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THE MADRAS MAHAJANA SABHA.

ESTABLISHED

ON THE

Friday 16th May 1884.

1. That this Sabha be called the MADRAS MAHAJANA SABHA.

2. That its object be to endeavour to promote the interests of the people of this country.

3. That any Native of more than 21 years of age may be admitted as a Member of the Mahajana Sabha on his being recommended by two Members.

4. That every Member whether residing in the mofussil or in the city shall pay an annual subscription of not less than *one* Rupee.

5. That the Mahajana Sabha may affiliate with itself any other Association in Madras or in the mofussil aiming at the same object.

6. That the management of the Sabha shall be vested in a Committee of 25 elected by the Members of the Sabha once a year.

7. The Sabha shall also elect, once a year, as its office bearers (1) one President, (2) one or more Vice-Presidents, (3) Two Secretaries one of them being also nominated a Treasurer. These shall be also *ex-officio* Members of the Committee.

8. That the Committee so formed, shall have in addition as *ex-officio* Members for the time

being the nominees delegated from the different Associations both in the mofussil and the Presidency Town.

9. No Association shall nominate more than one Member or delegate for the Committee.

10. The Committee shall bring about the objects of the Sabha by means of memorials, deputations, public meetings and such other means as it deems fit.

11. The quorum to conduct any business of the Committee shall be seven.

12. That ordinarily at least 2 days' notice be given to Members of the Committee and 5 days, notice to Members of the Sabha before the date of meeting.

13. The proceedings of each Committee Meeting be circulated to the Members of the Committee and their initials taken in the Minute book.

14. The Committee shall meet once in a month or oftener if necessary.

15. The Committee shall convene a Meeting of the Members of the Sabha once in three months or oftener if necessary, and at Quarterly meetings the business transacted by the Committee during the quarter, shall be laid before them.

16. The quorum for the General Meeting of the Sabha shall be 20.

17. The Secretaries of the Sabha shall convene a Meeting of the Sabha on a requisition in writing of not less than 12 members.

The first conference of native gentlemen from the different parts of the Presidency of Madras held under the auspices of the Madras Mahajana Sabha came off at Patcheappa's Hall, 29th and 30th of December 1884, and also in the 1st and 2nd January 1885. The subjects proposed for discussion during that conference were :—

1. The constitution of the Legislative Councils.
2. Separation of Judicial from Executive functions and other reforms in the present judicial system.
3. Whether and how far the intentions of the Government of India Act of 1858 and Her Majesty's Proclamation have been carried out.
4. The condition of the agricultural classes.

On the 29th of December 1884, M.R.Ry. P. Rungiah Naidu, the President of the Sabha took the chair. There were present, among others, M.R.Ry's. C. Singaravelu Mudaliar, P. Anunda Charlu, H. Balakristna Mudaliar, S. Rungia Chetti, M. Veeraghava Charry, S. Bilighiri Iyengar, R. Balajee Row, K. P. Viswanadha Iyar, Ramalinga Pillai, C. V. Sundram Sastry, C. Mahadeva Iyer, C. Ramachandra Row Sahib, R. Ragoonath Row, G. Subramania Iyer, Y. Venkataramiah.

(MOFUSSIL.)

M.R.R.y. Rama Krishna Iyer, Tinnevely, G. Subbuisami Aiyar, Vellore, Native Association, P. Singara Charri, Bangalore, M. Rama Rao, Bangalore, C. Masilamoney Muddally, of Madras, W. Ramaiya, B.A., Triplicane Literary Society, K. P. Visvanadiyar, Black Town, J. Gopala Iyer, Chandragiri, M. V. Narayanasawmi Pillai, B.A., Triplicane Literary Society, C. Muniswami Nayudu, Triplicane, I. Venkata Rama Iyer, Vellore, Native Association, V. J.

Manickavaloo Moodetiar, Madras, C. Venkateswarar Aiyar, M. Hindu Literary Association, Madras, S. Ramaswami Aiyar, Madras, V. Alwar Chetty, City Union, V. Numberumal, B.A., City Union, C. Sundra Shastri, Tondiarpett, C. Rungaswami, M. S., Srinivasa Iyer, Tinnevely, M. S. Krishnaswami Iyer, Tinnevely, K. Ramanuja Chariar, Madras, S. Rungiah Chetty, P. Subramaneya Iyer, Madras, R. Rajajee Row, Madras, M. L. Venkataramana Puntulu, Tadpatri, the Hon. Subramania Iyar, Madura, Kamesam Puntulu, Rajamundry, A. Cupia, Cuddapah, A. Sabapathy Mudaliar, Bellary, V. Subramania Iyar, Madura, T. A. Anantharama Iyer, Tinnevely, N. Rangasawmy, Iyar, Poonamallee, M. Appadorai Iyar, Tinnevely, S. Biligri Iyengar, Madras, S. Doraisawmy Iyengar, C. Ramachendra Row Sahib, Madras, A. Balakrishna Mudaliar, Madras, Y. Vencataramiengar, Bangalore, N. Doraswami Iyer, Chingleput, B. Baulia Iyer, Madras, C. Jeeyer Chetty, Madras, V. Nagwarriah, Madras, K. Sundararaman, Kumbakonum, S. Appu Sastri Kumbakonum, S. Namasivaya Chetti; Madras, K. Subramani Aiyar, Madras, N. Sriivivassa Iyer, Chingleput, N. Parthasarathy Iyar, K. S. Krishnama Chari, Triplicane, K. S. Sreenivasa Pillay, Negapatam, C. Mahadava Iyer, Madras, P. Sreenivasa Row, Gooty, Anuntapore District, P. Kesava Pillai, Gooty, Anuntapore District, B. Gavarran Iyer, Rajahmundry, K. Veerasalingam, Rajahmundry, Ramankrishna, Datla, Saidapet.

In opening the meeting the Chairman observed that he considered himself highly honored by being asked to preside on such an occasion as this when there were present leading men from the different parts of this Presidency. He said that the chief object with which this Conference was organized was to bring to a focus the opinion of the people on certain important questions affecting the millions of our countrymen and that by the holding of such periodical

Conferences in the centres of India we should be simply strengthening the hands of our Government. Some might consider, he observed, that this was all Utopian, but to them he would say the old saying 'Rome was not built in a day,' and that England which now enjoyed a government of a thoroughly representative character took many centuries to attain the position it now held.

Mr. P Anunda Charlu the Secretary of the Sabah made the following remarks thereupon :—

Those of you that are not members of the Mahajana Sabha will, I take it, be disposed to hear some account of the body that has invited you. That account is briefly as follows :—The body came into being in May 1884, though its formation was the subject of consideration for nearly 6 months before that date. It is composed chiefly of non-official residents in and out of Madras. It has also affiliated to itself a number of Associations in the Presidency and hopes before long to have in it members representing nearly all Associations. The length of time it has now existed has been much too short to admit of much interaction between this central Association and those affiliated to it. This time next year, when I hope we shall meet again, the Sabha expects to bring to a focus nearly all the non-official intelligence, now spreading without any visible proofs of cohesion, all over the Presidency. This, however, is not the object which is striven after for its own sake. It is pursued as a means to an end—that end being to promote mutual understanding among the people, separated by space; to ascertain what consensus of opinion there is among them on questions of vital interest to us; and, from time to time, to submit for the consideration of Government, the views and suggestions that such a concensus of opinion may warrant. One of the necessary conditions to achieve this object is a free

and frequent interchange of thought, and one of the means for its attainment is to hold periodical conferences of the kind I have the honor to address to-day.

Noting the signs of the times, it is no longer possible to delay the creation of this mutual understanding on a large and comprehensive scale. Ceasing to be a mere matter of choice, it has become a crying emergency. Overlook it, there will arise, in the place of an understanding, a wide-spread misunderstanding, the symptoms of which are already discernible between the rulers and the ruled in certain quarters, and between the races making up the latter. The evil is, however, in the bud, and it is easily nipped, if we realise the full force of the word "misunderstanding" which, like many other words in the language, denotes at once the cause and the effect. In its latter acceptation, there is seldom a mistake; for although, in its initial stage, it is a mere alienation of feeling, the progress from that mental attitude to positive antipathy is wonderfully rapid; and, if sober judgment is not permitted to check it in time by making proper allowances, the woeful result is all but unerring.

The superlative importance of avoiding misunderstanding *as a result*, only accentuates the necessity to avoid it in a causal sense. Now it is worthy of note, that, in this matter, it will never do to act on the principle that something is better than nothing. It will never do to say that *some sort* of understanding is better than none. I would rather desire that there should be no understanding at all than that there should be an *imperfect* understanding—whether it be as between sections of the people or between the people and the Government—for the latter I look upon as the origin of most of the errors and most of the miseries of mankind. Absence of it leaves the mind a perfect blank and is unsuggestive as utter darkness; whereas an imper-

fect understanding proves; like obscurity, the parent of many a baseless error. In being content with an imperfect understanding, we constantly run the risk of ignoring those very considerations, which might enable us to realise the true standpoint—possibly the justification—of the men judged—be they people or the Government. What is thus a course of wisdom generally, is imperatively so in the existing circumstances. The national intelligence has long been roused. It has been gathering strength day by day. It occupies a large enough space outside the Government service. It has grown to a consciousness of its vast force, and urgently calls for direction. Fail to direct it aright, it will overflow its bounds—it would flood where it should fertilise. If the renovated national spirit is desired to yield its maximum good, it requires proper objects to be put before it with well-examined facts and diligently-collected materials. Its days of fitfulness are past. Its longevity is a matter of absolute certainty. *That* will not suffice, however. It must exhibit unmistakable signs of sobriety. Of such sobriety, there cannot be a better proof, or better means of development than the process of stock-taking and self-appraisement. To help in such stock-taking—to enable the more sedate of our countrymen, not only to take an exact measure of what they believe they know, as distinguished from vague impressions and off-hand imaginings, bred of insufficient information, but also to afford them facilities to enlighten the public with their knowledge and the result of their labours and thereby aid in the cause of progress—*this* is the aim of the series of Conferences of which this is the first.

That the first of these Conferences is held in the capital city is consistent with the fitness of things; and it will be equally consistent with fitness of things that future

gatherings of the kind may have to be arranged here. I shall, however, mention for the information of such as are not the members of the Sabha that it is a part of its programme and it is within its contemplation to get similar Conferences held, though on a smaller scale and at longer intervals, in such mofussil towns as afford facilities for easy locomotion and for concentration of intelligence. I am aware there is a seeming objection in the fact that the city of Madras is not ahead of many mofussil towns which have distanced it by their industrial activities and other forms of enterprise. For all that, the capital must, I believe, take the lead by reason of the greater preponderance of varied intelligence, a wider expansion, if not a larger aggregation, of wealth, and a higher appreciation of the responsibilities of citizenship. We shall also thereby aid in developing into a national feeling what has been, till quite recently, an essentially local feeling, with the prospect, which I have every reason to hope, of further enlargement, when Calcutta, Bombay, and other capital cities hold similar Conferences and step forward to fraternise with us.

Towards that goal the Sabha feels bound steadily to work, undaunted by failures, unchilled by hostile criticism and unabashed by wanton ridicule; for I venture to think that none, who has any acquaintance with the early history of national movements, will be prone to taunt it for the necessarily slender results of early efforts.

Bespeaking your co-operation in rendering the Mahajana Sabha a mouthpiece of South India in the fullest sense of the term, I make way for those who are in charge of the main business of the day.

This over, Mr. M. Veeraraghava Charry, Joint-Secretary to the Mahajana Sabha, read a paper submitted on the subject fixed for the day, viz. the constitution of the Legisla-

tive Councils, which will be found in the appendix pp. 1—20.

After a good deal of discussion the meeting adjourned for the next day.

2ND DAY, THE 30TH OF DECEMBER.

The following gentlemen were present: the Hon'ble S. Subramania Iyer, B.L., Messrs. Arunachellam, a District Judge in Ceylon, V. Bashyam Iyengar, B.A., B.L., S. Gopala Chariar, B.A., B.L., P. V. Krishnasawmy Chettyar, B.A., G. Subramania Iyer, B.A., P. Anunda Charlu, B.L., P. Rungiah Naidoo, M. Veeraraghava Charriar, B.A., V. Subramania Iyer, B.L., (Madura) A. Cupiah, (Cuddapah,) S. Dorasamy Iyengar, B.A., B.L., N. R. Narasimma Iyer, B.A., B.L., M. R. Ramakrishnier, B.A., B.L., (Tinnevely,) C. Anundura Iyer, B.A., B.L., Soobbiah Chetty, Attorney-at-Law, (Bellary,) P. Casava Pillay, (Gooty) T. Ramachendra Row, B.A., B.L., T. Chidambara Iyer, B.A., and Narasinga Row, Soondra Rajiengar, (Salem) Narasimmooloo Naidu, (Coimbatore) Varadarajulu Naidu, B.A., (Palmanair,) Paul Peter Pillay (Sreeviliputur) Baliah Naidu; and several others belonging to Madras and different places in the mofussil. There were in all more than 100 gentlemen present. Mr. Anunda Charlu explained the substance of the paper read on the previous day, and pointed out that as it would necessitate the alteration of the law if we wanted a larger number of gentlemen in the Legislative Council or the principle of election to be adopted in making these appointments, the Conference need not think of it for the present, and that it would be enough to see how we could improve on the lines laid down in the Indian Councils Act. He said that it was necessary that some kind of representative principle ought to be adopted in making these appointments, that it need not, as a matter of course, be on the elective basis, and that, without meaning that there were not competent officials sitting in the

Council, he thought that public interests would be much better served by getting the highest number of non-official members allowed by the Act appointed on some kind of representative system.

Mr. Casava Pillay, of Gooty, moved that the paper read by Mr. Veeraraghava Chariar on the previous day be recorded and that steps be taken to give the views therein wide publicity. He said that as the subject was one of great importance, public opinion should be invited. Mr. Narasimhulu Naidu seconded this and it was carried unanimously.

The Hon'ble S. Subramania Iyer, then moved the following resolution :—

“That this Conference resolves that a memorial to Government be drawn up by the Mahajana Sabha on the lines of the paper with such modifications and suggestions as it might consider necessary and that the same be laid before the next Conference for adoption.” This resolution was seconded by S. Soobramania Iyer, and carried unanimously.

Mr. Cuppiah then read a paper on “The separation of Judicial from Revenue functions.”

Mr. Arunachellam, an English graduate, a member of the Ceylon Covenanted Civil Service, and at present a District Judge on being introduced by the chairman to the audience spoke at length on the constitution of Legislative Council in Ceylon and also upon the administration of justice. The full text of his speech will be found in the appendix.

THIRD DAY.

The chairman having taken his seat Mr. K. Subramania, Iyer, B.A., of Patcheappa's College read a paper on

the separation of Judicial from Revenue functions which will be found in the Appendix.

After some discussion it was proposed by Mr. Rama Kristna Iyer, a Pleader of Tinnevely, and seconded by Mr. P. Sama Row, of Cuddalore, that the papers read by Mr. Cupiah and Mr. Sabramania Iyer, on the separation of judicial from executive functions, be recorded. Carried *nem con.*

It was next proposed by Mr. A. Cupiah, and seconded by Mr. T. Ramanatha Iyer: 'That it is the sense of this meeting that the union of the revenue and magisterial functions in one and the same officer is productive of much evil and hardship, and that early measures should be adopted for their separation.' This, on being put to the meeting, was carried unanimously. It was next resolved to draw up a memorial for circulation and presentation to the Government. The points to be touched upon in the memorial were: (1) That there should be separate officers to conduct the Civil, Magisterial and Revenue functions; (2) That the Bench Magistrates system ought to be fully resorted to; (3) To meet the additional charges salaries of civilian Magistrates should be reduced, and (4) that there should be no difference in pay between the Magistrates and corresponding revenue officials. The meeting was adjourned to 2 P.M. on Friday.

FOURTH DAY.

The chairman having taken his seat Mr. Peter Paul Pillay the delegate from Srivilliputtur Sabha delivered an address on the condition of the agricultural population of this Presidency. The address will be found in the Appendix. Later on Mr. M. P. Ramakristna Iyer, B.A., B.L., Vakil, Tinnevely, read a paper on the condition of the ryots which is printed in the appendix. Mr.

Cupiah proposed that the papers read by Messrs. Peter Paul Pillay and Ramakrishna Iyer be recorded: This being seconded by Mr. P. Sama Row, of Cuddalore, was carried *nem con.* Mr. Cupiah, Pleader, Cuddapah, read an interesting paper on the constitution of the present Government and suggested some changes in it. Mr. S. Srinivasa Iyer, of Conjevaram, proposed that the paper read by Mr. Cupiah be recorded. This being seconded by Mr. Peter Paul Pillay was carried unanimously. Mr. P. Gurumurthi Iyer, Vakil, High Court, proposed that the proceedings of the Conference and all the papers read, be printed in a pamphlet form and copies of the same be forwarded to the Government of Madras, Government of India and the Secretary of State and also to the members of Parliament. Mr. T. K. Annasawmy Iyer, Pleader, Negapatam, seconded the proposal. This was put to vote and carried unanimously. The Chairman Mr. P. Rungiah Naidu closed the Conference after thanking the several delegates from the mofussil districts and also those who have come prepared with papers on the several subjects. He said that the advantages of holding annual Conferences to discuss the leading topics of the day are great, and so similar Conferences will be held year after year. With a vote of thanks to the chairman and also to the Trustees of Patcheappa's Charities the Conference closed at 5-30 P.M.

INDIAN LEGISLATION AND INDIAN LEGISLATIVE COUNCILS.

THE most prominent characteristic of the Indian Legislative system is its practically inexorable stability. In this respect, perhaps, Government simply follows the example of Hindu legislators of old. Our ancient laws, social, religious and political—and politics, society and religion were most strangely and inextricably intertwined, —were made with the intention that they must be good for all time and that they must be observed for all time. It was not simply that they were enforced by the strong arm of sovereign power and by the infliction of painful social disabilities ; but they were invested with a religious sanction and backed up, therefore, by the terrors of extra-terrestrial suffering. And still they are ruling us with the cast-iron despotism of fate. It is very guarded language to say that it seems we have to a very great extent outgrown the conditions of the past. We are no longer the stationary people we were once known to be ; our reputed innocence, happily or unhappily, as some think, has departed from us. Progress, steady and healthy progress, is our motto and our aim. It is also our good fortune that the British people who rule us are a progressive and a constitutional people. It is, therefore, proper that we consider our position, that we take stock from time to time and enforce on the attention of Government and of the English people and Parliament our views on the requirements of the nation.

We must, in the first place, recognise one essential merit of the legal and legislative system now in vogue. It is that, with a few not unimportant exceptions, the rulers are equally with the ruled amenable to the penalties and

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restraints imposed by the law ; and the result—the happy result—is that, broadly speaking, no small amount of confidence is reposed by the people equally in the intentions of the Legislature and in the working of the Laws.

Having premised this much, we are bound to consider the defects of the present system. We stated at the very outset that the conspicuous, the overshadowing feature of the existing legislative constitution is its unbending permanency. It seems as if fate had once for all decided it for us.

Even under British rule, was it like this before ? The times we live in—the twenty-two years succeeding the Proclamation and these recent eventful years—show a record of rapid and steady advancement in the knowledge and civilisation of the people. But during the century preceding the Proclamation matters were practically at a stand-still. Even during those times of intellectual stagnation, successive improvements were effected in the legislative machinery. To make this point clear, we must go back a little. The Regulating Act of 1773 made no distinct provision for the making of laws and regulations. But the Executive Council of the Governor-General as well as the Executive Councils of the Presidencies were empowered to make Regulations laying down the procedure of the Courts and stating also what was the kind and extent of native law by which the Judges were to be governed. These Regulations partook of the character of official instructions rather than of regular enactments. The Judges, however, were at liberty to arrive at their decisions by analogy of English law and by regard for equity and good conscience. But, however imperfect the law-making machinery, it is by no means true that the Regulations themselves were so bad as they are usually painted, Mr. Justice Cunningham says that there was not in them “ a germ of

living law" and that "grave illegalities not unfrequently occurred owing to the ignorance which the chaotic condition of the Statute Book rendered almost inevitable." Also, the excellent historian of India, John Malcolm Ludlow, speaks of them as follows:—"Bad as English statutes are, as models of law-making, the older Indian Regulations beat them hollow for badness." But Ludlow wrote before he could have any experience of the Indian legislation of the post-Proclamation era; otherwise he would not have used such strong terms. The faults usually found with these Regulations are that in drawing them up no assistance on technical matters was derived from professional lawyers and that in consequence grossly irreconcilable and conflicting laws were often passed and the procedure laid down was often very complicated and tedious. These faults perhaps disfigured these Regulations; but it is not for a moment to be supposed that they were so bad as to justify Mr. Cunningham's strong expressions of condemnation. If we will really look at the facts, it will be found—and the evidence collected by the Famine Commission goes to confirm the fact—that we are indeed very much worse off now than under the old Regulations, that litigation has greatly increased since the passing of the Limitation Act, that the doing of substantial justice is rendered difficult by the complicated and over-technical rules provided by our Civil Procedure Code, that our Stamp Law has increased by several times the costs of our Civil Suits, that our Courts of Law have too often lured people to their doom of ruin and insolvency by drawing them away from the arbitrator's good offices. All this is capable of clear and incontrovertible demonstration; but that is alien to our present purpose. To proceed; the system of making Regulations continued till 1833, when the Charter Act introduced important alterations. It was determined that a code of substantive law should be provided for all India.

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A law member was accordingly added to the Council of the Governor-General, who was to be present only at its meetings for making Laws and Regulations. Lord Macaulay was the first of these Law Members, and a succession of very eminent lawyers have succeeded him in the office. The Commander-in-Chief could also be made a member, and the Council was permitted to legislate for all India. Important alterations were made in the Constitution of the Council in 1854. The Law Member was given the right of attending at ordinary meetings of the Council; at meetings for making laws and regulations seats were given to two Judges of the Supreme Court of Bengal and to members nominated by the Provincial and Local Governments; and the proceedings were conducted according to the recognized rules of procedure of legislative bodies. This state of things continued down to the passing by Parliament of the Indian Councils' Act of 1861. It will be seen that until this law came into force the entire body of legislators were Government servants. Since the passing of this Act an almost complete Code of what is exultingly called "scientific legislation" has been framed for India on the various portions of substantive law; and, besides, important Indian subjects connected with Imperial as well as local administration have been or are being dealt with. This has been the work partly of Commissions appointed in England consisting of eminent English lawyers and partly of Commissions in India consisting of eminent Anglo-Indian administrators and lawyers and of official and non-official legislative Councillors. The influence of the non-official European element, whether as members of Legislative Councils or as members of Law Commissions has been of a very faint and phenomenal character; and the influence of independent native official or non-official opinion has been practically nil. Of course the influence

of outside popular and public opinion has not been so much as thought of in this country till within the last three or four years. A few remarks will not perhaps be out of place in connexion with these Law Commissions. The English Law Commissions, as has been already said, were provided for by the Acts of Parliament of 1833, and 1853. The Commissioners were doubtless men of high legal attainments and of long and varied experience in the practice and profession of law; but they had little acquaintance with the conditions of the country. Also their legal status,—i.e., how far the codes which were to have been framed by them was binding on the authorities in England and India responsible for Indian administration,—was undefined and unintelligible. Besides the drain on our financial resources was great, and our “financial demons” in India fretted and growled. So, in 1877, when the question of Law Reforms again came up before the Indian Government, the idea of an English Commission was not for a moment entertained and resort was had to a Commission in India itself. A Commission was accordingly appointed in 1879 with the sanction of the Secretary of State; and, as we know, the result is that the country has been flooded with enactments on negotiable instruments, trusts, transfer of property, easements, &c. And still lawyers are not satisfied and cry for more codes; and one honourable and learned gentleman has gone so far as to suggest the renunciation of Hindu Law and the enactment of a pseudo-law, which to his scientific and codified mind appears to be entitled to be called Hindu Law.

Before proceeding to consider the Indian Council's Act, the constitution and powers provided by it for the Imperial and local Legislative Councils and the improvements of the existing state of things possible under its

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provisions, a few observations may not be out of place on the two important faults that are usually found with our "scientific" Indian Legislation and the defences of it by the framers and advocates of it. First, it is said that a scientific code is unsuited to the simple habits and unsophisticated minds of the people of this country. What is necessary is that substantial justice must be done. Before the advent of the British Government, cases even of importance used to be settled by the unappealed and unappealable decisions of *punchayets* or courts of arbitrators having local knowledge and local influence. A certain amount of relaxation of strictly scientific and technical rules is necessary in order that substantial justice may be done. Now, nobody can question the truth and legitimacy of this objection. While we do not object to legislation for its own sake, we do strongly object to the importation into the law of India of the technical quirks and the subtle distinctions of English jurisprudence in the illusory and illegitimate pursuit after definiteness and scientific precision. We know it has been said by a great authority that "the real antagonist of the pettifogger is the legislative department." This is certainly as Utopian as it is beautiful in theory. It is well known how unjustly and injuriously to the interests of suitors technical quirks and scientific rules operate in England, what are the proverbial delays and vexations of the English law. And the state of things here,—where happy the nation was, not because it had no history, but because it had not a beautifully precise and scientific system of law,—has necessarily grown worse. To convince one's self of this, one has only to peruse the admirable and conclusive evidence furnished to the Famine Commission by the late Ganesh Wassudeva Joshi, of the Poona Sarvajanic Sabha. It is said in defence of our legislators (1) that the introduction of foreign rule, the increase of trade and the

expansion of the Hindu mind under the operation of Western influences have brought out additional phases of litigation and that these have had to be provided for; and, (2) that the people themselves, especially in our Presidency are opposed to resorting in the simplest cases to Courts of Arbitration and prefer Courts of Law. With regard to the first statement, while certainly agreeing as to the facts stated, we must deny the conclusion founded on them as irrelevant and inconsequential. The circumstances enumerated have certainly not changed the constitution of man in India and complicated his relations with his fellowmen. It is false to argue that whatever is additional is abnormal and not amenable to ordinary regulation. It is, again, inconceivable to suppose that the technical cut-and-dry rules, the unmeaning and unsatisfactory formulas, of English law, which are of notoriously deleterious operation in England itself, can, when engrafted on the simple and time-honoured practices in vogue here, have any but the self-same effects. Again, as for the argument that the people prefer Courts of Law to Courts of Arbitration, it is enough simply to peruse the very interesting and instructive dialogue between Mr. Joshi and Mr. Justice Cunningham at Poona, given *in extenso* at page 85 of Appendix II of the Report of the Famine Commission. The second important fault alleged against Indian Legislation is that the customs of native society have been interfered with, that the constitution and tenure of property have been changed, and that local circumstances have been disregarded. Well, so far as society and property are concerned, that they are to a certain extent and under certain conditions fit subjects of legislation must be conceded. At least, they are recognised as such in every civilised country of the world. Very properly also have the British Government interfered to obliterate from the land certain very injurious and immoral customs which

had been prevalent here from time immemorial; witness, for example, Act XV of 1855 permitting the re-marriage of widows, Act XXI of 1860 facilitating divorce to Christian converts, Act VII of 1870 suppressing *suttee*. It must also be conceded that the laws regarding property have justly undergone alteration; witness, for example, the provision of Act XXI of 1860 establishing religious toleration by safeguarding to apostates from Hinduism their rights of property. There are several others, but these are some of the cases where the legislature has made necessary alterations and improvements in our laws of society and property. It must at the same time be allowed that several undesirable laws have been passed and that the legislature has left unopened several chapters of desirable reform from cowardice or from misapprehension or want of information regarding the needs and conditions of the people. It must also be allowed that laws have been made without the least regard being paid to local conditions. Such a state of things is found to a most deplorable extent even at this day when public opinion is at all events watching the conduct of affairs with interest and is often powerful enough to make itself heard; this has been made abundantly clear by Government's legislative projects and performances regarding Rivers Conservancy, Kudimaramat and Canal Navigation. But all Government's sins of omission and commission in respect of legislation are due to the sole and single circumstance that the Indian legislatures are not constituted so as to shed on them the light—the heavenly light—of popular opinion and local knowledge and thereby to subserve the highest ends of society and legislation.

We pass now to consider the constitution of the existing legislatures as provided in the Indian Councils Act of 1861. And, first, of the Imperial Legislature. It

consists, *ex-officio*, of the Viceroy, six ordinary members who form his Executive Council (of whom three are Covenanted Civilians and the three others are respectively the Law member, the Finance Minister and the Public Works Minister) and the Governor, Lieut.-Governor or Chief Commissioner of the Province in which the Council sits for the time being. The Commander-in-Chief, if appointed, counts as an extraordinary member. There are also provided not less than six and never more than twelve additional members, one-half at least of whom should be non-officials. Thus out of a maximum of 20 members forming the Imperial Legislature the Parliamentary enactment of 1861 provided that at least a minimum of 6 should be non-official, but does not raise any insuperable barrier, expressly or by implication, to the inclusion of 12 non-official Members into the Legislature. Turning now to the local Legislature the Members of the Executive Government, consisting of the Governor, the Commander-in-Chief and the two Civilian Councillors, are, *ex-officio*, ordinary Members of the Council for making Laws and Regulations. The Advocate-General may be, and usually is, appointed an Additional Member. Besides these, the Act provides for the appointment of not less than four, and not more than eight, additional Members, one-half at least of whom should be non-officials. Thus, out of a maximum of 13 Members, the Act of Parliament provided that at least a minimum of 4 should be non-officials, but does not raise, expressly or by implication, any insuperable barrier to the inclusion of eight non-official Members into the Legislature. It is also very properly provided that non-official Members should vacate their seats on accepting office under the Crown in India

Before proceeding to consider how the provisions of the Act are applied by Indian authorities, what improve-

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ments under the Act Government has it in its power to introduce and how circumstances have arisen rendering it wise, expedient and necessary to introduce such improvements, we shall briefly review the functions our Legislatures are permitted by Parliament to exercise, what are its disabilities and to what interfering and neutralising influences it is subject.

Our Legislatures are permitted generally to make Laws and Regulations amending and consolidating existing rules and customs. But certain subjects are placed beyond the scope of its regulation and influence. The Imperial Legislature itself is not permitted to consider questions affecting Public Debt, Public Revenue, Religious Rites, the Military or Naval force, and the Foreign Relations of the Government. In addition to these, the Local Legislatures are disabled without previous sanction from the Government of India from considering questions affecting Coin or Paper Currency, the Post Office or the Telegraph, the Penal Code of India and Patents or Copyright. The Act also provides for the exercise of executive interference so as partially or *in toto* to supersede the Legislative Councils. Government is granted, in its executive capacity, the power to issue proclamations having temporarily the force of law, to suspend or postpone meetings of the Council for any length of time and as often as possible and thereby stop the discussion of unpalatable subjects of legislation. Also, even when a law has been permitted to take its passage through the Legislature, even when it has received the approval of the majority, the Executive and even the head of the Executive singly has the power to withhold assent to it temporarily or altogether.

From this review it is clear that there are serious defects in the constitution of our legislative machinery, that the functions which the Legislatures are enabled to perform

are of an unsatisfactory, though not of an unimportant, character, and that they are liable to be seriously hampered by executive interference. There seems to exist little room for improvement under its provisions. But even the little that exists is not available to us, and it is due to the unsympathetic policy of the authorities.

What improvements, then, are possible, we have now to consider. As we have already said, there seems to exist no impassable barriers to the inclusion, in a larger degree than hitherto, of the non-official element in our Legislative Councils. As matters now stand, in most cases Government stints its allowance of the non-official element to the least possible extent; and the result is that the official and executive authority overwhelmingly preponderates, and little influence for good and little check over evil is exercised by the independent section of the Legislature. Then voting strength is little and easily overwhelmed; and the injurious and undesirable result follows that the Legislature forms a simple Registration office where the projects of the Executive, however unpopular and however ill-suited as regards time and place, are correctly copied and recorded and preserved. But, the farce—we had rather say, the pantomime,—of a discussion having been gone through, the executive is in a position to boast of having consulted the *real* representatives of the people, the leaders, as they are often called, of the people, their men of rank, wealth and culture. But we know the unreality there is in the boast. There is much pomp and parade, but little circumstance, in and about the affair. Without saying a single word in disparagement of the talents or the earnestness which the non-official nominees of Government have brought to bear on our legislation, we may point out what we consider the defects of the system now in vogue, how far the provisions of the Act of Parlia-

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ment are and have been misapplied or insufficiently applied. In the first place, there seems, as we have already said, no objection whatever to an enlargement of the non-official section of the Legislature. There exists no objection which human ingenuity can comprehend in the provisions of the law itself why in the Imperial Legislature all the 12 additional Members allowed, and in the local Legislature all the 8 additional Members allowed, should not be non-officials. Why even one of these should necessarily be an official is not clear. The law makes it compulsory that one-half of them should be non-official. But that does not prevent all the Additional Members being non-officials. If they are not all non-officials, it is because the bureaucracy which rules in India does not so will it. Of course, the executive must be represented in the Legislature to explain its proposals and its projects; experienced Government officials ought to assist in Legislating for the people. But this is guaranteed by all the Members of the executive being supplied by virtue of their office with seats in the Legislature. To explain measures, to furnish the data requisite for a decision, to guide all necessary discussions, this ought to be enough. Government officials should, if possible, *not* be appointed Additional Members. There are incidents of their position,—as servants of Government and depending on them for place and preferment,—which render their votes and opinions liable to be misconstrued and which may, in some cases, even hinder them from expressing their independent and conscientious convictions. And, supposing, too, they are honest enough, as is very likely often to be the case, unreservedly to express their unbiased convictions on the legislation submitted to them, they are almost always certain to be misconstrued and misrepresented, whether or not they agree with the Government. This is not a desirable condition of things; and no official, therefore, should be ap-

pointed, if possible, to be additional Members. There is a very apt exemplification of these remarks in our recent history. Dr. Hunter is a respected and honoured member of the Service to which he belongs; and when he voted and fought for the principle of the Ilbert Bill, he used to be persistently vilified and misrepresented as a servile and subservient place-hunter. It may, perhaps, be objected that, if all the additional Members are non-official, the Government will be placed in a minority. But there is no chance of such a thing happening so long as the Government consults, as it ought to consult, the will of the people and their recognised leaders in determining the course of their legislation. If the Government's proposal is not approved by the Legislature, it ought to be abandoned. Legislation is essentially the people's business; and though the initiative may proceed from Government itself or from any other quarter, it can have no rational basis except in popular approval. Mr. Gladstone's legislation receives parliamentary support, because the objects and reasons of legislation are previously settled for him and for his followers by the people's will. So should it be here. We must, of course, consider the objection whether such popular opinion and enlightened popular leaders are now available. The present composition of our Legislatures can find no ground of defence if such opinion and enlightened exponents of such opinion are available. As regards the latter point, can reasonable men, we may be permitted to ask, entertain a doubt? Speaking of Bengal, the *Calcutta Statesman*, the leading Anglo-Indian journal, asked, "Look abroad over this great community, and see how vast a field of selection there is among the professions for a really strong, wise and independent non-official council. Are there no medical men, no merchants, no bankers, no traders, no scholars, to fill eight or ten seats efficiently, that we must really have none but Government Secretaries or Government

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officers therein?" Have we not it in our power, are we not, in fact, entitled, to ask our Government here the same, or a similar, query? Again, does an enlightened and genuine public opinion, worthy to guide and to instruct the Government exist at present in the land? The question has in a measure been settled, the ground cleared, for us. Several men who have held high office in India or have long studied Indian questions, men like Sir Charles Trevelyan and the late lamented Sir David Wedderburn and numerous others, their like, both in and out of the British Parliament, have repeatedly declared that in India the time is come for the introduction in some form or other of the principle of representation. Besides the representative system has worked satisfactorily in Municipalities, both in our own Province and elsewhere. We have just heard how satisfactorily the Municipal elections in Bengal have come off. Lord Ripon's farewell speeches in the Punjab and Upper India and Bengal refer repeatedly to the opinions held on the subject by the Lieutenant-Governors of those Provinces. Bombay has long had the reputation of being the most enlightened of Indian Provinces. Lord Ripon, by the appointments of the late illustrious Kristodas Pal and the Honorable Peary Mohun Mukerji, and His Excellency Mr. Grant Duff, in a measure, by the appointment the happy appointment of the Honorable S. Subramania Iyer to the Local Legislature, have set valuable precedents and recognised the fitness of the people for some kind of representation. Experience, then, and sound policy are alike in favour of introducing the representative principle in our Legislatures, especially when under the present law, so many restraints and disabilities have been provided for. No evil is likely to result from such a course, but much strength to Government, as more confidence will be reposed in them by the people.

Now we have to frame some practicable scheme of representation. In the Imperial Legislature, we found the Law provides for the appointment of 12 additional Members of Council. All these members should be selected on the representative principle, each of the six Indian Provinces selecting two Members. The question is, what is to be our electorate? Perhaps the best one under present circumstances is the Municipal Corporation of the Presidency Towns; or some property qualification may be appointed to form the electorate, and such a body is sure to include all that is highest in the wealth, rank, intelligence, culture, enterprise and public spirit of each Provincial metropolis. The latter would certainly be more preferable. What is to be the precise property qualification does not evidently need to be dwelt upon here. It is a mere matter of detail and the extent and scope of the franchise will necessarily vary according to circumstances. As regards the men, the dignity and the responsibility and the fame attaching to the position ought to attract competent individuals to come forward as candidates and induce them to disregard the necessary sacrifice of convenience, especially as the tenure of their seats is temporary, extending but for two years, and they are at perfect liberty to make room for others when their term expires. These are also days when public feeling and patriotic feeling are becoming more enlarged in extent and in intensity. Also, it has to be remembered that there is little or no loss of money and not much loss of comforts as attendance is only required twice and on each occasion for but portions of the year and as Government provides for each Member a travelling allowance of 10,000 Rupees a year.

We now pass to the Local Legislatures. The law provides for the appointment of 8 additional Members.

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Here, too, it seems easy enough to introduce some principle of representation. What is the exact thing required, what is most suited to the circumstances, is a matter of detail when once the principle is conceded that the people are fit to select their own Councillors and that their claims must be recognised. Some ideas—necessarily crude,—on this subject too may be propounded here, so as at least to serve to start a discussion. The Presidency may be divided into circles, each circle choosing a Councillor. We have now to look for a competent and reliable electorate. The District Local Fund Boards of each Circle must be able to satisfy these requirements. There is not perhaps available at the present moment a more desirable constituency for this particular purpose. If better ones can be found, so much the better.

In closing this part of the subject, it may be remarked that if the choice of Councillors is regulated by these or similar principles, great satisfaction would be felt throughout the land, and those “magnificent nobodies,” already beginning to become rarer, whom Mr. Lal Mohun Ghose denounced in adequate and appropriate terms in his speech at Bombay in 1880, would immediately cease to exist.

In another respect, also, the provisions of the present law do not prevent us from finding means of improving the usefulness of our Legislative Councils. That publicity should be given to what passes in the Legislature and what proposals as regards legislation are contemplated by Government is provided for by the Act of Parliament itself. Under Lord Ripon important steps have been taken to give effect to the provisions of the Act, and the result is that public opinion is making itself heard. But the mere publication of the Bills before the Legislative Councils and of the proceedings of those bodies is not enough. Government cannot and ought not to consider

its duty to the people adequately fulfilled when it has only done so much. There are other means more satisfactory, more desirable, more worthy of a civilised and progressive Government like ours which ought to be adopted. The experiment that has been made in Mysore under the happy auspices of the illustrious Dewan Kunga Charlu has met with singular success. Mr. Porter once said that Mysore will in some cases soon set examples worthy to follow by the British Government itself; and nothing was more truly or more justly said. Every Collector of a District ought to assemble a representative public meeting of the ryots and other chief men of his District once in six months and explain to the assembly fully on behalf of the Government the objects and reasons of the measures before the Legislature and invite a full, free and frank statement of their objections to them and of their views on such improvements as appear to them desirable. The Collector may also write their opinions generally on matters of local and general administration and legislation. If Government before taking important steps let themselves be guided by these or similar principles, it will soon secure to itself the passionate loyalty and devotion of the people. On the other hand, if, following the evil counsels of gentlemen like Mr. Justice Cunningham, they "restrict the sphere of the Council to giving the form of law to measures on which Government has resolved," it will only serve to accentuate and intensify the pervading feeling of distrust and disappointment that now exists in respect of our legislation. Mr. Cunningham, in his benevolence to us, even goes further than what is conveyed by the extract above quoted and objects even to the present system of allowing the non-official members to carry on something like discussions in the Legislative Council. Here are his pregnant and eloquent observations on the subject and nothing can be

more characteristic or more worthy of their author. He writes :—"Personal attendance, where it was inconvenient (mark well this word *inconvenient*) might be dispensed with; in fact, the formal meetings of Council and its quasi-parliamentary procedure might advantageously be replaced by the ordinary arrangements of a Commission. The proposed measure, the views of its supporters and opponents and the grounds of approval or dissent should in each instance be laid before the Government, and the Viceroy in Council might then order it to become law." What, indeed, would the Anglo-Indian community, of which Mr. Cunningham is one of a host of honoured chiefs, have not done to Lord Ripon, or at least not threatened him with, had he adopted the procedure suggested with reference to the Ilbert Bill. Verily, these opinions, the offspring of unreasoning partisanship and blind antagonism to popular advance in this country, do not require any serious consideration and must be consigned to deserved oblivion and contempt.

In closing this paper, we cannot forbear quoting a significant passage from an Indian *Statesman* and journalist,—the prince, as he is sometimes and very properly called, of Indian journalists,—a man who has spent a lifetime in India and who is justly renowned for his wide experience, thorough knowledge of affairs and large sympathies. Mr. Robert Knight writes :—"so sure are we that no substantial reform in this country is possible until for domestic legislation, we have a truly representative Council, in which the official element will be in a small minority only, that we earnestly recommend the commencement of an agitation to this end. Let public meetings be summoned by the great leading Reform Associations to discuss this question and let petitions for

a properly constituted Legislative Council be prepared for presentation to Parliament."

These are words of wisdom and convey to us wholesome and disinterested advice. They deserve to be engraven on our hearts. Unless we act on this advice, unless our men of light and leading start an agitation and carry it through with energy and earnestness, the process by which the country has been flooded with laws cast into new and rigid moulds and conceived and framed as if we formed an inorganic mass subject to no principle of transformation and development,—this process will continue; and history will record it to our eternal disgrace that with so much intelligence and enlightenment in the land, and under the rule of the most progressive people on the face of the earth, we, of the present generation, forgetful of our antecedents and regardless of our duty to posterity, preferred a life of ignominious and ignoble ease to one subserving the best and most vital interests equally of our race and humanity.

SEPARATION OF JUDICIAL FROM REVENUE FUNCTIONS.

THE second subject laid down in the Programme for consideration and discussion by this conference is the separation of Judicial from Executive functions. I shall, with your permission, enumerate a few of the evils that result from the combination of revenue and magisterial powers in one officer, then put before you a practicable scheme for the entire separation of these two functions and try to show its practicability. I have had occasion to talk this matter over with mofussil magistrates of wide experience and they think with me in most of what I purpose to set before you in this paper. I concur with Mr. Coopiah in much of what he has said in his exhaustive paper on this subject. On those portions, I do not purpose to tire your patience by dwelling long.

It will readily be conceded that a speedier and better administration of criminal justice and a speedier and juster settlement of revenue disputes will follow in the wake of a reform like the one now contemplated.

The first great evil that arises from the vesting of magisterial powers in revenue officers, is *delay*. This delay is in most cases caused by the multifarious nature of the revenue duties imposed on these officers. Every kind of miscellaneous work for which there is no special department is thrown on their shoulders. Instances are not wanting in which a mofussil magistrate is compelled to leave off while holding a criminal inquiry and start for a village, perhaps 20 or 30 miles off, on revenue duty. Delay in criminal matters is often a denial of justice. Delay facili-

tates the concoction of evidence. Delay in the trial of persons charged with non-bailable offences causes their retention in custody for days together, even in those cases in which they may after all be acquitted. Under cover of a pressure of revenue work, corrupt magistrates wantonly cause delay to serve their own ends. Delay and the evils following in its train would disappear if these two powers be separated.

Magistrates have frequently to go on *circuit* to discharge their revenue duties. The result is that parties and witnesses to a magisterial complaint before them are dragged whithersoever they go. It may be a very petty complaint; there may be a large number of witnesses in the case; the village that the magistrate goes to may be a small and unhealthy place; sufficient accommodation may not be available there; the parties and witnesses may have no means of securing enough food and water to keep their body and soul together. No regard is paid to any of these circumstances. There is no choice left them; they *must* hang about these Courts and *must* dance attendance on the magistrates whithersoever they go. I know, as a matter of fact, that this is one chief reason why it is difficult to make a *mofussil* respectable *vakil* consent to appear on behalf of a party before a magistrate. In several cases, therefore, these parties are unable to engage the services of a counsel even when they are able and willing. When a magistrate is called away to a village where there is no police station on imperative revenue work, and when there are persons retained in custody for non-bailable offences, he has either to post-pone the hearing of the case till he is able to return to Head-quarters or take those persons with him and manage as best as he can to keep them in safe custody while in that village. This picture, gentlemen, is in no way overdrawn. All these

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evils flow from the combination of these two functions, even when the officer is a thoroughly conscientious gentleman. But when he happens to be just what he ought not to be, all this vexation and annoyance is caused all the more with other than proper objects. Subordinate Magistrates are in charge of sub-jails where under-trial and small-term-prisoners are kept in custody. When the magistrate is on circuit these are at the mercy of the Jail-warder, a constable on perhaps Rs. 6 or 7 a month. What a regard for the prisoners and what a trust in such low-paid servants! Divest magistrates of their revenue duties, and all these will vanish and even a corrupt magistrate will find it difficult to annoy his parties by delay.

It has sometimes been said that these revenue officers will not be able to collect the Government revenue with ease if they are deprived of their magisterial powers. But look at our Municipalities and at the Revenue Department of the Madras District; are not these Non-Magisterial officers able to collect all dues with ease? There is a clear procedure laid down for the collection of land revenue; and certainly magisterial powers are not wanted for the purpose; if revenue officers are to take advantage of the magisterial powers vested in them for the purpose of collecting Government dues, the sooner they are rendered unable to oppress the ryots on this score, the better.

The Tashildar was originally the chief revenue, magisterial, police, and public works officer of the Taluq. He was first relieved of his public works duties, and then of his police duties. It is now high time that he should be relieved of his magisterial work also. Such a course will be consistent with the policy which Government has been pursuing in its own interests as well as in the interests of the people.

When it was proposed to relieve the Tashildar of his public works duties, it was confidently asserted by many, that the public works officer would not be able to secure labour and get through his work unless he were also the revenue and magisterial officer of the Taluq. All those fears have been falsified as such alarms generally are.

Instances are not wanting in which revenue officers have used violence in collecting the land revenue, though such cases are fast becoming fewer in number. All this oppression would cease on the separation of these two functions. Further, a revenue officer has need to be more familiar with his ryots than a magisterial officer, which would become possible only when there are two distinct sets of officers to discharge these two duties.

While the necessity for such a reform is conceded, it has often been raised as an objection to carrying it out at once that it would entail upon the State a very large amount of extra cost. And it has been urged on the other side that the imperative necessity that exists for such a reform should out-weigh considerations of cost and would justify any amount of extra expenditure. But, gentlemen, is there no other position that we could take up in this matter? Is it not possible to effect this much-needed reform without much extra cost? Cannot the Government form a Revenue Department and a Magisterial Department without making any material addition to the present number of officers in service. It appears to me that it is possible to a large extent. With these officers, gentlemen, a Revenue Department consisting of Collectors, Sub-Collectors, Head Assistant Collectors, Assistant Collectors, Deputy Collectors, and Tashildars and a Magisterial Department consisting of District Magistrates, Joint Magistrates, Head Assistant Magistrates, Assistant Magistrates, Deputy Magistrates and Sub-Magistrates can be created.

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I will now proceed to establish with the aid of *a few facts and figures* that such a course is possible and that these officers will be quite equal to the work that will then be allotted to them. In the District of Madras revenue and magisterial duties are exercised by different officers. This reform has, therefore, to be effected in the remaining 21 Districts.

In these districts, the subordinate magisterial and revenue officers are the Tashildars and Deputy Tashildars. These Tashildars should, I consider, be made purely revenue officers and divested of their magisterial powers, and the Deputy Tashildars made Sub-Magistrates with no revenue work. There are at present about 155 Tashildars in this Presidency, and a Tashildar with no magisterial work will, I am assured, by mofussil revenue officers of experience, be able to do full justice to his work if aided by a competent staff of Revenue Inspectors. When Mr. Garstin's scheme for the reorganization of the Revenue Department comes into operation, there will be a goodly number of well-paid revenue inspectors recruited from the educated classes. So far as revenue duties are concerned, Revenue Inspectors exercise the same powers as Deputy Tahsildars; only, the latter are a more respectable class of officers. It is not necessary that Tahsildars should be given the assistance of Deputy Tahsildars under this system.

There are at present 179 Deputy Tahsildars and Sub-Magistrates and this number will be increased to 264 when Mr. Garstin's scheme is given effect to.

These 264 officers, if made Sub-Magistrates, will be more than equal to the work that falls to the share of the subordinate magistracy. At present there are (155+179) 334 Subordinate Magistrates (Taluq and Firka Magistrates) administering criminal justice to 306 lacs of people. This

gives an average of nearly one lac of people to each subordinate magistrate. If the Tahsildar-magistrates be done away with, the number of subordinate magistrates would be reduced from 334 to 264—*i.e.*, by 70, and the population in the jurisdiction of each subordinate magistrate would be increased from one lac to $1\frac{1}{6}$ lacs. From returns submitted to the High Court, it would appear that subordinate magistrates devote from 3 to 6 months to magisterial work. Taking the maximum of 6 months, we see that subordinate magistrates when relieved of their revenue work could turn out twice as much work as at present—*i.e.*, could administer criminal justice to nearly 2 lacs of people ; but, as a matter-of-fact, each sub-magistrate will only have $1\frac{1}{6}$ lacs of people in his jurisdiction. Viewed in another light, since each sub-magistrate would have twice as much time as at present for magisterial work, half the present number of subordinate magistrates, *viz.*, 167, would do ; but we shall have 264 such or nearly a 100 in excess. So much the better for criminal justice. These may further be relieved of a little of their work by extending the system of Bench magistrates. We need not shrink from transferring the magisterial work of Tahsildars to sub-magistrates ; for, in respect of magisterial powers, Deputy Tahsildars and Tahsildars are now on an entirely equal footing. If this be done, one principal object—*viz.*, the speedier and better administration of criminal justice would have been effected.

Even if it should be said that in certain taluqs the Tahsildar would require the aid of a Deputy Tahsildar in addition to that of the Revenue Inspectors, about 64 could well be spared for purely revenue work from the total number of 264 sub-magistrates.

It appears Mr. Garstin, in his scheme, has remarked that sub-magistrates should have no revenue work ; but

nothing is said about Tahsildars being relieved of their magisterial work. The latter, I beg to submit, is as necessary as the first.

Reforms of this nature will, I trust, place the subordinate Revenue and Magisterial Departments on a satisfactory footing. But if the ryots are to be freed from the oppression caused by the combination of these two functions in one officer, the separation should take place in the higher ranks also. Perhaps we shall meet with greater opposition when we ask for such a reform in the ranks of the native and civilian Divisional officers; but it is not the less our duty to press it on the notice of our Government.

We have 45 Deputy Collectors, 21 of whom are in charge of Huzoor Treasuries. The remaining 24 are in charge of divisions of districts and exercise magisterial and revenue powers; and there are about 58 civilian divisional officers exercising similar powers. In all, therefore, we have 82 native and civilian divisional officers, which gives an average of about *four* to a district; and each district has a Collector and District Magistrate; so we have *five* officers available for the work of supervision and for superior original work in each district. Of these *five*, *three* may be placed in the Revenue Department and *two* in the Magisterial Department.

The Collector may be made the head of the Revenue Department with a civilian assistant Collector and a native Deputy Collector for his revenue assistants. Each of these two Revenue assistants would then have to supervise the work of *three* Tahsildars, and the Collector the work of *two* Tahsildars and of his two divisional officers; for the total of 155 Tahsildars gives an average of 7 or 8 Tahsildars to a District. This will not be too much work for any of them, considering that the divisional officers have at present

to supervise the work of *two* and sometimes *three* Tahsildars, notwithstanding the magisterial duties attached to the office of every one of these revenue officials. The Collector would then be able to pay more personal attention to his work than he is at present able to do. The Collector under the present system is overworked and leaves, I trust, in other hands much of that work which he could and would do if he had the leisure for it.

The Collector with his revenue subordinates would then, be under the sole control of the Board of Revenue and the Revenue Secretariat. We shall then have a Revenue Department composed of purely revenue officers from the Revenue Secretary down to the Revenue Inspector. Arrears of work in the Revenue Board are, I trust, proverbial ; summary suits instituted before Revenue Courts under the Rent Recovery Act often stand over for 2 or 3 months and even more ; considerable revenue work is allowed to fall into arrears in consequence, I shall say, of pressure of work, it may sometimes be in consequence of neglect. This much may be taken for granted that a reform like this will be followed by less delay in turning out revenue work. Revenue work requires a larger establishment of clerks than magisterial work. The cost of the establishment of the Revenue Department as at present constituted is debited to the Revenue and Magisterial branches of the administration in the proportion of 2 to 1. According to the scheme put forward here, the Sub-Collector and another divisional officer will become magistrates and $\frac{2}{3}$ or say $\frac{1}{2}$ of their establishment may then be added to the establishment of the three Revenue Divisional officers of the District—who, thus strengthened by a number of clerks, will have no excuse for allowing revenue work to fall into arrears.

Of the two magisterial divisional officers, one of them should be made the District Magistrate and the other a civilian Assistant Magistrate or a native Deputy Magistrate. Each of these will have to supervise the work of 6 sub-magistrates; for the total number of 264 sub-magistrates gives an average of between 12 and 13 to a district. Even supposing that at present every district magistrate has direct supervision over the criminal administration of one or more Taluqs, (which is not the case) we have only (82+21) or 109 Superior Magistrates and 334 Subordinate Magistrates (Taluq and Firka Magistrates)—which gives an average of *three* Subordinate Magistrates to each Superior Magistrate. These 1st class Magistrates do not at present devote more than *four* months in a year to their original and appellate criminal work. According to this calculation these first class Magistrates would, when relieved of revenue work, be able to supervise the work of *three times three* or *nine* Sub-Magistrates. According to the scheme now suggested, each would have only *six* Sub-Magistrates—a work which is only less than what they have been shown to be able to turn out.

The Criminal Procedure Code empowers divisional officers to try certain minor offences summarily; these magistrates, at any rate the Deputy Magistrates, do not sufficiently avail themselves of this power of summary trial. If they did, there would be a saving of time and they would be able to devote greater time to the trial of important cases.

The Code provides that ‘cases triable by a Court of Sessions should be inquired into and committed to the Sessions Court by a District Magistrate, a Divisional Magistrate, a First Class Magistrate or *any other Magistrate specially empowered in that behalf.*’ This argues that subordinate magistrates should be empowered to inquire into

such cases *only when* superior magistrates have no time for it. That is, I consider, a just provision of law. These are important cases ; and it is highly necessary that such cases ought *always* to be taken up by 1st class Magistrates who are necessarily of a higher standing ; such a course will become perfectly practicable when these two functions are separated. It would then, I trust, become possible to divest Subordinate Magistrates of the power to commit cases to the Sessions. In Bengal and the Punjab *no* Magistrate *below* the rank of a 2nd class Magistrate is empowered to inquire into such cases, whereas in Madras *all* Magistrates are empowered in that behalf.

Civilians of the rank of a Sub-Collector should be made District Magistrates. There are some small districts like Trichinopoly which do not require a separate District Magistrate ; such districts may be split up so far as magisterial work is concerned. We shall not then want 21 District Magistrates ; and the civilians thus spared may be made assistant Magistrates in those districts where more than one assistant may be deemed necessary. The Magisterial Department will not, I have been assured by Magistrates of experience, be under-officered if a scheme like this be adopted. Such a department will afford civilians a better training ground for the post of Sessions Judges.

Arrangements like these will affect neither the emoluments nor the grade in the service of any of these officers. A Deputy Collector of whatever grade will, under the proposed system, be either a Deputy Magistrate, or a Deputy Collector, but will draw the same pay as now and fill the same rank. So, a sub-Collector will be a District Magistrate, or a Sub-Collector, drawing in either case, the same pay as now. The same will be the case with every other divisional officer.

If it is considered too much to expect Government to divest the Collector, who is the *de-facto* Governor of the district, of the powers of a district magistrate let us at any rate ask for reforms in this direction so far as regards the Subordinate and the Divisional Magistrates.

The separation of these two functions should

First be made among the subordinate revenue and magisterial officers ;

Secondly, among the native and civilian divisional officers ; and

Thirdly, among the district revenue and magisterial officers. All these three may be effected at the same time, or, better, may be taken up, one after another, in the order set forth here.

Gentlemen, these are the suggestions I venture to put before you for consideration and for acceptance in whole or in part or for rejection, as you may deem fit and proper. As regards the latter part of the second subject put down in our programme, I have a few *minor practical reforms* to suggest in the *criminal administration* of our Presidency. These will tend to remove some of the evils at present existing and will be easily conceded by Government if we move in the matter. I have already occupied so much of your time that I am afraid of encroaching still further on the little time you have at your disposal. I will, however, try to state them in as few words as possible without entering into any lengthy disquisition.

1. In non-cognizable cases, *process fees* are levied from parties to a magisterial complaint for the service of summonses and warrants. These are served by police officers, and the Government incur no special expenses on account of such service rendered to the parties. The object of

levying such fees is probably to prevent parties from citing persons as witnesses vexatiously. But the police are frequently short of hands and delay the service of the process. The party pays down the fees at once ; but his case is delayed on account of this delay on the part of the police who are the process-servers. Is this not injustice to the party ? Why should he suffer even when special fees are levied from him for this purpose. There should be an establishment of *batta* peons to serve these processes, as there are to serve revenue processes ; or the police staff should be strengthened with this view. The police, rightly, I suppose, consider process-serving as a minor duty when compared with their detective and other duties and with their duties in what are known as cognizable offences. It may here be observed that such processes were served by the police even before 1871, before which year no process fees were levied.

2. *Discretionary* power is vested in Magistrates to grant *batta* to witnesses. *Mofussil* witnesses, even when they do claim *batta*, have not the nerve to press their claims ; and *batta* is often disallowed. The disinclination to allow *batta* arises from the unavoidable delay in deciding magisterial cases ; for in that case if *batta* is allowed the cost to Government on this head increases. Whatever may be the ground of such disinclination, it is a clear injustice to witnesses. This, I consider, is so obvious, that I do not purpose to encroach upon your time by trying to establish it. We should, I submit, bring this to the notice of Government. If the two Departments be made distinct, this disinclination to allow *batta* will, I trust, cease.

3. *Public prosecutors* are appointed for the conduct of cases before Courts of Session. We should move that even in cases before Magistrates, at least before first class Magis-

trates, public prosecutors should, as a rule, be appointed. Several great evils will be removed by such a course."

The Magistrate has often to act the part of a Judge and at the same time of a Prosecutor—certainly a great injustice to the accused. The Magistrate has also to be the prosecutor, because the plaintiff is unassisted by Counsel, and because the Magistrate is not unfrequently blamed if he does not take steps for the securing of all possible evidence in favour of the prosecution.

Secondly, in *non-compoundable* offences, parties sometime come to a private understanding between themselves and prevented by law to publicly compromise the case, take such steps as will weaken the prosecution. This is certainly a failure of justice. We are not, I am sure, prepared to say that it will be to the benefit of the accused if public prosecutors are not appointed and that, therefore, the present course is sufficiently good.

Further if there be a public prosecutor, concoction of evidence for the prosecution will become less possible.

In the appointment of these public prosecutors, due regard should, of course, be had to the qualifications of the pleader chosen; but I say it ought not to be *monopolized* by any one pleader. Each respectable pleader should be given his turn.

Police Superintendents and Police Inspectors are sometimes appointed prosecutors. But Police Superintendents when appointed to prosecute a case before a subordinate magistrate should be made to pay better respect to the Magistrate and to desist from brow-beating or over-awing the Magistrate; or all those cases in which it is necessary for the Police Superintendent to conduct the prosecution in person should *from the beginning* be inquired into by Divisional Magistrates.

4. When a Magisterial Department is created as proposed by us, it will be well to consider the advisability of instituting a Competitive Examination for the Uncovenanted Civil Service and appointing the successful candidates as probationary Sub-Magistrates. The utility of such a scheme and the details about it will probably be considered and discussed when we come to the third subject in our programme ; I shall, therefore, say no more about this just now.

5. Will it not be well, Gentlemen, to get an administrative order passed that the trial of cases in which the accused are in custody pending trial should have a priority over the trial of other cases as much as possible. Such an order would prevent the unnecessary detention in custody of persons who may after all be proved to be innocent.

I beg your pardon, Mr. Chairman and Gentlemen for having taken so much of your time. If we succeed, Gentlemen, in *accomplishing for the present at least a part of the reforms suggested*, we shall have done some substantial good to ourselves and to our countrymen.

THE separation of the Executive and Judicial (magisterial) functions, and the extension of the system of trial by jury, are two kinds of reforms, which in the interest of the voiceless millions of India, and of good government, are loudly called for. And it appears to me that the appearance of financial difficulties should not frighten the Viceroy, who has been deputed by our much beloved Lady Sovereign to rule over this jewel in her Crown, from seeing his way to introducing reforms, admitted to be essential, and which the people themselves in no unmistakeable language have forcibly brought to the notice of the authorities.

The union of the Executive and magisterial functions in one and the same individual is a source of great annoyance and oppression to the people, and leads in some instances to absolute failure of justice, not to say that both kinds of work are often obliged to be done hurriedly and unsatisfactorily. The training and temperment of mind necessary for the office of a Judge, or chief Magistrate, protecting people from each other's aggressions, punishing violence and breaches of law, are so essentially different from the qualifications which go to make a good executive officer, who represents the Majesty of government, and who ought to be intimately acquainted with the people and know their wants and failures in order to be able and be ready to provide the head of administration with all sorts and kinds of information that might be called for, that it must be a wonder for any man, calling himself the subject of a civilized Government, that the two functions should be found united in the same officer in India, and that for so many years.

At the very commencement of the British administration, from the very necessities of the case, the military and civil functions of Government were left in the hands of the same individual, and the Governor-General of India was also the Commander-in-Chief of its Forces; but with the advance of times and the establishment of Government on a solid and sound basis, these departments were placed under different heads, though nominally the Commander-in-Chief is still under the control of the Governor-General; and at the present day the Governor-General is the Proconsul of Her Majesty, supervising the innumerable administrations and departments into which the administration of this vast empire is divided. Similarly the Collector, who was originally the head of the Police, of the Public Works, of Salt, and other Departments in

the District, has virtually now ceased to exercise any control over Public Works, and Salt; and the Police have a Department of their own. While Education, Registration, Finance, have a department of their own, it is matter for deep regret that the important office of administering criminal justice should be considered so unimportant as to form but a portion of the Executive officer's duties.

At the present day the over-worked revenue officer, with his multifarious executive duties, often finds himself pressed with criminal work which he is obliged to hurry over; and in his Executive capacity, the revenue officer stands in the uneenviable position of the prosecutor, the complainant, the collector of evidence, the witness, and the Judge; and such enormous powers, placed in the hands of officers, about whose education, character and special training there is at present no satisfactory guarantee, even if the assertion that we see often made that men forming at least the lower branches of the service are of little education and less character is not true, necessarily lead to corruption, and failure of justice and oppression of the people. Some of the all-jealous revenue officers, who had tasted the sweets of power, used to say that if they were not invested with magisterial powers, the revenue could not be collected. And what is this but an admission, if I may so called it, in the strongest terms, that their Magisterial powers are sometimes at least, if not often, misused by the overzealous revenue executive officers; for it is difficult to see what sort of connection there is between the collection of revenue, and the exercise of magisterial functions. Is not the land tax collected in the town of Madras, by a set of officers who have no magisterial powers. Do not Zemindars, Shrotriendars, Jagirdars, who have no magisterial powers, collect revenue or rent from tenants even under the present by no means

satisfactory, if not very faulty, Rent Recovery Act. Do not Civil Courts collect money from judgment-debtors without pretending in any way to magisterial powers. The fact is that the Act for the Recovery of Arrears of Revenue is so favorable to Government and so regardless of the convenience or otherwise of cultivators, that no powers of any sort are wanted for realizing revenue, except those already given by the Act itself.

Under the present Code of Criminal Procedure, the powers of a magistrate are so vast, intricate, and multifarious, and of such a diversified character, that there appears to be greater need in this country of strict watch and supervision over the doings of the Magistrates, and of securing men of good character and education to fill such posts, than in other countries: and the wonder is that so little care seems now to be taken in selecting proper persons for exercising the important and onerous functions of a magistrate. It might be remembered that this difficulty was prominently brought to notice during, what has been called, the Ilbert Bill controversy; when the Calcutta High Court took occasion to point out that the system in force in India was an extremely dangerous system which "has certainly provoked adverse criticism." "In India" say the Judges of the Calcutta High Court "the powers of police investigation, magisterial inquiry and Judicial trial are closely connected, and are frequently combined in the same individual, and it not unfrequently happens that the chief local magistrate practically becomes the prosecutor and may become the Judge, notwithstanding that he may have formed a strong opinion on the case behind the back of the accused without having his explanation or defence." Hence then the greater necessity for strict and careful supervision by the chief officers than in other departments; but how different alas! is the case.