CHAPTER X

THE DECLARATION OF 1922 UPHELD

THE declaration that a fresh election was to be held had, as anticipated, the effect of dissipating the immediate crisis. Upon the meeting of the National Congress on February 19, 1926, there followed a marked lull in the political atmosphere, and all parties began to busy themselves in their preparations. The most difficult task before the leaders was, in the practical distribution of seats, to maintain the unity between Watan, Wafd, and Constitutional Liberals, which had hitherto been far more apparent than real. The negotiations which took place on this question came frequently very near to breaking up the coalition, and the agreement ultimately arrived at was a fragile instrument indeed: both Liberals and Watanists entertained a lively, if temporarily suppressed, indignation against Zaghlul's arrogance, while the more moderate Liberals were filled with an equally lively distrust of the future under his leadership. In the event nine constituencies were allowed to Watanists, and forty-five to Liberals, while the Wafd contested one hundred and sixty seats.

The 22nd May was the date fixed for the final Elections, and several days before that date there was no escaping the conclusion that the result would be a sweeping victory for the Wafd. It was essential,

therefore, to be prepared for the all too probable eventuality that Zaghlul would wish to take office, and that we should be faced with a situation exactly similar in its potentialities for disaster to that of 1924. His tenure of office then, and the policy he had followed, had been responsible for a series of political crimes, the culmination of which had compelled us to issue the ultimatum of November 1924. It is true that Zaghlul had constantly been at pains to announce that he had no intentions of reassuming the Premiership himself: he was too old, he was "content "to be the Father of the People" and his health forbade the strain of further office. It was unfortunately not possible to attach much credence to these pronouncements; indeed, it was essential that we should carefully consider and decide in time what course of action on the part of His Majesty's Government would most closely accord with the policy declared in 1922. That policy had set up a constitutional régime in Egypt, and to refuse to accept as Prime Minister the leader of an overwhelming majority of elected representatives, would at first sight appear to be a definite departure from that policy, which would require very cogent arguments to justify it. Moreover, Zaghlul was growing older and had recently been taught a severe lesson, so that there might seem to be ground for hoping that he might now be more reasonable. And in any case, how could he learn to be wise in his handling of responsibility if the opportunity of undertaking responsibility was denied to him? Considerations of prudence also seemed to dictate that Zaghlul, in whom the real political power would continue to reside whatever the composition of the Ministry, would be a more serious danger if he were using his power from a concealed position, in which

the constitutional responsibility would rest not upon him but upon another.

All these were arguments supporting the view that we could acquiesce in Zaghlul's taking office without doing injury to our declaration of policy. They advocated, moreover, the negative attitude, which, if at all justifiable, is always so much easier to adopt than the positive. But unfortunately for our peace of mind and future ease, the Declaration of 1922 was not simply a declaration of the constitutional independence of Egypt. Under it we had expressly reserved responsibilities, of which we could not lightly divest ourselves; and behind the letter of this declaration lay also the intention which informed it—the intention to procure an amicable arrangement with Egypt. Unfortunately again, the essential policy for which Zaghlul's name stood in Egypt was a policy of bitter hostility to Great Britain, and to the relations with Egypt which Great Britain had solemnly declared herself to be determined to maintain. Zaghlul's return to power could therefore only be interpreted as a serious set-back to our policy, and a triumph for its opponents. If we acquiesced in that return, the inference was certain to be drawn that we were disinclined to adhere to our policy, and the possibility of a return from extremism to reasonableness would still further recede. Moreover, all these probabilities would be much enhanced by the apparent difference between the words which we had spoken in 1924 and our present action. Then, we had indicted Zaghlul's government in the most solemn terms, as responsible for a campaign of murder and lawlessness which had justifiably aroused among the foreign residents in Egypt the gravest fears for their safety, and had clearly demonstrated that under his

leadership the Government of Egypt was unwilling or unable to protect foreign lives. Could we now acquiesce in the return of such a government and still be held sincerely desirous of discharging the responsibilities we had reserved to ourselves?

Upon the point of policy, however much one might consider it, there was no avoiding the conclusion that an honest and strict adherence to the Declaration of 1922 demanded that we should, if necessary, intervene to prevent Zaghlul from taking office. I consulted my own advisers upon the point, as well as responsible officials in the service of the Egyptian Government, and leading British residents, and found that the overwhelming majority of them were of like mind with myself. It was therefore without more misgivings than those which naturally accompany an important decision, that I set the arguments for and against such action before the Secretary of State, acquainted him with my own views, and asked for authority to take action accordingly. It was but natural that the case should first present itself to his mind from the aspect of the difficulties he would have in justifying such action before public opinion in England: and it was perhaps equally natural that I in Egypt should be inclined to rate those difficulties less highly. There appeared to be at least some cause for holding that public opinion would be less shocked by a deviation from constitutional principles than by finding His Majesty's Government extending official recognition to one who was widely held to be morally responsible for the Sirdar's murder. But when it came to a discussion of Eastern opinion all the reliable information which I had received made it clear that Zaghlul's return to power would be regarded on all sides, Egyptian and foreign, as a serious blow to

our authority, and that our acquiescence would be taken as evidence of a definite intention to abandon in practice the policy and attitude which we had publicly declared. There was also one other important point upon which there was room for a difference of view as between London and Egypt. At the beginning of 1925, when elections were about to be held, Lord Allenby had given a definite and official assurance to British and Egyptian officials in the service of the Egyptian Government that Zaghlul would on no account be permitted to return to power. It must be remembered that throughout Zaghlul's régime British officials had carried on their duties in the most arduous and dangerous circumstances, being not only the daily targets for Zaghlulist criticism and abuse, but in many cases paying the penalty for their service with their lives. Nor were Egyptian officials much more happily placed. Those Mudirs who at Lord Allenby's behest had remained at their posts and restored order, had inevitably come into sharp conflict with Zaghlul and his party. Constant persecution, following upon summary eviction from their posts, would have been their inevitable fate. Such a promise was clearly essential to protect loyal officials and to ensure that the work of administration would be carried on. The Foreign Office, it appeared, had never specifically sanctioned such a promise, and had no official record that it had been given: they were inclined, therefore, to minimise its importance and to regard themselves, and consequently myself, as very lightly bound by it. In the East, however, official records and documentary evidence are not regarded with the same reverence that is accorded to them in Whitehall. Nor would the Egyptian official who received a promise from the High Commissioner stop

to ask himself whether that promise had received the sanction of the Secretary of State. Mudirs indeed themselves came to me and claimed its fulfilment. They would have regarded the return of Zaghlul to power as a breach of faith on our part, and our chance of securing the co-operation and trust of loyal Egyptians in the future would be gravely jeopardised.

When all these arguments were put before him in detail, Sir Austen Chamberlain at once acknowledged their force, and agreed to the policy proposed. But even while these discussions had been going on, endeavours had been made to secure a way out of the fundamental difficulty, and avoid any open clash with Zaghlul. I had put myself in close personal touch with Adly Pasha Yeghen, who seemed the Prime Minister most likely to be acceptable to Zaghlul as an alternative to himself, and found him not unhopeful that Zaghlul might refuse the Premiership and allow him to form a Cabinet in his place. The trouble was twofold: first, Zaghlul might be visited by a fresh wave of megalomania as a result of the elections: second, Zaghlul's professions could never, as Adly Pasha was well aware, be relied upon in the least.

The result of the elections was finally known on May 25: the Wafdist Party under Zaghlul secured 144 seats out of a total of 201 for which elections were completed. Of their allies, the Liberals secured 28 seats, several of which even were due to Wafdist indulgence, and the Watan 5: 17 seats were won by Independents and 7 by Ittehadists. Zaghlul was once again in control of the constitutional government. We waited anxiously to hear from Adly what effect this triumph was having upon the Pasha's attitude. On the evening of the 26th Zaghlul was for an Adly Ministry; on the morning of the 27th he was

for taking office himself in spite of all the previous assurances he had given. This sudden change did not surprise everybody, it was indeed what some of us had expected: the evidence of his own personal power had overcome the promptings of his judgment. Most unfortunately, too, on the same day that the Election results were announced, the Court, which had been trying those of his colleagues who were charged with complicity in the Sirdar's murder, announced its verdict of acquittal. It seemed on the face of it improbable, therefore, that direct intervention by the British Government could now be avoided. On the 27th I had an audience with the King, who showed himself by no means reluctant to leave the battle with Zaghlul to be fought by us. I was left with the impression that His Majesty did not intend to pull our chestnuts out of the fire for us, but that he would view our declaration of war upon Zaghlul without intolerable pain. The Liberals, were clearly anxious to avoid a Zaghlul Ministry, and had decided that they could not enter such a Ministry themselves. These were encouraging factors and we were also now fortified by the knowledge that His Majesty's Government were prepared to veto Zaghlul's return to office. But it was not proposed to use that veto except as a last resort. Zaghlul had not yet publicly announced his determination to take office, and there was still hope that he might be recalled to a more sensible frame of mind, especially as on the 29th he had had a message conveyed to me intimating that he would welcome an invitation to meet me.

On the 29th, therefore, I invited him to the Residency. The conversation which took place was not, perhaps, encouraging in its terms. I carefully reviewed the dangers of disturbing the confidence, alike

of officials and of foreign residents, and attempted to picture to him the shock to British public opinion which would result from his acceptance of office at this stage. Zaghlul Pasha replied that he had always understood that His Majesty's Government desired friendly relations with Egypt: and that as Egypt and Zaghlul were synonymous, he was at a complete loss to understand why he was not welcome as Premier. When it was pointed out that nothing in his public utterance was of a nature to restore the confidence of British opinion, and that the speeches and writings of his supporters had, on the contrary, been extremely hostile, he contented himself with the reply that we must trust him completely, and all would be well. Such arrogant and provocative language made it essential to prepare for action and for all the results that might follow it. I therefore drew up for the approval of the Secretary of State the draft of a communication to be made to Zaghlul. And in order to prevent a possible repetition of the grave rioting and loss of life of 1921 I suggested the despatch of a battleship to Alexandria.

Everything depended on whether our estimate of Zaghlul's character had been a correct one, and as to this I remained confident. Zaghlul had retired to bed and demanded solitude after his interview. He was, at any rate, giving himself leisure for reflection, and his followers were showing considerable symptoms of uneasiness as a result of his visit to the Residency. This move in the right direction was very much accelerated by the resignation of Judge Kershaw from his service, on the ground of his disagreement with the verdict of acquittal in the trial of those who were accused of Sir Lee Stack's murder. Disagreeing with his colleagues, Judge Kershaw held

that the verdict in the case of four of the accused, of whom Ahmed Maher was one, was "so much against "the weight of evidence as to amount to a grave mis- "carriage of justice". Holding this view, he could not reconcile it with his conscience to retain his post, and at great personal sacrifice resigned an honourable and promising career.

The resignation, which was announced on June 2, gravely shocked the confidence of the Wafd in the impregnability of their position, and the same afternoon came the news that H.M.S. *Resolute* was on her way to Alexandria.

On the following day a banquet was to be given to Zaghlul Pasha at the Continental Hotel, at which it was inevitable that he should make public declaration of his intentions. Time was short and telephonic pandemonium now broke loose. The Wafd were disheartened by the firm appearance of the forces against them, and were very anxious to persuade their leader not to engage in a fight for which they had no stomach. They were roundly opposed to running any risks of losing their hard-won seats in the Legislature and the other substantial perquisites of political endeavour, and spent long hours at the telephone shrilly acquainting their colleagues with the exact degree of their own apprehension. The Liberals were not so frankly greedy as their allies, but they knew better how precarious were the foundations of constitutionalism in the sands of Egypt; they were dismayed at the possibility of a dissolution, to be followed by a further suspension of their beloved Constitution, and a further drift towards the autocracy which is the natural fate of Eastern countries. We could therefore await the banquet in a comparatively tranquil frame of mind,

knowing that from all sides pressure was being put upon Zaghlul to do what we desired him to do: and that even if I wanted to intervene I should hardly be able to get at him for the press of his own compatriots!

On June 3, at 1 P.M., the guests assembled for the fateful banquet. The play that was then enacted was somewhat pathetic, but did credit to actors and stage management alike when it is remembered how little time had been left for rehearsal. In the opening scene, a strong chorus carefully drilled and drawn from the leaders of all parties to the coalition, sang the praises—somewhat anodyne and non-committal—of the hero of the day. After the applause had died down, a super came forward rather unexpectedly and spoke a few lines urging that hero not to overstrain his health by undertaking the cares of office, but rather to conserve and cherish it in the interests of the Fatherland. To Zaghlul's immense surprise this counsel was greeted with overwhelming and most significant applause. The speech he had prepared was useless. It was some moments before he appeared able to grasp what had happened. He then rose and hesitatingly referred to the precarious state of his own health, and his natural disinclination for power; he stated that for him, in this case as always, the will of the people must decide, and that he would leave it to the Deputies to resolve whether he should assume the Premiership or not. The Deputies needed no further urging; the choice between their seats and their loyalty was already made and now vociferously proclaimed. Zaghlul was thrown right out of his stride. Instead of rising to accept the decision, he said to Adly Pasha, who was sitting next to him: "I "am too weak to reply, let someone speak for me". No one did so, and the meeting broke up.

The tension which had existed for a fortnight was now at length dissipated: and the relief which was generally felt on all sides found wide expression among the public and in the Press. As far as British policy was concerned, the worst obstacle had been surmounted, and without overt intervention. It now remained only to infuse Adly Pasha with the necessary determination to undertake the formation of a Cabinet. His doubts in regard to taking this step had been much enhanced by Zaghlul's bewildering changes of mind, and it was not possible to resolve them without inviting Zaghlul again to the Residency and getting him to commit himself before me to definite assurances of his support of an Adly Ministry. It was a very different Zaghlul who presented himself, in response to my second invitation, on June 5. At our previous meeting he had been arrogant and provocative: now his tone was courteous and conciliatory. He assured me without qualification that he had definitely decided never to take office again in any circumstances: he promised to do all in his power to establish and maintain friendly relations with the British Government, and to extend to Adly Pasha's Ministry the full support of his party. The same afternoon he was received in audience by the King, to whom it is believed he held much the same courteous and moderate language. Heartened by the results of these interviews, Adly Pasha accepted the King's invitation to form a Government, and the crisis was in all major aspects terminated.

Only one point remained in dispute, and the moment seemed propitious for securing upon it a decision favourable to the future of good relations. Zaghlul pressed strongly for the inclusion in the Cabinet of his lieutenant, Mustapha Nahas Pasha. But

the latter had always stood for a policy of uncompromising hostility to Great Britain and the British connexion, and it was evident that much of the good recently achieved would be lost if he took office in the new Ministry. At present he would undoubtedly work against an understanding, and had still not learnt the lesson that hostility to Britain was incompatible with Egyptian progress. When the composition of the Ministry was finally announced on June 7, his name was not included. The new Ministry contained three Liberals and seven Wafdists, but for the moment at any rate Zaghlul was in a chastened frame of mind and would restrain his following, so that there was good hope for the immediate future.

In the comparative quietude of the ensuing days, there was almost for the first time in recent months opportunity to sit back and attempt to estimate what had been done, and to assess the various incidents of the past few months at their true value. Looking back, it seemed that there was good ground for the conclusion that the policy which had recently been pursued had justified itself so far.

It was of course impossible to ignore that Zaghlul's present mood was more than likely to be transitory, but it was of no use to go out to meet trouble. For the moment we were in a fair way to advancing the aims of both Egyptian and British policy. The constitutional régime had been restored and the restoration had been followed by a Government in which Moderate and Anglophile influences had a very considerable share. Also, up to the present it had not been found necessary for the British Government to intervene in the internal administration. I had let the wishes of that Government be known to the protagonists, and when they sought my advice I had given to it all, but

no more than, the weight which traditionally attached to the office of His Majesty's representative in Egypt. In the event, Zaghlul had surrendered, not, as far as appearances went, to the wishes of His Majesty's Government, but to the unanimously expressed desire of his own followers.

The one point upon which it had been found necessary to make a public declaration of the attitude of His Majesty's Government had been in regard to the verdict upon those charged with complicity in the murder of the Sirdar, and it is essential that the facts of this matter should be correctly and fully understood. The incidents which led up to the dastardly attack upon Sir Lee Stack have been fully described in a previous chapter. Subsequent investigations revealed strong *prima facie* evidence of the complicity of the members of the Wafd party in that crime. Two of those arrested and put on their trial as a result of these investigations were Ahmed Bey Maher, Minister of Education in Zaghlul's 1924 Government, and Nekrashi Bey, under-Secretary for the Interior in the same administration. These men were tried by a Court of Assize in Cairo, consisting of judge Kershaw, as President, and two Egyptian judges. The verdict of the Court, which was delivered on May 25, 1926, acquitted all the accused with the exception of one. On June 2, 1926, Judge Kershaw wrote as follows to the Minister of Justice:

YOUR EXCELLENCY,

I regret to have to inform your Excellency that, after a deliberation with my colleagues lasting five days, I find myself unable to agree with the judgement given in the case of Mohamed Fahmy Ali and others, except as regards Mohamed Fahmy Ali (condemned to death), Mohamed Fahmi-el-Nekrashi

(acquitted) and Abdel Halim-el-Biali (acquitted). Against the two last names the evidence was insufficient.

The remainder of the judgement was that of my colleagues.

In my view the judgement of acquittal in the cases of Mahmoud Osman Mustafa, El Hag Ahmed Gadalla, Ahmed Maher and Hassan Kamel-el-Shishini is so greatly against the weight of evidence as to amount to a grave miscarriage of justice.

So serious in my opinion is this miscarriage of justice, and so grave the dangers that might result from the verdict, that I considered it my duty to disregard on this occasion the principle that the secrets of deliberation must not be revealed, and consequently, after pronouncing the judgement, I proceeded at once to the Residency and informed His Excellency the High Commissioner of my opinion in his capacity of protector of foreigners in Egypt.

Before doing so I had realised that this technical breach of my duty as a judge entailed my placing my resignation in your hands. I also felt that it would not be right for me to do so until the judgement had been prepared and had been signed. The judgement was completed by my colleagues yesterday and signed by me in accordance with the law. There is now therefore no impediment to my sending you my resignation. Although the course I have chosen must involve me in very considerable financial loss, and I am not a rich man, I feel on my conscience that I must dissociate myself with the acquittals as aforementioned, and I have no alternative but to place my resignation in your hands.

I can assure your Excellency that, after my long period of service with the Egyptian Government, and considering the many friends I have made here, it is with the greatest pain and regret that I find myself forced to sever my connection with Egypt.

I have, etc.,

J. F. KERSHAW.

It will be seen from the above letter that Judge Kershaw, immediately after delivering his verdict, had personally acquainted me with his views upon the result of the trial. At the time, and holding the position

I held, I could not help him in the anxious problem which faced him, I was only able to tell him that I could give him no advice and could bear no shadow of responsibility for any action which his conscience as a judge might induce him to take. I am glad now to be able to pay a public tribute to the courage and the regard for judicial integrity which guided him in the difficult decision which fell to his lot to take. The service which he rendered to the cause of justice in Egypt was very great.

On the same day I addressed, under the instructions of His Majesty's Government, the following note to the Prime Minister of Egypt:

SIR, CAIRO, *June 2nd*, 1926.

I have the honour to inform your Excellency that, on the day on which the judgment of the Assize Courts in the case of Mohamed Ahmed Ali and others was pronounced, I received the following letter from Judge Kershaw, the President of the Court:

"The Cairo Assize Court over which I have the honour to "preside has to-day given judgment in the criminal conspiracy "case acquitting all the accused with the exception of Mohamed "Fahmy Ali, who has been condemned to death unanimously.

"I regret that I must dissociate myself from the verdict of "acquittal except in the cases of Nekrashi Bey and Abdel "Halim-el-Biali (against whom the evidence is insufficient), and "I have so informed my colleagues.

"In my opinion the verdict of acquittal in the cases of Mah-"moud Osman, El Hag Ahmed Gadalla, Ahmed Bey Maher and "Shishini is so much against the weight of evidence that I "refuse to take any responsibility for the judgment, which is that "of my colleagues."

2. Loyal to his duty as a judge, Mr. Kershaw, having once heard the case, was unwilling to take any official steps until he had signed the judgment, as president, in accordance with the rules of the Criminal Procedure Code, but he has to-day handed

to His Excellency the Minister of Justice his resignation of his post as Judge of the Native Court of Appeal as a protest against this verdict, which he considers in the case of four of the accused to have been a gross miscarriage of justice.

3. Your Excellency will fully appreciate the gravity of the step which Mr. Kershaw as an upright magistrate has felt himself compelled to take. In view of his long experience in the Egyptian Courts, his well-balanced judgment and his complete impartiality, of which your Excellency is fully aware, His Majesty's Government feel bound to reserve their own judgment in relation to the conclusions of the court.

4. I have consequently been directed to inform you that, whatever may have been the reasons which induced the two Egyptian judges to come to their decision, His Majesty's Government as at present advised decline to accept it as proof that the four persons mentioned above are innocent of the charges made against them.

5. I am glad to recognise that your Excellency's Government has throughout the investigations given every assistance to the praiseworthy efforts of the police and Parquet to discover and prove the guilt of the persons involved in the conspiracy to commit the long series of political murders which have taken place in this country during the last six years, but I must point out to your Excellency that the effect of this judgment must be to endanger the safety of foreigners in Egypt, for which His Majesty's Government retained responsibility at the time of the proclamation of Egyptian independence and upon which they based the demands made and accepted after the murder of Sir Lee Stack.

6. In these circumstances His Majesty's Government must reserve complete liberty to take such steps as the future may show to be necessary for the discharge of the duty thus incumbent upon them.

I avail, etc.,

LLOYD, High Commissioner.

This grave warning was rendered essential by the steps which Judge Kershaw had felt impelled to take. In view of that step, the accused must remain

under suspicion of complicity and the impression must inevitably be created that in Egypt no justice existed adequate to protect the lives of foreigners. His Majesty's Government must, therefore, again unequivocally assert their responsibility and their determination to discharge it. The effect of this declaration was excellent, and very marked upon the critical political situation which then existed. But the declaration was in no sense interference with Egypt; it was nothing more or less than a firm reminder of a policy declared in 1922 and of a determination to adhere to it. As such it could not fail to be salutary.