“I owe it perhaps to the Indian public and to the public in England, to placate which this prosecution is mainly taken up, that I should explain why from a staunch loyalist and co-operator I have become an uncompromising disaffectionist and non-co-operator. To the Court too I should say why I plead guilty to the charge of promoting disaffection towards the Government established by law in India.

My public life began in 1893 in South Africa in troubled weather. My first contact with British authority in that country was not of a happy character. I discovered that as a man and an Indian, I had no rights. More correctly I discovered that I had no rights as a man because I was an Indian.

But I was not baffled. I thought that this treatment of Indians was an excrescence upon a system that was intrinsically and mainly good. I gave the Government my voluntary and hearty co-operation, criticizing it freely where I felt it was faulty but never wishing its destruction.

Consequently when the existence of the Empire was threatened in 1899 by the Boer challenge, I offered my services to it, raised a volunteer ambulance corps and served at several actions that took place for the relief of Ladysmith. Similarly in 1906, at the time of the Zulu ‘revolt’, I raised a stretcher-bearer party and served till the end of the ‘rebellion’. On both the occasions I received medals and was even mentioned in despatches. For my work in South Africa I was given by Lord Hardinge a Kaisari-Hind gold medal. When the war broke out in 1914 between England and Germany, I raised a volunteer ambulance corps in London, consisting

of the then resident Indians in London, chiefly students. Its work was acknowledged by the authorities to be valuable. Lastly, in India when a special appeal was made at the War Conference in Delhi in 1918 by Lord Chelmsford for recruits, I struggled at the cost of my health to raise a corps in Kheda, and the response was being made when the hostilities ceased and orders were received that no more recruits were wanted. In all these efforts at service, I was actuated by the belief that it was possible by such services to gain a status of full equality in the Empire for my countrymen.

The first shock came in the shape of the Rowlatt Act—a law designed to rob the people of all real freedom. I felt called upon to lead an intensive agitation against it. Then followed the Punjab horrors beginning with the massacre at Jalianwala Bagh and culminating in crawling orders, public flogging and other indescribable humiliations. I discovered too that the plighted word of the Prime Minister to the Musalmans of India regarding the integrity of Turkey and the holy places of Islam was not likely to be fulfilled. But in spite of the forebodings and the grave warnings of friends, at the Amritsar Congress in 1919, I fought for co-operation and working of the Montagu-Chelmsford reforms, hoping that the Prime Minister would redeem his promise to the Indian Musalmans, that the Punjab wound would be healed, and that the reforms, inadequate and unsatisfactory though they were, marked a new era of hope in the life of India.

But all that hope was shattered. The Khilafat promise was not redeemed. The Punjab crime was

whitewashed and most culprits went not only unpunished but remained in service, and some continued to draw pensions from the Indian revenue and in some cases were even rewarded. I saw too that not only did the reforms not mark a change of heart, but they were only a method of further draining India of her wealth and of prolonging her servitude.

"Administration of Law Prostituted"

I came reluctantly to the conclusion that the British connection had made India more helpless than she ever was before, politically and economically. A disarmed India has no power of resistance against any aggressor if she wanted to engage in an armed conflict with him. So much is this the case that some of our best men consider that India must take generations, before she can achieve Dominion Status. She has become so poor that she has little power of resisting famines. Before the British advent India spun and wove in her millions of cottages, just the supplement she needed for adding to her meagre agricultural resources. This cottage industry, so vital for India's existence, has been ruined by incredibly heartless and inhuman processes as described by English witnesses. Little do town dwellers know how the semi-starved masses of India are slowly sinking to lifelessness. Little do they know that their miserable comfort represents the brokerage they get for their work they do for the foreign exploiter, that the profits and brokerage are sucked from the masses. Little do they realize that the Government established by law in British India is carried on for this exploitation of the masses. No sophistry, no jugglery in figures, can explain away the evidence that the

skeletons in many villages present to the naked eye. I have no doubt whatsoever that both England and the town dwellers of India will have to answer, if there is a God above, for this crime against humanity, which is perhaps unequalled in history. The law itself in this country has been used to serve the foreign exploiter. My unbiased examination of the Punjab Martial Law cases has led me to believe that at least ninety-five per cent of convictions were wholly bad. My experience of political cases in India leads me to the conclusion that in nine out of every ten, the condemned men were totally innocent. Their crime consisted in the love of their country. In ninety-nine cases out of hundred, justice has been denied to Indians as against Europeans in the Courts of India. This is not an exaggerated picture. It is the experience of almost every Indian who has had anything to do with such cases. In my opinion, the administration of the law is thus prostituted, consciously or unconsciously, for the benefit of the exploiter.

The greater misfortune is that the Englishmen and their Indian associates in the administration of the country do not know that they are engaged in the crime I have attempted to describe. I am satisfied that many Englishmen and Indian officials honestly believe that they are administering one of the best systems devised in the world, and that India is making steady, though slow, progress. They do not know that a subtle but effective system of terrorism and an organized display of force on the one hand, and the deprivation of all powers of retaliation or self-defence on the other, have emasculated the people and induced in them the habit of simulation. This awful habit has added to the

ignorance and the self-deception of the administrators. Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence. But the section under which Mr. Banker and I are charged is one under which mere promotion of disaffection is a crime. I have studied some of the cases tried under it and I know that some of the most loved of India's patriots have been convicted under it. I consider it a privilege, therefore, to be charged under that section. I have endeavoured to give in their briefest outline the reasons for my disaffection. I have no personal ill-will against any single administrator, much less can I have any disaffection towards the King's person. But I hold it to be a virtue to be disaffected towards a Government which in its totality has done more harm to India than any previous system. India is less manly under the British rule than she ever was before. Holding such a belief, I consider it to be a sin to have affection for the system. And it has been a precious privilege for me to be able to write what I have in the various articles tendered in evidence against me.

“Non-co-operation with Evil—a Duty”

In fact, I believe that I have rendered a service to India and England by showing in non-co-operation the way out of the unnatural state in which both are living. In my humble opinion, non-co-operation

with evil is as much a duty as is co-operation with good. But in the past, non-co-operation has been deliberately expressed in violence to the evil-doer. I am endeavouring to show to my countrymen that violent non-co-operation only multiplies evil, and that as evil can only be sustained by violence, withdrawal of support of evil requires complete abstention from violence. Non-violence implies voluntary submission to the penalty for non-co-operation with evil. I am here, therefore, to invite and submit cheerfully to the highest penalty that can be inflicted upon me for what in law is a deliberate crime, and what appears to me to be the highest duty of a citizen. The only course open to you, the Judge, is either to resign your post and thus dissociate yourself from evil, if you feel that the law you are called upon to administer is an evil, and that in reality I am innocent, or to inflict upon me the severest penalty, if you believe that the system and the law you are assisting to administer are good for the people of this country, and that my activity is, therefore, injurious to the public weal."

Mr. Banker made the following statement:

"I only want to say that I had the privilege of printing these articles and I plead guilty to the charge. I have nothing to say as regards the sentence."

JUDGMENT

The Judge, Mr. Broomfield, then delivered the following judgment:

"Mr. Gandhi, you have made my task easy in one way by pleading guilty to the charge. Nevertheless,

what remains, namely, the determination of a just sentence, is perhaps as difficult a proposition as a judge in this country could have to face. The law is no respecter of persons. Nevertheless it will be impossible to ignore the fact that you are in a different category from any person I have ever tried or am likely to have to try. It would be impossible to ignore the fact that in the eyes of millions of your countrymen, you are a great patriot and a great leader. Even those who differ from you in politics look upon you as a man of high ideals and of noble and of even saintly life. I have to deal with you in one character only. It is not my duty and I do not presume to judge or criticize you in any other character. It is my duty to judge you as a man subject to the law, who by his own admission has broken the law and committed what to an ordinary man must appear to be, grave offence against the State. I do not forget that you have constantly preached against violence, and that you have on many occasions, as I am willing to believe, done much to prevent violence. But having regard to the nature of your political teaching, and the nature of many of those to whom it was addressed, how you could have continued to believe that violence would not be the inevitable consequence, it passes my capacity to understand.

There are probably few people in India who do not sincerely regret that you should have made it impossible for any Government to leave you at liberty. But it is so. I am trying to balance what is due to you against what appears to me to be necessary, in the interest of the public, and I propose in passing sentence to follow the precedent of a case in many respects similar to this case, that was decided some

twelve years ago, I mean the case against Mr. Bal Gangadhar Tilak under the same section. The sentence that was passed upon him, as it finally stood, was a sentence of simple imprisonment for six years. You will not consider it unreasonable, I think, that you should be classed with Mr. Tilak, that is, a sentence of two years' simple imprisonment on each count of the charge, that is, six years in all, which I feel it my duty to pass upon you. And I should like to say in doing so, that if the course of events in India should make it possible for the Government to reduce the period and release you, no one will be better pleased than I."

Turning to Mr. Banker, the Judge said: "I assume you have been to a large extent under the influence of your chief. The sentence that I propose to pass upon you is simple imprisonment for six months on each of the first two counts, that is to say, simple imprisonment for one year and a fine of a thousand rupees on the third count, with six months' simple imprisonment in default."

"Association with Tilak's Name—an Honour"

Mr. Gandhi, addressing the Judge, then said: "I would say one word. Since you have done me the honour of recalling the trial of the late Lokamanya Bal Gangadhar Tilak, I just want to say that I consider it to be the proudest privilege and honour to be associated with his name. So far as the sentence itself is concerned, I certainly consider that it is as light as any judge would inflict on me, and so far as the whole proceedings are concerned, I must say that I could not have expected greater courtesy."

As the Judge left the Court, the friends of Gandhiji crowded round him and fell at his feet. There was much sobbing on the part of both men and women. But all the while, Gandhiji was smiling and cool and giving encouragement to everybody who came to him. Mr. Banker was also smiling and taking this in a light-hearted way. After all his friends had taken leave, Gandhiji and Mr. Banker were taken out of the Court to the Sabarmati Jail.

And thus the great trial, which lasted only a hundred minutes, ended.

APPENDICES

APPENDIX I

SAROJINI RECALLS TO MIND TRIAL OF CHRIST

Shrimati Sarojini Naidu, who was present at the trial, wrote shortly afterwards as under about this historical event:

“A convict and a criminal in the eyes of the law! Nevertheless, the entire Court rose in an act of spontaneous homage when Mahatma Gandhi entered—a frail, serene, indomitable figure in a coarse and scanty loin-cloth, accompanied by his devoted disciple and fellow-prisoner, Shankarlal Banker.

‘So you are seated near me to give me your support in case I break down,’ he jested with that happy laugh of his which seems to hold all the undimmed radiance of the world’s childhood in its depths. And looking round at the host of familiar faces of men and women who had travelled far to offer him a token of their love, he added, ‘This is like a family gathering and not a law court.’

A thrill of mingled fear, pride, hope and anguish ran through the crowded hall when the Judge took his seat—an admirable Judge deserving of our praise, alike for his brave and resolute sense of duty, his flawless courtesy, his just perception of a unique occasion and his fine tribute to a unique personality.

The strange trial proceeded and so I listened to the immortal words that flowed with prophetic fervour from the lips of my beloved master. My thoughts sped across the centuries to a different land and different age, when a similar drama was enacted and another divine and gentle teacher was crucified, for spreading a kindred gospel with a kindred courage. I realized now that the lowly Jesus of Nazareth, cradled in a manger, furnished the only parallel in history to this invincible apostle of Indian liberty who loved humanity with surpassing compassion, and to use his own beautiful phrase, 'approached the poor with the mind of the poor'.

The most epic event of modern times ended quickly. The pent-up emotion of the people burst in a storm of sorrow as a long, slow procession moved towards him in a mournful pilgrimage of farewell, clinging to the hands that had toiled so incessantly, bowing over the feet that had journeyed so continuously in the service of his country. In the midst of all this poignant scene of many-voiced and myriad-hearted grief he stood, untroubled, in all his transcendent simplicity, the embodied symbol of the Indian nation—its living sacrifice and sacrament in one.

They might take the Mahatma to the utmost ends of the earth, but his destination remains unchanged in the hearts of his people who are both the heirs and the stewards of his matchless dreams and his matchless deeds."

APPENDIX II

KASTURBA'S MESSAGE

Following the sentence on her husband, Shri-mati Kasturba Gandhi issued a message to "My Dear Countrymen and Countrywomen" as under:

"My dear husband has been sentenced today to six years' simple imprisonment. Whilst I cannot deny that this heavy sentence has to some extent told upon me, I have consoled myself with the thought that it is not beyond our powers to reduce that sentence and release him by our own exertions long before his term of imprisonment is over.

I have no doubt that, if India wakes up and seriously undertakes to carry out the constructive programme of the Congress, we shall succeed not only in releasing him, but also in solving to our satisfaction all the three issues for which we have been fighting and suffering for the last eighteen months or more.

The remedy, therefore, lies with us. If we fail, the fault will be ours. I, therefore, appeal to all men and women who feel for me and have regard for my husband to wholeheartedly concentrate on the constructive programme and make it a success.

Among all the items of the programme, he laid the greatest emphasis on the spinning wheel and Khaddar. Our success in these will not only solve the economic problem of India in relation to the masses, but also free us from our political bondage. India's first answer, then, to Gandhiji's conviction should be that:

(a) All men and women give up their foreign cloth and adopt Khaddar and persuade others to do so.

(b) All women make it a religious duty to spin and produce yarn every day and persuade others to do so.

(c) All merchants cease trading in foreign piecegoods.

KASTURIBAI GANDHI”

APPENDIX III

GANDHIJI ‘DISBARRED’ BY INNER TEMPLE

One curious consequence of the conviction of Gandhiji for sedition was that the Inner Temple in England, of which he had enrolled himself as a member in June 1891, met in a special “Parliament” on 10th November, 1922, and resolved to remove his name from the roll of Barristers. The following is a copy of the order* issued in this respect by the Inner Temple.

Inner Temple

At a Parliament holden
Friday, 10th day of November 1922.

Whereas at a Bench Table holden on the 7th day of November 1922 the Treasurer having reported that he had received a certified copy of the conviction and sentence to six years’ imprisonment of Mohandas Karamchand Gandhi, a Barrister of this Inn at the Court of the Sessions Judge, Ahmedabad, India on the 18th of March 1922 for sedition.

*We are indebted for this copy to *Mahatma* (Vol. II), the well-known, 8-volume biography of Gandhiji by Shri D. G. Tendulkar.

It was Ordered—That Mohandas Karamchand Gandhi having been convicted by a competent Tribunal of an offence which in the opinion of the Bench disqualifies him from continuing a Member of the Inn should have his name removed from the books. And at the same Bench Table. It was further Ordered—That at the Parliament to be holden on Friday the 10th day of November 1922 the said Mohandas Karamchand Gandhi be disbarred and his name removed from the books of this Society and that this Order be communicated to the Judges of the Supreme Court of Judicature to the other Inns of Court to the General Council of the Bar and by registered letter to the said Mohandas Karamchand Gandhi and be screened in the Hall.

It is at this Parliament Ordered—That the said Order be and the same is hereby confirmed and the said Mohandas Karamchand Gandhi is hereby disbarred and his name removed from the books of this Society.

True Copy
(initials)
for Superintendent.

WALTER G. WRANGHAM,
Sub-Treasurer.

APPENDIX IV

THE 'OFFENDING' ARTICLES

The three articles in *Young India* which formed the subject of the charges in the trial for "Sedition" (see p. 56) were as under:

1. TAMPERING WITH LOYALTY

His Excellency the Governor of Bombay had warned the public sometime ago, that he 'meant business', that he was not going to tolerate the speeches

that were being made. In his note on the Ali Brothers and others he has made clear his meaning. The Ali Brothers are to be charged with having tampered with the loyalty of the sepoy and with having uttered sedition. I must confess, that I was not prepared for the revelation of such hopeless ignorance on the part of the Governor of Bombay. It is evident that he has not followed the course of Indian history during the past twelve months. He evidently does not know, that the National Congress began to tamper with the loyalty of the sepoy in September last year, that the Central Khilafat Committee began it earlier still, for I must be permitted to take the credit or the odium of suggesting that India had a right openly to tell the sepoy and everyone who served the Government in any capacity whatsoever, that he participated in the wrongs done by the Government. The Conference at Karachi merely repeated the Congress declaration in terms of Islam, but speaking for Hinduism and speaking for nationalism I have no hesitation in saying, that it is sinful for anyone, either as soldier or civilian, to serve this Government which has proved treacherous to the Musalmans of India and which had been guilty of the inhumanities of the Punjab. I have said this from many a platform in the presence of sepoys. And if I have not asked individual sepoys to come out, it has not been due to want of will but of ability to support them. I have not hesitated to tell the sepoy, that if he could leave the service and support himself without the Congress or Khilafat aid, he should leave at once. And I promised, that as soon as the spinning wheel finds an abiding place in every home and Indians begin to feel that weaving gives anybody any day an honourable

livelihood, I shall not hesitate, at the peril of being shot, to ask the Indian sepoy individually to leave his service and become a weaver. For, has not the sepoy been used to hold India under subjection, has he not been used to murder innocent people at Jalianwala Bagh, has he not been used to drive away innocent men, women and children during that dreadful night at Chandpur, has he not been used to subjugate the proud Arab of Mesopotamia, has he not been utilized to crush the Egyptians? How can any Indian having a spark of humanity in him and any Musalman having any pride in his religion feel otherwise than as the Ali Brothers have done? The sepoy has been used more often as a hired assassin than as a soldier defending the liberty or the honour of the weak and the helpless. The Governor has pandered to the basest in us by telling us what would have happened in Malabar but for the British soldier or sepoy. I venture to inform His Excellency that Malabar Hindus would have fared better without the British bayonet, that Hindus and Musalmans would have jointly appeased the Moplahs, that possibly there being no Khilafat question there would have been no Moplah riot at all, that at the worst, supposing that Musalmans had common cause with the Moplahs, Hinduism would have relied upon its creed of non-violence and turned every Musalman into a friend, or Hindu valour would have been tested and tried. The Governor of Bombay has done a disservice to himself and his cause (whatever it might be), by fomenting Hindu-Musalman disunion, and has insulted the Hindus, by letting them infer from his note, that Hindus are helpless creatures unable to die for or defend their hearth, home or religion. If

however the Governor is right in his assumptions, the sooner the Hindus die out, the better for humanity. But let me remind His Excellency, that he has pronounced the greatest condemnation upon British rule, in that it finds Indians today devoid of enough manliness to defend themselves against looters, whether they are Moplahs, Musalmans or infuriated Hindus of Arrah.

His Excellency's reference to the sedition of Ali Brothers is only less pardonable than his reference to the tampering. For he must know, that sedition has become the creed of the Congress. Every non-co-operator is pledged to preach disaffection towards the Government established by law. Non-co-operation, though a religious and strictly moral movement, deliberately aims at the overthrow of the Government, and is therefore legally seditious in terms of the Indian Penal Code. But this is no new discovery. Lord Chelmsford knew it. Lord Reading knows it. It is unthinkable that the Governor of Bombay does not know it. It is common cause that so long as the movement remained non-violent, nothing would be done to interfere with it.

But it may be urged, that the Government has a right to change its policy when it finds, that the movement is really threatening its very existence as a system. I do not deny its right. I object to the Governor's note, because it is so worded as to let the unknowing public think, that tampering with the loyalty of the sepoy and sedition were fresh crimes committed by the Ali Brothers and brought for the first time to His Excellency's notice.

However, the duty of the Congress and Khilafat workers is clear. We ask for no quarter; we expect

none from the Government. We did not solicit the promise of immunity from prison so long as we remained non-violent. We may not now complain, if we are imprisoned for sedition. Therefore, our self-respect and our pledge requires us to remain calm, unperturbed and non-violent. We have our appointed course to follow. We must reiterate from a thousand platforms the formula of the Ali Brothers regarding the sepoys, and we must spread disaffection openly and systematically till it pleases the Government to arrest us. And this we do, not by way of angry retaliation, but because it is our Dharma. We must wear Khadi even as the Brothers have worn it, and spread the gospel of Swadeshi. The Musalmans must collect for Smyrna relief and the Angora Government. We must spread like the Ali Brothers the gospel of Hindu-Muslim unity and of non-violence for the purpose of attaining Swaraj and the redress of the Khilafat and the Punjab wrongs.

We have almost reached the crisis. It is well with a patient who survives a crisis. If on the one hand we remain firm as a rock in the presence of danger, and on the other observe the greatest self-restraint, we shall certainly attain our end this very year.

Young India, 29-9-1921

2. A PUZZLE AND ITS SOLUTION

Lord Reading is puzzled and perplexed. Speaking in reply to the addresses from the British Indian Association and the Bengal National Chamber of Commerce at Calcutta, His Excellency said, "I confess that when I contemplate the activities of a section of the community, I find myself still, notwithstanding persistent study ever since I have been in T. M.-6

India, puzzled and perplexed. I ask myself what purpose is served by flagrant breaches of the law for the purpose of challenging the Government and in order to compel arrest?" The answer was partly given by Pandit Motilal Nehru when he said on being arrested that he was being taken to the house of freedom. We seek arrest because the so-called freedom is slavery. We are challenging the might of this Government because we consider its activity to be wholly evil. We want to overthrow the Government. We want to *compel* its submission to the people's will. We desire to show that the Government exists to serve the people, not the people the Government. Free life under the Government has become intolerable, for the price exacted for the retention of freedom is unconscionably great. Whether we are one or many, we must refuse to purchase freedom at the cost of our self-respect or our cherished convictions. I have known even little children become unbending when an attempt has been made to cross their declared purpose, be it ever so flimsy in the estimation of their parents.

Lord Reading must clearly understand that the non-co-operators are at war with the Government. They have declared rebellion against it inasmuch as it has committed a breach of faith with the Musalmans, it has humiliated the Punjab and it insists upon imposing its will upon the people and refuses to repair the breach and repent of the wrong done in the Punjab.

There are two ways open to the people, the way of armed rebellion and the way of peaceful revolt. Non-co-operators have chosen, some out of weakness,

some out of strength, the way of peace, i.e., voluntary suffering.

If the people are behind the sufferers, the Government must yield or be overthrown. If the people are not with them they have at least the satisfaction of not having sold their freedom. In an armed conflict the more violent is generally the victor. The way of peace and suffering is the quickest method of cultivating public opinion, and therefore when victory is attained it is for what the world regards as Truth. Bred in the atmosphere of law courts, Lord Reading finds it difficult to appreciate the peaceful resistance to authority. His Excellency will learn by the time the conflict is over that there is a higher court, than courts of justice and that is the court of conscience. It supersedes all other courts.

Lord Reading is welcome to treat all the sufferers as lunatics, who do not know their own interest. He is entitled therefore to put them out of harm's way. It is an arrangement that entirely suits the lunatics and it is an ideal situation if it also suits the Government. He will have cause to complain if having courted imprisonment, non-co-operators fret and fume or 'whine for favours' as Lalaji puts it. The strength of a non-co-operator lies in his going to gaol uncomplainingly. He loses his case if having courted imprisonment he begins to grumble immediately his courtship is rewarded.

The threats used by His Excellency are unbecoming. This is a fight to the finish. It is a conflict between the reign of violence and of public opinion. Those who are fighting for the latter are determined

to submit to any violence rather than surrender their opinion.

Young India, 15-12-1921

3. SHAKING THE MANES

[These and other fulminations and open official threats presumably led Gandhiji to write in an editorial headed "Shaking the Manes," in *Young India* dated 23rd February 1922, as follows:]

How can there be any compromise whilst the British lion continues to shake his gory claws in our face? Lord Birkenhead reminds us that Britain has lost none of her hard fibre. Mr. Montagu tells us in the plainest language that the British are the most determined nation in the world, who will brook no interference with their purpose....

Lord Birkenhead and Mr. Montagu little know that India is prepared for all 'the hard fibre' that can be transported across the seas and that the challenge was issued in the September of 1920 at Calcutta that India would be satisfied with nothing less than Swaraj and full redress of the Khilafat and Punjab wrongs. This does involve the existence of the 'empire', and if the present custodians of the British Empire are not satisfied with its quiet transformation into a true commonwealth of free nations, each with equal rights and each having the power to secede at will from an honourable and friendly partnership, all the determination and vigour of 'the most determined people in the world' and the 'hard fibre' will have to be spent in India in a vain effort to crush the spirit that has risen and that will neither bend nor break. It is true that we have no 'hard fibre'. The rice-eating,

puny millions of India seem to have resolved upon achieving their own destiny without any further tutelage and without arms. In the Lokamanya's language it is their 'birthright' and they will have it, in spite of the 'hard fibre' and in spite of the vigour and determination with which it may be administered. India cannot and will not answer this insolence with insolence, but if she remains true to her pledge, her prayer to God to be delivered from such a scourge will certainly not go in vain. No empire intoxicated with the red wine of power and plunder of weaker races has yet lived long in this world, and this British Empire, which is based upon organized exploitation of physically weaker races of the earth and upon a continuous exhibition of brute force, cannot live if there is a just God ruling the universe. Little do these so-called representatives of the British nation realize that India has already given many of her best men to be dealt with by the British 'hard fibre'. Had Chauri Chaura not interrupted the even course of the national sacrifice, there would have been still greater and more delectable offerings placed before the lion, but God had willed it otherwise. There is nothing, to prevent all those representatives in Downing Street and Whitehall from doing their worst. I am aware that I have written strongly about the insolent threat that has come from across the seas, but it is high time that the British people were made to realize that the fight that was commenced in 1920 is a fight to the finish, whether it lasts one month or one year or many years and whether the representatives of Britain reenact all the orgies of the Mutiny days with redoubled force or whether they do not. I shall only hope and pray that God will give India sufficient humility

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and sufficient strength to remain non-violent to the end. Submission to the insolent challenges that are cabled out on due occasions is now an utter impossibility.

Young India, 23-2-1922

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