

CHAPTER X.

Declaration of Martial Law.

1. By article 2 of the Bengal Regulation 10 of 1804 the Governor in Council is entitled to direct any public authority or officer to order the suspension, wholly or partially, of the functions of the ordinary Criminal Courts of Judicature within any part of the British territories subject to the Government and to establish martial law therein "for any period of time while the British Government in India shall be engaged in war with any native or other power, as well as during the existence of open rebellion against the authority of the Government, in any part of the territories aforesaid." The territories referred to include the Punjab.

On 13th April 1919 the Lieutenant-Governor of the Punjab, with the concurrence of the General Officer Commanding the 16th Division and Chief Justice, High Court, requested the Governor General in Council to direct him to "suspend function of ordinary Criminal Courts in Amritsar and Lahore districts, to establish martial law therein and to direct trial of offenders under the Regulation of 1804, *i.e.*, by courts-martial." The authority so asked was granted with the intimation that an Ordinance would be published the following day substituting for trials by courts-martial, trials by Tribunals similar to those under the Defence of India Act but with the powers of Field General Courts-Martial. This communication from the Viceroy was received by the Lieutenant-Governor in the evening of 14th April and a proclamation of martial law was made at Lahore and Amritsar on 15th April. Similar applications were made in respect of Gujranwala on 15th April, Gujrat on 18th April and Lyallpur on 20th April. Sanction having been given to the declaration of martial law as asked, proclamations to this effect were made in these districts on 16th, 19th and 24th April respectively. Martial law was withdrawn from Gujrat civil area and from certain parts of the other affected areas on 28th May 1919. At the conclusion of a Durbar held on 7th June at Amritsar, the Lieutenant-Governor announced that, except on the railway, martial law would be discontinued at midnight on the 9th in the districts of Amritsar, Gujranwala and Lyallpur and at midnight on the 11th at Lahore. It was finally withdrawn from railway lands on 25th August.

2. In terms of section 72 of the Government of India Act, 1915, "the Governor General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof and any ordinance so made shall for the space

of not more than six months from its promulgation have the like force of law as an Act passed by the Governor General in Legislative Council." Acting under the powers conferred upon him by this Statute, the Governor General by Martial Law Ordinance No. 1 of 1919 provided that every trial held under the Bengal State Offences Regulation, 1804, should, instead of being held by a court-martial, be held by a commission consisting of 3 persons appointed in this behalf by the Local Government, which was to have power to appoint as many commissions for this purpose as it might deem expedient. At least 2 of the members of each such commission were to be persons who had served as Sessions Judges or Additional Sessions Judges for a period of not less than 3 years or persons qualified under section 101 of the Government of India Act, 1915, for appointment as Judges of a High Court. The Commission was to have all the powers of a general court-martial under the Indian Army Act, 1911, and subject to the provisions of the Ordinance was to follow, so far as might be, the procedure regulating trials by such courts-martial.

3. Under section 3 of the Regulation of 1804 the only penalty that could be imposed by a court-martial upon a person found guilty of the crime of rebellion was death, a sentence involving forfeiture of all the criminal's property and effects. The Government of the Punjab pointed out to the Government of India that there would be many guilty persons whom it was not desirable to sentence to death and that provision should therefore be made by Ordinance for minor punishments. Accordingly the Governor General issued Martial Law Ordinance No. III of 1919 providing that any court-martial or commission convened under the previous Ordinances might, when convicting any person of any of the crimes specified in the Regulation of 1804, sentence such person to transportation for life or for any period not less than 10 years or to rigorous imprisonment for a term not less than 7 years and not exceeding 14 years. No person so convicted was to be liable to forfeiture of property unless such court or commission so directed.

4. On 16th April 1919 the Government of the Punjab wired to the Government of India urging that Ordinance I should be amended so as to cover offences committed on or after 30th March, the date on which trouble began in Delhi. In a further wire on 19th April they pointed out that the Amritsar murders occurred on 10th April and those at Kasur on the 12th. "Lieutenant-Governor considers it most desirable that these cases should be tried by commission under the Ordinance. Meetings which helped to prepare the ground for the rebellion took place on the 30th March at Amritsar and on 6th April at Lahore. The first riot in Lahore occurred on the 10th and on the 11th there was a mass meeting in the Shahi Mosque at which inflammatory speeches were made. Evidence is coming in which tends to show that emissaries from outside province visited Punjab shortly before outbreaks in various places. His Honour fears that, if date 13th is allowed to stand, it may be impossible to use the Ordinance against those with whom the real responsibility rests."

To meet these cases the Governor General on 21st April passed Ordinance No. IV of 1919 which provided that "notwithstanding anything contained in the Martial Law Ordinance, 1919, the Local Government may by general or special order direct that any commission appointed under the said Ordinance shall try any person charged with any offence committed on or after the 30th March 1919 and thereafter the provisions of the said Ordinance shall apply to such trials accordingly, and a commission may pass in respect of any such offence any sentence authorised by law." An appeal has been taken to the Privy Council by some of the accused, who were convicted by the commissions in which, among other points, it is maintained that it was not within the power of the Governor General to give the tribunals set up by him power to try offences other than those mentioned in the Bengal Regulation or any offences committed after 30th March and before the first acts of violence occurred. This is not therefore a matter upon which it would be proper for us to express any opinion.

5. Four commissions were set up in Lahore to try offences under the Regulation of 1804 as extended by the Ordinances. They tried 114 cases involving 852 accused. Of these 581 were convicted, the majority of convictions being recorded under section 121 of the Indian Penal Code (which deals with waging war against the King-Emperor). One hundred and eight persons were sentenced to death, 265 to transportation for life, 2 to transportation for other periods, 5 were sentenced to imprisonment for 10 years, 85 for 7 years and 104 for shorter periods. Substantial alteration of these sentences was made by the Local Government. Of the 108 death sentences only 23, including 5 where execution has been stayed pending an appeal to the Privy Council, have been maintained. Of the remaining 85 sentences 23 have been commuted to transportation for life, 26 to rigorous imprisonment for 10 years, 14 to 7 years, 1 to 6 years, 10 to 5 years and 11 to periods ranging from 1 to 4 years. Of the sentences of transportation for life 2 only were maintained, in 5 the Government ordered immediate release of the convicts, while the remaining 258 sentences were commuted to terms of imprisonment, 2 of them for 10 years and the remainder for periods ranging from 1 to 7 years. Two sentences of transportation for 14 and 10 years respectively were reduced to 3 years' imprisonment. Of 191 effective sentences of imprisonment the sentence was allowed to stand in 53 cases, in 2 cases the convicts were released and in the remaining 136 cases reductions were ordered, the average period of sentence before and after reduction being approximately $5\frac{1}{2}$ to $1\frac{1}{2}$ years respectively. Further alterations have been effected under the King-Emperor's proclamation dated December 23rd, and as a result of the recommendations of the commission of Mr. Justice Chevis and Mr. Justice Mullick, who were appointed under instructions conveyed in a letter dated 23rd September 1919, from the Government of India, Home Department, for the purpose of reviewing the sentences passed, in connection with the disturbances by Summary Courts appointed by the martial law authorities.