

CHAPTER VII.

Courts under Martial Law.

The effect of the various ordinances and the notifications by the two General Officers Commanding was to bring into existence the following courts during the period of martial law :—

(1) Summary courts presided over by area officers and civil officers authorised in that behalf to dispose of cases under Martial Regulations. Besides all officers designated as area officers, this term included every Officer Commanding a station or regiment, every Field Officer, every Officer Commanding a brigade and all officers appointed by the General Officer Commanding the Lahore Civil Area or by the Local Government. These summary courts had powers to pass sentences of imprisonment of two years, fines up to Rs. 1,000 and also whipping.

(2) Tribunals composed of three Judges, which were empowered to try any person who was charged with any offence committed on or after the 30th March. These tribunals tried only major offences in relation to disorders.

(3) Summary courts presided over by officers nominated by the Lieutenant-Governor, who were authorised by the notifications of the 5th May 1919, issued by the two General Officers Commanding, to try offences against the ordinary law, arising out of the disturbances but committed before the declaration of martial law. These notifications laid down the following limitations to the exercise of powers of those summary courts, namely that these courts (a) shall take cognizance only of cases sent by the police; (b) shall not try any person for an act which is not an offence under the ordinary law; (c) shall not try any person for an offence exclusively triable by a Court of Sessions; (d) shall not pass in respect of any offence any sentence which is not authorised by the ordinary law for that offence; (e) shall not pass any sentence which could not be passed by a First Class Magistrate. The legal sanction for constituting the last class of summary courts with powers to try offences against the ordinary law committed before the proclamation of martial law and for clothing them with retrospective powers is not very clear. General Beynon seems to think that he derived the power from the *Army Act*. We think, however, that it is beyond our enquiry to investigate this point and express any opinion on it. We think that the trial of people who were not arrested for and charged with taking any part in the actual disturbances by special tribunals was unwise. People like Drs. Kitchlew and Satyapal who had already been deported before the actual disturbances took place and people like Lala Har Kishan Lal, Pandit Rambhuj Dutt Chaudhri and Lala Duni

Chand who were not charged with taking any part in the disorders of the 10th and subsequent dates, but were tried for having by their previous acts and speech been guilty of sedition, should have been left to be dealt with by the ordinary courts. The course adopted was calculated to create the impression that they were prejudiced in getting a fair trial. The manner in which all legal practitioners of their choice were prevented from conducting their defence necessarily heightened that impression. It appears that Lala Har Kishan Lal and others were brought to Lahore about the middle of May, were arrested for the offences with which they were charged and the trial was begun in a day or two afterwards. They engaged legal practitioners from Calcutta, Bombay, Allahabad and Patna but were denied their assistance. This was brought about by an order issued on the 14th of May in identical terms by the General Officers Commanding the 16th (Lahore) and the 2nd (Rawalpindi) Division respectively :—

“ Notice is hereby given to all people concerned that legal practitioners whose ordinary place of residence is outside the Punjab will not be allowed to enter the martial law area without the permission of the martial law administrator.”

The issue of such orders on the eve of their trial had all the appearance of depriving these people of the assistance of the counsel of their choice. It appears from Mr. Thompson's evidence that the idea of excluding outside counsel originated with the Punjab Government, and they suggested it to the military authorities. The reason for the suggestion was “ the desire to prevent the disturbances of the political atmosphere now rapidly cleared by outsiders whose main purpose would not improbably be the revival of agitation under the protection afforded by the court.” Mr. Thompson admitted that this objection was inapplicable to all lawyers who had applied for permission to defend the accused. In fact, however, all lawyers were refused permission. General Beynon said that this was not the reason for which he issued the orders against the legal practitioners. According to him the reason was that it was not necessary to have these lawyers in, and that he did not want to have to keep an office to deal with applications. General Beynon said :

“ My intention was that it was not necessary to have all these people in. They were not an advantage to me. That is how I looked at it from the military point of view.” In another place he said, “ I daresay I looked at it from the military point of view and it was not necessary from the military point of view that those gentlemen should enter the area.”

Q. What was the reason that you considered their presence unnecessary ?

A. Because their presence was not considered necessary.”

The suggested reason with regard to keeping an office for dealing with numerous applications is not sound. There was an office which was dealing with applications for permits of various descriptions and

was issuing them in large numbers. Moreover neither before nor after this order there were any appreciable number of applications from lawyers. In fact, in a note supplied by the Punjab Government the number of applications before the 14th May are only two, one is on the 14th and eight on subsequent days. The form in which the order was made was really calculated to result in the military authorities having more applications to deal with. It appears that at one time the trial of Kali Nath Roy, the editor of the "Tribune," was actually postponed by the Tribunal for enabling Mr. Eardley Norton to appear for him. Then at a later stage Mr. Eardley Norton was prohibited from coming by an order to that effect made on the 11th of May.

Mr. Andrews, who was deputed by certain papers as their representative, was also refused entrance into the Punjab. By these orders of exclusion the Punjab Government laid themselves open to the suggestion, that their desire was to prevent outside people from knowing what was happening in the Punjab. Mr. Thompson denied emphatically, disclaimed any such intention, and said that they had called a representative of the *Indian Mirror* of Calcutta at Government expense and sent him round with Indian officers for the purpose of publicity work. The contention put forward that by this order the accused were placed in no worse position than they would have been in if they had been tried before the High Court at Lahore, because that court had the discretion to refuse permission to an outside practitioner to appear and that in all probability that court would have refused permission is, in our opinion, not sound. The examination of Mr. Thompson on this point shows that the information subsequently gathered as regards the precedents in other courts were somewhat misleading. We venture to think that no High Court would have in the exercise of its discretion refused permission for an outside counsel to appear for an accused charged, as the accused were in this case, with the heinous offence of waging war which would expose them to the death penalty.

2. The evidence shows that Captain Doveton, acting as an Area Officer, gave what have been described by "Fancy" Punishments. Mr. Marsden, S. D. O., Kasur, as "Fancy Punishment." They have been referred to in the majority report in paragraph 27 of the Chapter on martial law.

In a number of cases, he ordered people to be taken to the goods shed to load and unload bales for a day or two. In the case of those who were so ordered to work for a day, they were allowed to go home for the night on depositing some of their belongings as security for their returning the next morning. We think this, in effect, amounted to rigorous imprisonment while they were so at work in the goods shed. This is what Captain Doveton says :—

Q. The work that these people were made to do was no easier than the work which the prisoners in jails under rigorous imprisonment are made to do ?

A. I did not intend it to be.

Captain Doveton says that in case of individuals who were truculent and defiant he awarded this punishment in cases where the railway had any thing to recover from them. Captain Doveton says in his report as follows :—

“ Shortly after the raising of martial law from the city there was a noticeable influx of a type of individual whose attitude towards authority was not a good example for the people of Kasur, many of these being not merely truculent but openly defiant. One heard such expressions as “ *Hukam kya chiz hai,*” “ *Ham koi hukam nahin jante.*”^{*} Unless there was some tangible offence it was unfortunately impossible to deal with such persons, but in cases where the railway had anything to recover from them, they were sent to do work in the goods yard equivalent to the amount to be recovered from them in the event of their being unwilling or unable to pay.”

“ In view of the fact that this particular station had been the scene of murder and unprecedented violence a short time previously, similar treatment was meted out to all persons who threatened railway officials or made a show of violence to them, by way of pointing out that the station was Government premises and that they should be regarded as such.”

These punishments have not been shown in the usual return of cases.

3. Captain Doveton explains that he treated these as minor punishments and inflicted them in cases where the ordinary martial law punishments were unsuitable. It is difficult to accept the description ‘minor punishment’ as regards the orders

Compelling people to put their foreheads on the ground.

to do the work of loading and unloading in the goods sheds for a day or two. Then Captain Doveton compelled all people who were convicted by him of any offence to put their foreheads on the ground, irrespective of the nature of the offence. Captain Doveton gives the following reason for adopting this course :—

Q. What was it intended to accomplish, this order about their putting their foreheads on the ground ?

A. To the people of that place there was no such thing as authority and every body was his own master. The main object was to impress on the people that every body was not his own master and they had got to conform to order.

Q. Was that not sufficiently brought home to them by the convictions and sentences that you inflicted this on them in addition ?

A. I thought it was suitable.

We think it was unwise to have made people thus put their forehead on the ground. They must have felt it as a humiliation.

* “ What is an order ? I don't know any order.”

4. The following are the figures of the sentences of whipping inflicted in the five districts under martial law, ranging from 5 to 30 :—

Flogging.	
(a) Lahore	80
(b) Kasur	79
(c) Chuharkana S. D.	46
(d) Gujranwala	24
(e) Amritsar	32
(f) Gujrat	3
(g) Lyallpur	<i>Nil</i>

This makes the total of 258. It does not include the flogging inflicted on the six boys at Kasur and the flogging inflicted on the six persons under trial for the attack on Miss Sherwood for the breach of Fort discipline. It also does not include any flogging resorted to when the mobile columns visited the various villages. The normal procedure adopted was to strip the person to be whipped and to tie him to a frame-work and then lash him. It appears that a marriage party in Lahore Civil Area were arrested because they were more than ten in violation of the Martial Law Order I and some of them were flogged. The area officer in passing sentence on one of them made the following record. "He is young. Flogging will do him good." Lieutenant-Colonel Johnson stated before us that this case was regrettable and that when he heard of it, he had the powers as summary court-martial of that officer taken away. It appears that flogging in the beginning was done publicly; but after the 19th April or thereabout it was carried out in Lahore in the Central Jail. Sir Michael O'Dwyer says that the Viceroy had written to him on the subject and he replied to him on the 21st of April to the effect that he had told the military authorities that it was very undesirable to have public flogging. Lieutenant-Colonel Johnson and General Beynon told us that the Commander-in-Chief advised them to discontinue public flogging. Sir Michael O'Dwyer in his evidence before us expressed the view that he did not think that there was really any harm in having on the first day a few public floggings which would make the people realise that law was re-established and people who had infringed the law must accept some chastisement. Although instructions from higher quarters, as stated above, had the effect of stopping public floggings in Lahore, in outside places it was not wholly discontinued. At Kasur a railway employee was flogged on the railway station on the 25th April and the sentences of whipping inflicted by Mr. Bosworth Smith of the Sheikhpura sub-division used to be carried out in the court compound after the rising of the court. Mr. Bosworth Smith explained that his court was held at the canal bungalow which was outside the town, and that the only people present would be the accused persons and the witnesses in other cases before him. He therefore said that the place "was not altogether private, and it was not public." Sir Michael O'Dwyer says that when he discovered that flogging was being carried out comparatively freely he spoke to the military authorities on the 19th April. Up to that time, Sir Michael O'Dwyer said only

12 floggings had been carried out. Apparently this had not much effect on the martial law administrator for it appears that as many as 68 sentences of whipping were subsequently passed in the Lahore Civil Area itself. This is not surprising as Lieutenant-Colonel Johnson told us that in his view, "when the civil population runs amuck, if I may say so, as in this case, it is the only method by which you can deal with it." Sir Michael O'Dwyer says that after he had called Lieutenant-Colonel Johnson's attention on the 19th April, he had no reason to think that the sentences of flogging were in any way excessive. But in view of the figures given in the beginning of this paragraph we think that Sir Michael O'Dwyer was under some misapprehension. The sentences of flogging were attempted to be defended before us on the ground that it was the most convenient and speedy way of dealing with offences under martial law, and that it was the ordinary punishment inflicted in the Army. General Hudson, however, told us that for the last two years or so the Commander-in-Chief had issued executive orders to the effect that no corporal punishment should be inflicted without getting sanction from the Army Headquarters and that although flogging is in the list of punishments in the Indian Army Act, it has been placed somewhat on a different footing by the executive orders above referred to. There is also considerable repugnance to the punishment of flogging as it is humiliating in its nature, and in India for some time there has been considerable agitation in favour of the abolition of whipping as a punishment under the criminal law. Under these circumstances, we think that it was unwise to have resorted to flogging on a scale on which it was done and that this measure must have resulted in bitterness of feeling.

5. It appears that the cases of the breach of Martial Notices and

Trials before summary courts.

Orders were not many and did not occupy the time of any of these courts for any appreciable time. The vast majority of the cases dealt with by these courts were in respect of offences committed between the 30th March and the date of the proclamation of martial law. In the Martial Law instruction No. 3, dated the 25th April 1919, in the Sialkot Brigade Area, it is provided by paragraph 12 that an evidence will be taken on oath and a very brief précis of evidence and the accused's statement submitted on or with Form No. 5.

We are informed that these summary courts were bound by these instructions. The procedure prescribed conformed neither with that prescribed under the Indian Army Act nor with that prescribed for summary trials under the Criminal Procedure Code. These courts were empowered to award punishments up to imprisonment for two years, fine up to Rs. 1,000 and also whipping; and it appears that they tried people for serious offences under the Defence of India Rules and for making seditious speeches and enforcing *hartal*. Their decisions were not open to appeal. Under the circumstances it was incumbent that the trial should be so conducted and the record so kept that there might be no room for any suggestion of prejudice. In the form above

referred to, column No. 5 is headed "Witnesses and brief circumstances alleged against accused," and column 6 is headed, "Brief statement of witnesses for defence and statement by accused" and column 7 is headed "Finding." We had produced to us the records of these trials and a careful examination of them revealed to us the following in a comparatively large number of cases:—

- (a) Column 6 was absolutely blank.
- (b) The whole form appears to have been filled in by some clerk and initialled by the presiding officer in the last column.
- (c) Under column 7, "Finding," only guilty or not guilty is mentioned.

This has been done even in cases where a great number of prosecution witnesses and a large number of accused were undergoing a trial for a serious offence.

- (d) Offences such as cheating, perjury, false personation, adultery, etc., evidently not in any manner connected with the disturbances, were tried. They were swept in under clause 15 under the Martial Law Proclamation as acts which were to the prejudice of good order and public safety.

The impression left on us is that these trials do not appear to have been conducted as satisfactorily as one would desire. We must say that some of these officers who presided over these courts appeared before us as witnesses but as at that time we had not before us the records of these cases we were unable to put the above facts to them and hear their explanation.

We are unable to concur in the conclusions of the majority regarding arrests both by the military and the police during the period under review. People seem to have been arrested on mere suspicion and kept in custody for considerable periods. Some of them were never brought to trial, and others brought before the court had to be discharged because there was absolutely no evidence against them. We think that it was a very unsatisfactory feature that people were kept for many days under arrest without being brought before a court and remanded, and facilities for bail were unnecessarily curtailed, even with regard to bailable offences.

It appears that Lieutenant-Colonel O'Brien said that before the introduction of martial law he arrested certain leading people at Gujranwala and added that why he made those arrests was that such arrests were likely to have most good effect. He also made similar arrests at Wazirabad on the 16th and at Sheikhpura on the 19th April. He says, in none of these cases warrants were issued for their arrests and that they were arrested under the Defence of India Act. It appears that Lieutenant-Colonel O'Brien was not appointed an area officer under General Beynon's Proclamation of 19th April until the 23rd April, and the notification of the Government of India empowering the District Magistrates in the Punjab to make arrests under the Defence of India

Rules did not appear till much later. Lieutenant-Colonel O'Brien says that he had a conversation with the Chief Secretary over the telephone and he was given to understand that if he took action hurriedly it would be legalised afterwards if it was done in good faith.

We do not propose to enter into any detailed examination of these cases but give below certain illustration as examples :—

The following proceedings with regard to certain people arrested by the flying column in charge of Lieutenant-Colonel Bourne are given below :—

Present as below :—

I. *Sahajpal village*—

1. JALAL.
2. BARKAT.
3. PEER BAKHSH.
4. MEHTAB.

Arrested by Colonel Bourne on 16th April 1919, who says "No direct evidence but it (Sahajpal) is near the place where grass farm stacks were burnt."

Police Report "No evidence, should be discharged." The four men are accordingly discharged and released from custody. After it has been explained to them how wrong it was for people to attend to false reports and bad advice, etc.

II. *Narwar village*—

1. SAMAN SINGH (*lambardar*),
2. BAHADUR SINGH
3. RADHA SINGH,
4. BOOTA SINGH,
5. HUKAM SINGH,
6. DEVI CHAND.

and five others (not brought up by mistake).

Colonel Bourne says : The crowd who burnt the station came from the direction of Narwar.

Colonel Bourne asked the *Ziadar* and *lambardar* of Narwar who denied all knowledge of who burnt railway station and to produce evidence as to the culprit, they failed to do so and were arrested with others named above.

The police report as regards these Narwar men "not wanted. No evidence. Village has been fined."

I accordingly discharge the Narwar men present to-day and release them from custody after admonishing them as in the case of (1).

I may note Narwar is fined Rs. 15,000 (half a year's revenue) by the G. O. C. Brigade on 21st April 1919.

The fine was paid on 24th April 1919.

Sanke village—

1. VEER SINGH.

2. CHANCHAL SINGH.

Sanke is a village in the neighbourhood of Wagha railway station (3 miles) was by the G. O. C. Brigade fined Rs. 300 on 21st April 1919. Fine paid on 24th May 1919.

Police say no evidence, should be dismissed. I accordingly discharge both these men and release them from custody after speaking to them as to others.

LAHORE CANTONMENT :

F. SPENCER,

15th May 1919.

Cantonment Magistrate and Area Officer.

These persons amongst others were arrested on the 16th or 17th of April and were released from custody on the 15th of May (practically after one month).

7. Similarly we may draw attention to the arrests of Dr. Kedar Nath Bhatia and Sardar Gurdial Singh at Amritsar and of Dr. Manohar Lal at Lahore. On the materials before, we cannot avoid the conclusion that there were no sufficient grounds for making these arrests. Dr. Kedar Nath, an old retired Assistant Surgeon, occupying considerable position in Amritsar, was arrested and hand-cuffed and kept under arrest for about a month, but without being brought to trial. Similarly Dr. Manohar Lal, a Barrister-at-Law of standing in Lahore, was arrested apparently because he was one of the trustees of the paper the "Tribune"; he was arrested and hand-cuffed and kept in the Lahore Jail for about a month, and released without being brought to trial. Mr. Gurdial Singh, a Barrister at Amritsar, at considerable risk to himself, did his best to prevent the crowd from getting unruly at the railway footbridge at Amritsar. Mr. Miles Irving acknowledged his services before us. It appears that he was arrested and at his trial Mr. Miles Irving gave evidence, testifying to the creditable part he had taken in assisting the authorities and he was discharged. Mr. Miles Irving said to that "I think people rather laughed at him. What he afterwards said to me was 'they are all laughing at me because I have done my best for you and all I have got is to be arrested.'" At Gurdaspur about eight pleaders were arrested and kept in custody for nearly six weeks and were then released without being brought to trial. In all 789 persons were arrested, who were never brought to trial.

8. It may be noticed that the sentences passed by the Martial Law Commissions were considerably reduced by Government. Out of 108 death sentences, only 23 were maintained and the remaining were commuted to transportation in some cases and in the rest to sentences

of imprisonment going down to one year. Out of 265 sentences of transportation, only 2 were maintained, 5 were commuted altogether, and the rest were commuted to imprisonments varying from 10 years to one year. There is a great disproportion between the original sentences and those to which they were commuted and this gives ground for the suggestion of initial severity that has been made.

JAGAT NARAYAN.

C. H. SETALVAD.

SULTAN AHMED.