

The Jallianwala Bagh Revisited - I

Lieutenant Colonel Nigel A Collett (Retd)

The O'Dwyer v Nair Libel Case

In 1923, Sir Michael O'Dwyer, who had been Lieutenant-Governor of the Punjab until 1919, sued Sir Chettur Sankaran Nair, also until that year a Member of the Viceroy's Executive Council, for libel. In his book, *Gandhi and Anarchy*, Nair had written: 'Before the reforms it was in the power of the Lieutenant-Governor, a single individual, to commit the atrocities in the Punjab which we know only too well.'¹ The book had been written to attack Mahatma Gandhi's Non-co-operation movement, but Nair, who was a moderate, had not resisted the opportunity to take a swipe at a man whose oppressive policies he, and much of India, regarded as the real cause of the Punjab Disturbances of 1919 and the repression under Martial Law which had followed them.²

The case was heard before Mr Justice McCardie in the Court of King's Bench in London over five weeks from 30 April 1924, and, apart from being one of the longest civil hearings in legal history, was notable for being the only court to air in England any of the matters arising from the Punjab Disturbances of 1919. The case was seen, and particularly so by the plaintiff, Sir Michael O'Dwyer, as a method by which to vindicate the actions of officials of the Punjab Government who had taken a hand in suppressing the disturbances, among them most notably Brigadier-General Reginald Dyer, the perpetrator of the Jallianwala Bagh massacre at Amritsar. It was accepted at the trial that two of the major points at issue were that:

1. On 13 April 1919, General Dyer committed an atrocity by ordering the shooting at Amritsar, and
2. That the plaintiff caused or was responsible for the commission of that alleged atrocity.³

In preparation for the case, both sides gathered evidence from supporting witnesses. For O'Dwyer, this was a relatively easy matter, as many key figures who had been involved in India in 1919 were by now back in, or close to, England and could

Lieutenant-Colonel Nigel A. Collett is Managing Director of the Gorkha International Group. He is based in Hong Kong. He is the author of the book *The Butcher of Amritsar*.

appear in person. These included the Viceroy of the time, Lord Chelmsford, by 1924 a Government Minister, First Lord of the Admiralty; his Commander-in-Chief in India, General Sir George Carmichael Munro, by now Governor of Gibraltar; and Major-General Sir William Beynon, General Officer Commanding 16 Division in Lahore, Sir Michael O'Dwyer's military equivalent in the Punjab and Martial Law Administrator during the disturbances, who had by now retired. So strong and impressive were these supporting witnesses, that O'Dwyer felt the need to solicit testimony from only six men in India.

Nair found himself at a very great disadvantage. In England in 1924 there were few who were prepared to support his view that Sir Michael O'Dwyer had been a repressive tyrant, and those who were, had little public standing. One of Nair's key witnesses, for example, Mr Gerard Wathen, in 1919 Principal of the Khalsa College, Amritsar, was by 1924 running his own school in Hampstead. Nair's legal team was forced to fall back on depositions legally sworn by over 120 witnesses in India. Justice McCardie made it plain that he attributed these far less weight than he did the evidence of those who appeared before the jury. In the event the Indian depositions had little effect and have been forgotten since. Sir Michael O'Dwyer won his case, and was able ever thereafter to maintain that he and Dyer had been vindicated in a British court of law. He could do so relying to a good degree upon Mr Justice McCardie's highly partial summing up:

I express my view that General Dyer, under the grave and exceptional circumstances, acted rightly, and in my opinion, upon his evidence, he was wrongly punished by the Secretary of State for India.⁴

The Depositions

The depositions of the Indian witnesses have lain untouched to this day in the Public Record Office (now the National Archive) at Kew, where they are filed under the reference and title J17/634, *O'Dwyer v. Nair, Supreme Court of Judicature, Depositions – Exhibits Taken off the File, 16 January 1924*. The information they contain is important, and represents in some cases the sole evidence for incidents and matters otherwise unknown. This file of papers remains the only place in the English record where the voices of victims of the suppression of the Punjab Disturbances can be heard in their own words. The depositions support and

supplement the evidence published by the Indian National Congress Inquiry in 1921.⁵ The depositions, taken within just over four years of the events they describe, have an enormous wealth of detail elucidating and clarifying the history of the Disturbances.

The depositions were taken in India between November and December 1923 by teams of lawyers representing each side. For O'Dwyer, the plaintiff, acted Khan Bahadur Sheikh Abdul Qadir and Mr Obedulla. The defendant, Sir C Sankaran Nair, was present himself with his advocates Mr B Tek Chand, Mr BR Puri and Mr R C Soni. Both sides were allowed to cross examine witnesses, and voluntary follow-up examinations were also permitted. Statements were recorded in English (translated from the vernacular where necessary), the cross examinations and follow-ups in question and answer form, and all were signed.

A reading of the full set of depositions reveals why Nair lost his case. His witnesses include many middle ranking figures, some of them Government officials, but at no point in their depositions do they come close to proving that Sir Michael O'Dwyer directly abused his power. This is unfortunate, as the depositions clearly describe undoubted abuses, for instance in recruiting for the Army in the Punjab during the First World War. All the abuses, though, are attributed to low ranking officials and at no point do the depositions reveal any abuse ordered or carried out by O'Dwyers himself. They singularly fail to tie any abuse to an order made directly by him. On several occasions the depositions point out that during Martial Law public order was in the hands of the Army (despite O'Dwyer's unsuccessful attempt to retain control even after the grant of the Martial Law he had demanded), and so abuses committed under Martial Law could not be directly attributed to him. This is notably the case regarding the Jallianwala Bagh. Nair's team recognized that it had to prove Sir Michael O'Dwyer's involvement in the massacre if it were to successfully defend the suit, but nowhere in the depositions did they manage to present evidence to prove the involvement of the Lieutenant-Governor prior to the event. There was no smoking gun, and on the evidence presented it is difficult to see how Sir Michael O'Dwyer could have lost his case.

Recruiting Abuses in the Punjab, 1917-18

Sixty-eight of the defence's 125 depositions concern abuses in the recruitment of Punjabi soldiers for the Indian Army during

the last two years of the First World War.⁶ Allegations of these abuses were prevalent in the Punjab at the time and have been often cited since, and in the depositions the story emerges very clearly of a gradually worsening situation after the civilian authorities took over responsibility for recruiting from the military in 1917. The body of evidence in these depositions is compelling; of recruiting quotas fixed on rural areas as high as one third of the eligible male population; of rural headmen compelled to furnish recruits or losing their jobs as a result of their failure to conform to the policy or to meet targets; of young men fleeing in increasing numbers to the cities to escape recruitment; of misuse of the judicial process by the offering of recruitment as an alternative to punishment, or worse by the bringing of false charges to secure this result; of growing rural resistance to recruitment, resulting in one case in the murder of a Tehsildar and in another of a riotous assault on the police; of a recognized price paid to enable recruiters to fill their quota by paying gangs kidnapping the poor in urban areas or purchasing men from other villages, a price which started at Rs. 250 a head in 1917 and which reached Rs. 1300 by the end of the War. The evidence is personal and compelling. Rai Zada Bhagat Ram, Barrister-at-Law in Jullundur, and a Member of the Punjab Provincial Legislative Council from 1916, stated that he knew of suspensions of headmen and superior headmen for failure to fill quotas and of false cases brought to put pressure on them. He knew a judge who had acquitted a man who had agreed to enlist. Bhagat Ram also testified on the subject of enforced war loans. As a leading member of the Punjab war loan movement, he had seen men pressured to pay by being handcuffed and made to stand in the sun, and as a result he had resigned his position.⁷ Dr Mani Ram, a dental surgeon of Amritsar, had seen headmen handcuffed by Sardar Harbel Singh, the Recruiting Officer for his Tahsil in Multan, for refusing to provide recruits; all had paid to escape arrest.⁸

Interestingly, many of the witnesses deposing for the plaintiff, all conservative supporters of the Punjab Government, also testified to these abuses. Colonel Sir Malik Umar Hayat Khan Tiwana, elected member of Council of State, stated that the recruiting quota was fixed at one third of villagers of military age. He recounted how Tahsildar Sayyad Nadir Hussain had been killed at Bahk Lurka in Lakk by villagers who objected to his recruiting methods. He also described an attack by a mob of 1000 villagers on police sent to enforce warrants; the police were forced to open fire, killing

some of the rioters. After a very long cross examination on recruiting, he admitted that a system was in force involving a 'white book' listing headmen who met targets and a 'black book' listing those who failed.⁹

Events in Lahore

The depositions include evidence of events across the province during the Punjab Disturbances in April 1919. As one would expect, many (seventeen in all) concern the provincial capital, Lahore. Depositions by the witnesses for the plaintiff cast some light on meetings held by Sir Michael O'Dwyer in the run up to, and early course of, the Disturbances. Nawab Sir Bahram Khan Mazari, a Member of the Punjab Legislative Council in 1919 and later of the Council of State, Umar Hayat Khan and Khan Bahadur Sayyad Mehdi Shah, President of the Municipal Committee of Gojra and Member of the Punjab Legislative Council in 1919, described a farewell party held by the martial classes for Sir Michael O'Dwyer in the Lawrence Gardens on 10 April, the day of the first outbreak of violence in the city. They also described political consultations taken by the Lieutenant-Governor at Government House in the following days. Interestingly, Umar Hayat Khan, despite being a supporter of Martial Law, stated that for seven or eight days it proved to be of little or no use in restoring order due to the cutting of telegraph wires, the burning of *bhusa* and strikes by railway staff.¹⁰

For the defendant, three of the staff of King Edward Medical College, Lahore: Dr Jiwan Lal, Assistant Professor of Pathology and Assistant Bacteriologist; Dr Yar Mohammad Khan, Assistant to the Professor of Physiology; and Dr Tilok Chand Nanda, Assistant to the Professor of Materia Medica, described how, in the days after the imposition of Martial Law, their students were required to march twice a day from the College two miles to the Punjab Club and back.¹¹ Pandit Raghubar Dyal, Principal of the Sanatan Dharm College and Fellow of the Punjab University, recounted that his pupils were arrested, marched off with bedding and held in the fort as a reprisal for the removal of Martial Law posters from their school wall. They were kept at the fort without food overnight.¹² Pandit Hem Raj, Officiating Principal of Dyal Singh College, deposed that on 18 April the Martial Law Administrator, Colonel Frank Johnson, made an order requiring the compulsory roll call of his students four times a day near the Government telegraph office. This lasted some twenty days, though the

frequency was later reduced to thrice then twice a day. Some of the students were slapped, and they were paraded in the sun. The school was ordered to find and punish the ring-leaders of 'the movement'. The school attempted to comply, listing and punishing some 225 boys, rustivating some, putting others back a year, fining others Rs 25. They chose for punishment those who had absented themselves from an examination on 10 April, the day of the first firing in the city. All this was because the Martial Law Administrator had found one poster on the wall of the college portico.¹³

Mr Manohar Lal, Barrister-at-Law, late Minto Professor of Economics at Calcutta University and a member of the Council of the National Liberal Federation of India, had been in 1919 a Trustee of the *Tribune* Newspaper Trust. He testified that he had been arrested on 18 April, because, according to the statement made to the Hunter Committee by the Punjab Chief Secretary, Sir Edward Thompson, he was a trustee who took interest in the *Tribune's* editorials, and because 'I think there was some other idea that he was mixed up in the conspiracy'. He had been held in confinement for six weeks without trial. The Government of India had later stated in its white paper Command 705 that it 'considered the arrest and detention for long periods of so many persons and particularly ... Dr Manohar Lal and six lawyers of Gurdaspur were a series of errors, and while they do not overlook the difficulties of the situation, they are constrained to express their disapproval of the action taken in these cases.'¹⁴ On his arrest, Manohar Lal's house was searched over the course of two days whilst his wife and children were forced to live in outhouses.¹⁵

Events Across the Punjab

Other witnesses described similar roll calls of students and townspeople at Sangla, the imposition of Martial Law at Lyallpur and the outbreak of violence followed by the Royal Air Force's bombing at Gujranwala.¹⁶ Feroze Din, son of Mian Karam Bux, who had been at school in the Kasur Municipal Board High School in 1919, described identity parades by Europeans unsuccessfully looking for culprits of a Martial Law offence. His school was told eight days later to send twenty of its biggest, strongest boys to the Martial Law Administrator's camp at the railway. Twenty boys were also sent from the Islamia school. The Martial Law Administrator selected three boys from each, in all cases the biggest

and strongest, and had them flogged. Feroze Din was flogged, and later received Rs 2300 from the Government in compensation.¹⁷

Interesting sidelights illuminate events across the province. Witness for the plaintiff, Khan Bahadur Sayyad Mehdi Shah, President of the Municipal Committee of Gojra, stated that the Deputy-Commissioner of Gujrat had disagreed with the imposition by the Punjab Government of a Martial Law order on his district on the grounds that there had been no violence there, and had unsuccessfully tried to get it cancelled before imposing it.¹⁸ Rai Zada Bhagat Ram, Barrister-at-Law at Jullundur, Member of the Punjab Provincial Legislative Council from 1916 and a witness for the defence, stated that when Mr. Watson, Deputy-Commissioner of Jullundur, went on leave to England on 6 April he left Colonel Burlton as officiating Deputy-Commissioner. Bhagat Ram got on well with Burlton, though he found that officials in Jullundur were very nervous in the run up to the Disturbances. On 10 April, after receiving a telegram from Lahore with news of riots in Amritsar, Colonel Burlton asked for his advice and discussed with him what was wrong in the Punjab. Burlton told Bhagat Ram to go to Simla to lay the situation before the Viceroy. 'His view was that so long as Sir Michael O'Dwyer was in the province no peace was possible.' In the event, this trip did not happen, and O'Dwyer later made it plain to Burlton that he should cease meeting with local Indians like Bhagat Ram. The next Deputy-Commissioner, Hamilton, who arrived during the Disturbances, demanded that the leading local Indians draft a manifesto supporting Martial Law. They all refused.¹⁹

Random brutal British actions which were a part of the reimposition of order are indicated by the deposition of Shrimati Rajan, widow of Mahna, a sweeper of Chuhar Kana in Sheikhpura. Her husband was shot from an armoured train which passed by as he was relieving himself by the railway line. She received compensation for this from the Government.²⁰

Events in Amritsar Prior to the Shooting in the Jallianwala Bagh

Eight of the depositions for the defence touch upon the events in Amritsar in the lead up to the shooting in the Jallianwala Bagh, and include an important statement by Dr Satyapal, the political leader whose arrest sparked the violence which unleashed the Disturbances. Dr Satyapal's testimony described the course of

his education and career as a doctor, part of it spent as a Government Assistant Plague Medical Officer and one year as a volunteer in Aden during the War. His deposition covered the history of his entry to politics and his career as a leader in Amritsar in the campaign against the Rowlatt Acts. It showed that on 29 March 1919, he was informed that he was prohibited from speaking or writing to the press under the Defence of India Act. Dr Kitchlew, Pandit Dina Nath, Swami Annu Bhawanand and Pandit Kotoo Mal were similarly restricted and ordered not to move outside the municipal limits. All obeyed the orders, and none attended subsequent meetings. At 8 a.m. on 10 April, when he was visiting patients, Satyapal received a letter from the Deputy-Commissioner asking him to go to his bungalow at 10 o'clock. He arrived at the bungalow at 9.55, Dr Kitchlew arriving soon afterwards. Miles Irving the Deputy-Commissioner and Rehill, the Superintendent of Police, were there with Assistant Commissioner Beckett and other Europeans. Irving showed them warrants of arrest under rule 3, clauses (b) and (c) of the Defence of India Act, ordering Satyapal to remain within the limits of Lower Dharamsala in Kangra and Kitchlew within those of Upper Dharamsala. Neither was given an opportunity to say anything. Kitchlew asked to go home and get his things, but this was refused, and the drivers of their carriages were detained until after their departure in two cars under an escort of armed European soldiers in both and accompanied by Rehill. They drove at breakneck speed to Nurpur then on to Dharamsala where they were accommodated in the *dak* bungalows for twenty-eight days, after which they were arrested again under section 124A of the Indian penal Code. They were remanded by a court, held in the police station at Pathankot overnight, then driven in handcuffs to Lahore Central Jail. There they remained in solitary confinement and on 3 June were brought before the Martial Law tribunal charged with murder, dacoity, arson, theft, sedition, waging war against the King, being members of an unlawful assembly, and other offences. On 5 July 1919 they were sentenced to transportation for life, a sentence reduced later by the Government to two years in the European ward of Lahore Central Jail. Both were released on 26 December 1919 under the royal amnesty. Satyapal's sixty-five year old father was arrested a week after his own arrest and held for six weeks without charge. As a result of all this, Satyapal joined the non-cooperation movement as 'I lost all faith in British justice'.²¹

New evidence is found in the depositions of the events that unfolded in Amritsar after these arrests. Lala Duni Chand, Vakil of the High Court of Amritsar and Member of Amritsar's Municipal Committee, stated that on 10 April he was in court, which was functioning normally as people were not prepared for the events that were to unfold that day. After violence broke out, he met the Deputy-Commissioner on horseback on the Kutchery Road, and was asked by him to go towards city to persuade people to go back inside it. So he and several others went to the footbridge over the railway, where they found Deputy-Superintendent of Police Plomer, who in turn asked them to go to the railway station to get the people there back to city. They did this, bringing the crowd to Aitchison Park, where the people asked for their dead to be returned so that they could go back to city. Duni Chand had returned to the footbridge to accomplish this when there was a burst of unprovoked firing from the Telegraph Office. The people present blamed him for this, so Duni Chand and those with him told Plomer they would withdraw their help.²²

A similar story is told by Maneck Ji Bhica Ji Dhabar, Inspecting Agent for Messrs Strauss & Company Ltd, at Amritsar. He had gone as usual to his office in a by lane off the Hall Bazar at 11.30 am on 10 April and heard the firing. He watched dead bodies being carried past his office, so decided to close it and go back home to the Cantonment across the railway. He walked to the footbridge, where he saw Plomer and Magistrate Seymour with some troops. Some of the people were still sitting on the bridge and Seymour told him that he wanted to take possession of it, saying that if the crowd didn't move the troops would fire. Maneck began to persuade people to move to Aitchison Park and troops then took possession of the bridge. At that point firing came from the area of the Telegraph House. No one was hit by these shots, but he went to remonstrate with a nearby military officer, who said to him: 'We want to kill as many damn swine as possible.' At this, the people in Aitchison Park wanted to gather to protest, and asked him to petition the Deputy-Commissioner to allow a meeting in the Jallianwala Bagh, so he went to see the Deputy-Commissioner who was by then on the other side of footbridge. Irving said 'that he had no intention of sending the military into the city and that the people were quite welcome to go and hold a meeting' in the Bagh. The Deputy-Commissioner told him that it might be necessary to send the military only for the purpose of bringing out the European Bank

Officials. He asked Maneck to go to the town and find out what the position at the Bank was. Maneck went into the town and met a crowd who accused him of playing false as firing had taken place since his intervention. He was told that the bank managers were dead.²³

Dr Kidar Nath Bhandari, a retired Senior Assistant Surgeon, stated that he attended twenty-five to thirty men with gunshot wounds at his home on 10 April. He sent others not seriously wounded to Dr Bashir. He attended these patients in the street as there was no room in his consulting room. He saw Mrs Easdon, doctor in charge of the Municipal Female Hospital, on the roof of the hospital which was across the road in front of his house. She was with Mrs Benjamin, Sub-charge. Mrs Easdon 'ridiculed them [the wounded] and said that they had been well served. I asked her to give me some dressing materials but she refused to do so.' Dr Bhandari heard later that people had gone after her, and that she escaped by back door.²⁴

Dr Bal Mokand, Sub-Assistant Surgeon at Amritsar, was a private practitioner who at the time of the Disturbances had been in Government service working in the City Hospital under the Civil Surgeon, Colonel Smith. The latter was annoyed at the series of *hartals* which had led up to 10 April. Smith said that Kitchlew and Satyapal were not good men and called Gandhi a great *badmash*. Bal Mokand saw two bodies being carried back into the city on 10 April, and from his home saw smoke over the National Bank. In the evening, he attended a person wounded in the shooting in the Katra Mit Singh. People were panic stricken after the violence on the 10th, saying that all would suffer for the outrages committed by a few. He went to the Civil Hospital on 11 April. Two wounded had been admitted night before by Dr Dhanpat Rai, the Assistant Surgeon. Colonel Smith arrived and found them, blamed Dr Rai and sent him to work at the railway hospital. Two persons with gunshot wounds came but no one attended them, so their relations took them back. 'Colonel Smith said that General Dyer would come and bombard the city. He drew a plan and said how the bombardment would be carried out. I got frightened and asked Colonel Smith what I should do. He said that if I wanted to save my life I should come into the hospital.' On 11 and 12 April, Indian patients were told by Colonel Smith to 'go to Mahatma Gandhi'. No gun shot cases were admitted after the two treated by Dr Dhanpat Rai on the night of 10 April.²⁵

Lala Sarab Dial, Vakil of the High Court at Amritsar, who had seen the Deputy-Commissioner at the Allahabad Bank verandah sitting peacefully watching the Ram Naumi procession on 9 April, not guarded by the police but sitting among large number of Indian gentlemen, testified that he stayed indoors from 10 to 13 April as people were panic-stricken and thought that the Government would adopt severe measures. The courts closed on 10 April and did not reopen till the 22nd. Free kitchens were started and operated in the city up to 13 April.²⁶ But some movement was taking place; K Rustum Ji an Export Import Agent, testified that on 11 and 12 April 'my boys went into city on permits obtained from Plomer. They were dressed in European clothes.' Rustum had also seen the Ram Naumi procession acting very respectful to the Deputy-Commissioner on 9 April. On the 10th, he had gone to his office in the city at 9.45 a.m. He had stopped at the National Bank and had seen the two European managers working there. He also saw the Manager of the Alliance bank drive into the city that morning in his car. He was the last to see them alive before the crowd gathered, the shops closed at 11.30 and the firing started at 12.30.²⁷

To be concluded

References

1. Sir C. Sankaran Nair, *Gandhi and Anarchy* (Indore: Holkar State (Electric) Printing Press, 1922), p. 47.
2. The case is discussed in its context in Nigel A. Collett, *The Butcher of Amritsar* (London: Hambledon & London, 2005), pp. 414-18.
3. For Justice McCardie and the case, see George Pollock, *Mr Justice McCardie: A Biography* (London: John Lane, 1934), pp. 132-6.
4. Pollock, *Mr Justice McCardie*, p. 135.
5. Indian National Congress Subcommittee, *Report of the Commissioners Appointed by the Punjab Sub-committee of the Indian National Congress*, 2 vols (Bombay: Karnatak Press, 1920).
6. J17/634, D.W.1-49, 55-60, 64-67, 76-82, 86-87, 114, 118, and six depositions for the plaintiff, in the National Archive, Kew, *O'Dwyer v. Nair, Supreme Court of Judicature, Depositions – Exhibits Taken off the File, 16 January 1924*.
7. J17/634, D.W. 114.
8. J17/634, D.W. 115.

9. J17/634, Depositions for the Plaintiff.
10. J17/634, Depositions for the Plaintiff.
11. J17/634, D.W. 69-72.
12. J17/634, D.W. 78.
13. J17/634, D.W. 89.
14. Command 705: *Parliamentary Papers* (Commons), 1920, vol. 14, *Reports*, vol. 6, 'East India (Disturbances in the Punjab, etc)'. 'Correspondence between the Government of India and the Secretary of State for India on the Report of Lord Hunter's Committee', p.19.
15. J17/634, D.W. 113.
16. J17/634, D.W. 83, 85, 117, 118.
17. J17/634, D.W. 61.
18. J17/634, Depositions for the plaintiff.
19. J17/634, D.W. 114.
20. J17/634, D.W. 50.
21. J17/634, D.W. 119.
22. J17/634, D.W. 116. This is similar to, and adds additional information to, the statement given by Duni Chand to the Indian National Congress Subcommittee, *Report*, vol. 2, statement 93.
23. J17/634, D.W. 107. This is similar to, and adds additional information to, the statement given by Maneck Dhabar to the Indian National Congress Subcommittee, *Report*, vol. 2, statement 18.
24. J17/634, D.W. 110. This is similar to, and adds additional information to, the statement given by Dr Kidar Nath to the Indian National Congress Subcommittee, *Report*, vol. 2, statement 13.
25. J17/634, D.W. 112. This is similar to, and adds additional information to, the statement given by Dr Bal Mokand (Mukund) to the Indian National Congress Subcommittee, *Report*, vol. 2, statement 20.
26. J17/634, D.W. 105. This is similar to, and adds additional information to, the statement given by Lala Sarab Dial (Dayal) to the Indian National Congress Subcommittee, *Report*, vol. 2, statement 91.
27. J17/634, D.W. 111.