practical objections to it had been greatly aggravated by the course of legislation which had raised the judicial powers of a Magistrate six times higher than they were in the days of Lord Cornwallis. "It ought," Mr. Grant continued, "to be the fixed intention of the Government to dissever as soon as possible the functions of Criminal Judge from those of thief-catcher and Public Prosecutor, now combined in the office of Magistrate. That seems to me to be indispensable as a step towards any great improvement in our criminal jurisprudence."

6. Two years later—in September, 1856—a Despatch of the Court of Directors of the East India Company (No. 41, Judicial Department) on the re-organization of the Police in India pointed out that "to remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the police from the administration of the land revenue. . . . . In the second place, the management of the police of each district should be taken out of the hands of the Magistrate."

7. *In February, 1857, a further Minute was recorded* by the Hon. J. P. Grant, member of the Council of the Governor-General, upon the "Union of the functions of Superintendent of Police with those of a Criminal Judge." Mr. Grant, whose opinions Mr. (afterwards Sir Barnes) Peacock generally concurred, wrote :

"*The one point for decision, as it appears to me, on which* alone the whole question turns, is this—in which way is crime more certainly discovered, proved and punished, and innocence more certainly protected—when two men are occupied each as thief-catcher, prosecutor, and judge, or when one of

them is occupied as thief-catcher and prosecutor, and the other as judge? I have no doubt that the principle of division of labour has all its general advantages, and an immense preponderance of special and peculiar advantages, when applied to this particular case; and I have no doubt that if there is any real difference between India and Europe in relation to this question, the difference is all in favour of relieving the Judge in India from all connexion with the detective officer and prosecutor. The judicial ermine is, in my judgment, out of place in the bye-ways of the detective policeman in any country, and those bye-ways in India are unusually dirty. Indeed, so strongly does this feeling operate, perhaps unconsciously, upon the English minds of the honourable body of men from whom our Magistrates are chosen, that in practice the real evil of the combination is, not that a Judge, whose mind has been put out of balance by his antecedents in relation to the prisoner, tries that prisoner, but that the Superintendent of Police, whose nerve and honesty are indispensable to the keeping of the native police officers in order, abandons all real concern with the detection of crime, and the prosecution of criminals, in the mass of cases, and leaves this important and delicate duty almost wholly, in fact, to the native *darogahs*. . . . . If the combination theory were acted upon in reality—if an officer, after bribing spies, endeavouring to corrupt accomplices, laying himself out to hear what every tell-tale has to say, and putting his wit to the utmost stretch, for weeks perhaps, in order to beat his adversary in the game of detection, were then to sit down gravely as a Judge, and were to profess to try dispassionately upon the evidence given in court the question of whether he or his adversary had won the game, I am well convinced that one or two cases of this sort would excite as much indignation as would save me the necessity of all argument *a priori* against the combination theory."

Unfortunately the theory has been acted upon in reality. Actual cases—more than one or two—have excited the vehement indignation against which Mr. Grant sought in 1857 to provide. Mr. Grant added that the objections to separation of judicial and police functions seemed to him, after the best attention he could give them, to be founded on imaginary evils. He refused

to anticipate "such extreme antagonism between the native public officer and the native Judge as would be materially inconvenient." "Under a moderately sensible European Magistrate, controlled by an intelligent Commissioner, who would not talk or act as if police *peons* and *darogahs* were infallible, and dispassionate judges were never right, I cannot see why there should be any such consequences."

8. These, and similar, expressions of opinion were not lost upon the Government of India, as the history of the legislation which was undertaken immediately after the suppression of the Mutiny shows. In 1860 a Commission was appointed to enquire into the organisation of the Police. It consisted of representative officers from the Nort-West Provinces, Pegu, Bengal, Madras, the Punjab, and Oudh—"all," in the words of Sir Bartle Frere, "men of ripe experience, especially in matters connected with Police." The instructions issued to the Commission contained the following propositions :

"The functions of a police are either protective and repressive or detective, to prevent crime and disorder, or to find out criminals and disturbers of the peace. These functions are in no respect judicial. This rule requires a complete severance of the police from the judicial authorities, whether those of higher grade or the inferior magistracy in their judicial capacity. When, as is often the case in India, various functions are combined in the hands of one Magistrate, it may sometimes be difficult to observe this restriction ; but the rule should always be kept in sight that the official who collects and traces out the links in the chain of evidence in any case of importance should never be the same as the judicial officer, whether of high or inferior grade, who is to sit in judgment on the case. . . . . It may sometimes be difficult to insist on this rule, but experience shows it is not

nearly so difficult as would be supposed, and the advantages of insisting on it cannot be overstated."

Again :

"The working police having its own officers exclusively engaged on their own duties in preventing or detecting crime, the question is, at what link in the chain of subordination between the highest and lowest officers in the executive administration is the police to be attached, and so made responsible as well as subordinate to all above that link in the chain ? The great object being to keep the judicial and police functions quite distinct, the most perfect organization is, no doubt, when the police is subordinate to none but that officer in the executive Government who is absolved from all judicial duty, or at least from all duty involving original jurisdiction, so that his judicial decisions can never be biassed by his duties as a Superintendent of police. . . . . It is difficult to lay down any more definite rule as to the exact point where the subordination should commence than by saying that it should be so arranged that an officer should never be liable to try judicially important cases got up under his own directions as a police officer. . . . . This raises the question—Who is to be responsible for the peace of the district ? Clearly that officer, whoever he may be, to whom the police are immediately responsible. Under him, it is the duty of every police officer and of every magisterial officer of whatever grade, in their several charges, to keep him informed of all matters affecting the public peace and the prevention and detection of crime. It is his duty to see that both classes of officers work together for this end ; as both are subordinate to him, he ought to be able to ensure their combined action. The exact limits of the several duties of the two classes of officers it may be difficult to define in any general rule ; but they will not be difficult to fix in practice if the leading principles are authoritatively laid down, and, above all, if the golden rule be borne in mind that the judicial and police functions are not to be mixed up or confounded, that the active work of preventing or detecting crime is to rest entirely with the police, and not to be interfered with by those who are to sit in judgment on the criminal."

9. The Police Commission in their Report (dated September, 1860) expressly recognised and accepted

this "golden rule." Paragraph 27 of their Report was as follows:

"That as a rule there should be complete severance of executive police from judicial authorities; that the official who collects and traces out the links of evidence—in other words, virtually prosecutes the offender—should never be the same as the officer, whether of high or inferior grade, who is to sit in judgment on the case, even with a view to committal for trial before a higher tribunal. As the detection and prosecution of criminals properly devolve on the police, no police officer should be permitted to have any judicial function."

But although the Commission adopted without question the general principle that judicial and police functions ought not to be confounded, they proposed, as a matter of practical and temporary convenience, in view of "the constitution of the official agency" then existing in India, that an exception should be made in the case of the District Officer. The Commission did not maintain that the principle did not in strictness, apply to him. On the contrary, they appear to have stated expressly that it did. But they recommended that in his case true principle should, for the time being, be sacrificed to expediency. They reported:

"That the same true principle, that the judge and detective officer should not be one and the same, applies to officials having by law judicial functions, and should, as far as possible, be carefully observed in practice. But, with the constitution of the official agency now existing in India, an exception must be made in favour of the District Officer. The Magistrates have long been, in the eye of the law, executive officers, having a general supervising authority in matters of police, originally without extensive judicial powers. In some part of India this original function of the Magistrates has not been widely departed from; in other parts extensive judicial

powers have been superadded to their original and proper function. This circumstance has imported difficulties in regard to maintaining the leading principle enunciated above, for it is impracticable to relieve the Magistrates of their judicial duties; and, on the other hand, it is at present inexpedient to deprive the police and public of the valuable aid and supervision of the District Officer in the general management of police matters."

The commission recognised that this combination of judicial with police functions was open to objection, but looked forward to a time when improvements in organization would, in actual practice, bring it to an end:—

"That this departure from principle will be less objectionable in practice when the executive police, though bound to obey the magistrate's order *quoad* the criminal administration, is kept departmentally distinct and subordinate to its own officers, and constitutes a special agency having no judicial function. As the organization becomes perfected and the force effective for the performance of its detective duties, any necessity for the Magistrate to take personal action in any case judicially before him ought to cease."

10. The recommendations of the Police Commission were adopted by the Government of India and, in accordance with them, Sir Bartle Frere introduced in the Legislative Council on September 29, 1860, a Bill for the Better Regulation of Police. The debate on the second reading of this measure, which afterwards became Act V. of 1861, and is still in force, is important as showing that the Government of India regarded the exceptional union of judicial with police functions in the District Officer as a temporary compromise. Sir Barnes Peacock, the Vice-President of the Council, stated that he "had always been of opinion that a full and complete separation ought to be made between the two functions,"

while in reply to Mr. A. Sconce, who had argued that some passages in the Report of the Police Commission were at variance with the principle of separation, Sir Bartle Frere said :—

"It was one thing to lay down a principle and another to act on it at once and entirely when it was opposed to the existing system, to all existing forms of procedure, and to prejudices of long standing. Under such circumstances, it was often necessary to come to a compromise. . . . . He hoped that at no distant period the principle would be acted upon throughout India as completely as his hon. friend could desire. The hon. member had called the Bill a 'half and half' measure. He could assure the hon. gentleman that nobody was more inclined that it should be made a whole measure than he was, and he should be very glad if his hon. friend would only induce the Executive Governments to give it their support so as to effect a still more complete severance of the police and judicial functions than the Bill contemplated."

The hope expressed by Sir Bartle Frere in 1860 has yet to be fulfilled. It might have been realised in 1872 when the second Code of Criminal Procedure was passed. But the Government and the Legislature of the day were still under the dominion of the fallacy that all power must be centred in the District Magistrate, and the opportunity of applying the sound principle for which Sir Bartle Frere had contended was unfortunately rejected. In 1882 the Code of Criminal Procedure was further revised, and the Select Committee, in their report on the Criminal Procedure Bill, said :—

"At the suggestion of the Government of Bengal, we have omitted section 38, conferring police powers on Magistrates. We consider that it is inexpedient to invest Magistrates with such powers, or to make their connexion with the police more close than it is at present."

(*b*)—THE EXISTING GRIEVANCE, AND THE REMEDY.

11. The request which we have now the honour of urging is, therefore, that—in the words used by Sir J. P. Grant in 1854—the functions of criminal judge should be dissevered from those of thief-catcher and public prosecutor, or—in the words used by Sir Barnes Peacock in 1860—that a full and complete separation should be made between judicial and executive functions. At present these functions are to a great extent combined in India, especially in the case of the officers who in the Districts of Regulation Provinces are known as Collector-Magistrates, and the non-Regulation Provinces are known as Deputy Commissioners. The duties of these officers are thus described by Sir W. W. Hunter :*—"As the name of Collector-Magistrate implies, his main functions are twofold. He is a fiscal officer, charged with the collection of the revenue from the land and other sources ; he also is a revenue and criminal judge, both of first instance and in appeal. But his title by no means exhausts his multifarious duties. He does in his smaller local sphere all that the Home Secretary superintends in England, and a great deal more ; for he is the representative of a paternal and not a constitutional government. Police, jails, education, municipalities, roads, sanitation, dispensaries, the local taxation, and the Imperial revenues of his District, are to him matters of daily concern." It is submitted that, just as Lord Cornwallis's Government held a century ago that the proprietors of land could never consider the privileges which had been con-

* "The Indian Empire," p. 513 (3rd edition).

ferred upon them as secure while the revenue officers were vested with judicial powers, so also the administration of justice is brought into suspicion while judicial powers remain in the hands of the detective and public prosecutor.

12. The grounds upon which the request for full separation is made are sufficiently obvious. They have been anticipated in the official opinions already cited. It may, however, be convenient to summarize the arguments which have been advanced of late years by independent public opinion in India. These are to the effect (i) that the combination of judicial with executive duties in the same officer violates the first principles of equity; (ii) that while a judicial officer ought to be thoroughly impartial and approach the consideration of any case without previous knowledge of the facts, an executive officer does not adequately discharge his duties unless his ears are open to all reports and information which he can in any degree employ for the benefit of his District; (iii) that executive officers in India, being responsible for a large amount of miscellaneous business have not time satisfactorily to dispose of judicial work in addition; (iv) that, being keenly interested in carrying out particular measures, they are apt to be brought more or less into conflict with individuals, and, therefore, that it is inexpedient that they should also be invested with judicial powers; (v) that under the existing system Collector-Magistrates do, in fact, neglect judicial for executive work; (vi) that appeals from revenue assessments are apt to be futile when they are heard by revenue

officers ; (vii) that great inconvenience, expense, and suffering are imposed upon suitors required to follow the camp of a judicial officer who, in the discharge of executive duties, is making a tour of his District ; and (viii) that the existing system not only involves all whom it concerns in hardship and inconvenience but also, by associating the judicial tribunal with the work of the police and of detectives, and by diminishing the safeguards afforded by the rules of evidence, produces actual miscarriages of justice and creates, although justice be done, opportunities of suspicion, distrust and discontent which are greatly to be deplored. There is, too, a further argument for the separation, which arises out of the very nature of the work incidental to the judicial office, and which of itself might well be regarded as conclusive in the matter. It is no longer open to us to content ourselves with the pleasant belief that to an Englishman of good sense and education, with his unyielding integrity and quick apprehension of the just and the equitable, nothing is easier than the patriarchal administration of justice among oriental populations. The trial in Indian courts of justice of every grade must be carried out in the English method, and the judge or magistrate must proceed to his decision upon the basis of facts to be ascertained only through the examination and cross-examination before him of eye-witnesses testifying each to the relevant facts observed by him, and nothing more. It is not necessary for us to dwell on the importance of this procedure, nor is it too much to say that with this system of trial no judicial officer can efficiently perform

his work otherwise than by close adherence to the methods and rules which the long experience of English lawyers has dictated, and of which he cannot hope to acquire a practical mastery, unless he makes the study and practice of them his serious business. In other words it is essential to the proper and efficient—and we might add impartial—administration of justice that the judicial officer should be an expert specially educated and trained for the work of the court.

13. In Appendix B to this Memorial summaries are given of various cases which, it is thought, illustrate in a striking way some of the dangers that arise from the present system. These cases of themselves might well remove—to adopt Sir J. P. Grant's words—"the necessity of argument *a priori* against the combination theory." But the present system is not merely objectionable on the ground that from time to time it is, and is clearly proved to be, responsible for a particular case of actual injustice. It is also objectionable on the ground that, so long as it exists, the general administration of justice is subjected to suspicion, and the strength and authority of the Government are seriously impaired. For this reason it is submitted that nothing short of complete separation of judicial from executive functions by legislation will remove the danger. Something perhaps, might be accomplished by purely executive measures. Much, no doubt, might be accomplished by granting to accused persons, in important cases, the option of standing their trial before a Sessions Court. But these palliatives fall short of the only complete and satisfactory remedy, which

is, by means of legislation, to make a clear line of division between the judicial and the executive duties now often combined in one and the same officer. So long as Collector-Magistrates have the power themselves to try, or to delegate to subordinates within their control, cases as to which they have taken action or received information in an Executive capacity, the administration of justice in India is not likely to command complete confidence and respect.

14. It would be easy to multiply expressions of authoritative opinion in support of the proposed reform. But, in view of the opinions already cited, it may be enough to add that, in a debate on the subject which took place in the House of Lords on May 8th, 1893, Lord Kimberley, then Secretary of State for India, and his predecessor, Lord Cross, showed their approval of the principle of separation in no ambiguous terms. Lord Cross said, on that occasion, that it would be, in his judgment, an "excellent plan" to separate judicial from executive functions, and that it would "result in vast good to the Government of India." It was in the same spirit that Lord Dufferin, as Viceroy of India, referring to the proposal for separation put forward by the Indian National Congress, characterised it as a "counsel of perfection." Appendix A to the present Memorial contains, *inter alia*, the favourable opinions of the Right Hon. Sir Richard Garth, late Chief Justice of Bengal, the Right Hon. Lord Hobhouse, Legal Member of the Viceroy's Council, 1872-77, the Right Hon. Sir Richard Couch, late Chief Justice of Bengal, Sir J. B. Phear, late Chief

Justice of Ceylon, Sir R. T Reid, Q.C., M P, Attorney-General, 1894-5, Sir William Markby, late Judge of the High Court, Calcutta, and Sir Raymond West, late Judge of the High Court, Bombay. These opinions were collected and compiled by the British Committee of the Indian National Congress, and, among other important indications of opinions prevalent in India, we beg to refer you to the series of resolutions adopted by the Indian National Congress—which Lord Lansdowne, as Viceroy, referred to in 1891 as a "perfectly legitimate movement" representing in India "what in Europe would be called the more advanced Liberal party." In 1886 the Congress adopted a resolution recording "an expression of the universal conviction that a complete separation of executive and judicial functions has become an urgent necessity," and urging the Government of India "to effect this separation without further delay." Similar resolutions were carried in 1887 and 1888, and the proposal formed in 1889, 1890, and 1891 the first section of an "omnibus" resolution affirming the resolutions of previous Congresses. In 1892 the Congress again carried a separate resolution on the question, adding to its original resolution a reference to "the serious mischief arising to the country from the combination of judicial and executive functions." In 1893 the resolution carried by the Congress was as follows:—

"That this Congress, having now for many successive years vainly appealed to the Government of India to remove one of the gravest stigmas on British rule in India, one fraught with incalculable oppression to all classes of the community throughout the country, now hopeless of any other redress,

humbly entreats the Secretary of State for India to order the immediate appointment, in each province, of a Committee (one-half at least of whose members shall be non-official natives of India, qualified by education and experience in the workings of the various courts to deal with the question) to prepare each a scheme for the complete separation of all judicial and executive functions in their own provinces with as little additional cost to the State as may be practicable and the submission of such schemes, with the comments of the several Indian Governments thereon, to himself, at some early date which he may be pleased to fix."

A similar resolution was carried in 1894, 1895, and 1896. During recent years, also, practical schemes for separation have been laid before the Congress.

(c)—Answers to Possible Objections.

15. The objections which, during the course of a century, have been urged against the separation of judicial and executive functions are reducible, on analysis, to three only: (i) that the system of combination works well, and is not responsible for miscarriage of justice; (ii) that the system of combination, however indefensible it may seem to Western ideas, is necessary to the position, the authority, and, in a word, to the "prestige" of an Oriental officer; and (iii) that separation of the two functions, though excellent in principle, would involve an additional expenditure which is, in fact, prohibitive in the present condition of the Indian finances.

16. It is obvious that the first objection is incompatible with the other two objections. It is one thing to defend the existing system on its merits: it is another thing to say that, although it is bad, it would be too dangerous or too costly to reform it. The first objection

is an allegation of fact. The answer—and, it is submitted, the irresistible answer—is to be found in the cases which are set forth in Appendix B to this Memorial. The cases are but typical examples taken from a large number. It may be added that, among the leading advocates of separation in India, are Indian barristers of long and varied experience in the Courts who are able to testify, from personal knowledge, to the mischievous results of the present system. Their evidence is confirmed, also from personal knowledge, by many Anglo-Indian Judges of long experience.

17. The second objection—that the combination of judicial and executive functions is necessary to the "prestige" of an Oriental officer—is perhaps more difficult to handle. For reasons which are easy to understand, it is not often put forward in public and authoritative statements. But it is common in the Anglo-Indian press, it finds its way into magazine articles written by returned officers, and in India it is believed, rightly or wrongly, to lie at the root of all the apologies for the present system. It has been said that Oriental ideas require in an officer entrusted with large executive duties the further power of inflicting punishment on individuals. If the proposition were true, it would be natural to expect that the existing system would be supported and defended by independent public opinion in India instead of being—as it is—deplored and condemned. It is not reasonable to assume that the Indian of to-day demands in the responsible officers of a civilised Government a combination of functions which at an earlier time an

arbitrary despot may have enforced. The further contention that a District Magistrate ought to have the power of inflicting punishment because he is the local representive of the Sovereign appears to be based upon a fallacy and a misapprehension. The power of inflicting punishment is, indeed, part of the attributes of Sovereignty. But it is not, on that ground, any more necessary that the power should be exercised by a Collector-Magistrate, who is head of the police and the revenue-system, than that it should be exercised by the Sovereign in person. The same reasoning, if it were accepted, would require that the Viceroy should be invested with the powers of a criminal judge. But it is not suggested that the Viceroy's "prestige" is lower than the "prestige" of a District Judge because the Judge passes sentences upon guilty persons and the Viceroy does not. It is equally a misapprehension to assume that those who urge the separation of judicial from executive duties desire the suppression or extinction of legitimate authority. They ask merely for a division of labour. The truth seems to be that the somewhat vague considerations which are put forward in defence of the existing system on the ground that it is necessary to the due authority of a District Magistrate had their origin in the prejudices and the customs of earlier times, revived, to some extent, in the unsettled period which followed the Indian Mutiny. We venture to submit that these considerations are not only groundless and misplaced, but that the authority of Government, far from being weakened by the equitable division of judicial and executive duties, would

be incalculably strengthened by the reform of a system which is at present responsible for many judicial scandals.

18. The financial objection alone remains, and it is upon this objection that responsible authorities appear to rely. When Lord Dufferin described the proposal for separation as a "counsel of perfection," he added that the condition of Indian finance prevented it, at that time, from being adopted. Similarly, in the debate in the House of Lords on May 8th, 1893, to which reference has already been made, Lord Kimberley, then Secretary of state, said :

"The difficulty is simply this, that if you were to alter the present system in India you would have to double the staff throughout the country :"

and his predecessor, Lord Cross, said :—

"It [the main principle raised in the discussion] is a matter of the gravest possible importance, but I can only agree with what my noble friend has stated, that in the present state of the finances of India it is absolutely impossible to carry out that plan, which to my mind would be an excellent one, resulting in vast good to the Government of India."

The best answer to this objection is to be found in the scheme for separation drawn up in 1893 by Mr. Romesh Chunder Dutt, C I E., late Commissioner of the Orissa Division (at that time District Magistrate of Midnapur) and printed in Appendix A to this Memorial. In these circumstances it is not necessary to argue either (i) that any expense which the separation of judicial from executive duties might involve would be borne, and borne cheerfully, by the people of India ; or (ii) that it might well be met by economies in certain other di-

rections. Mr. Dutt shows that the separation might be effected by simple rearrangement of the existing staff, without any additional expense whatsoever. Mr. Dutt's scheme refers specially to Bengal, the Presidency, that is, for which the reform had been described as impracticable on the ground of cost. Similar schemes for other Presidencies and Provinces have been framed, but it was understood that the most serious financial difficulty was apprehended in Bengal.

19. In view of foregoing considerations we earnestly trust that you will direct the Government of India to prepare a scheme for the complete separation of judicial and executive functions, and to report upon this urgently pressing question at an early date.

We have the honour to be, Sir,

Your obedient Servants,

HOBHOUSE,
RICHARD GARTH,
RICHARD COUCH,
CHARLES SARGENT,
WILLIAM MARKBY,
JOHN BUDD PHEAR,
J. SCOTT,
W. WEDDERBURN,
ROLAND K. WILSON,
HERBERT J. REYNOLDS.

Scheme (Printed in "India" for August, 1893) suggested by Mr. Rómesh Dutt, C.I.E., Commissioner of the Orissa Division (at that time District Magistrate of Midnapur).

The recent discussions on the subject of the separation of Judicial and Executive functions in India have given sincere gratification to my countrymen in India. They have read with satisfaction, and also with feelings of gratitude, the views expressed by Lord Stanley in the House of Lords, and the clear and emphatic opinion on the subject expressed by Lord Kimberley. They have learnt with sincere joy that the system of uniting Judicial and Executive functions in the same officer has been condemned by two successive Secretaries of State, Lord Cross and Lord Kimberley. And they entertain a legitimate hope that a policy which has been thus condemned by the highest authorities in Indian affairs will not long continue to be the policy of British rule in India.

Sir Richard Garth, late Chief Justice of the High Court of Calcutta, whose paper on this subject led to the discussions in the House of Lords, has since explained the history of the present system of administration in a clear, lucid, and forcible manner. He has shown that so far back as 1860 a commission appointed to report on the police declared that "the judicial and police functions were not to be mixed up and confounded." He has pointed out that the late Sir Barnes Peacock

and other high authorities were against the union of these functions, and that the late Sir Bartle Frere, in introducing the Bill which afterwards became the Police Act of 1861, "hoped that at no distant period the principle (of the separation of Judicial and Executive functions) would be acted upon throughout India." Sir Richard Garth has also informed the public that between 1865 and 1868 the highest civilian authorities in India were again consulted on the subject, and, according to Sir James Stephen, the District Magistrates themselves were "greatly embarrassed by the union in their persons of Judicial and Executive functions." Sir Richard has further told us that under Lord Ripon's Government opinions were again collected, and the present system was only continued because the retention of Judicial powers in the hands of a District Officer was considered (and very wrongly considered, *vide* Lord Kimberley's speech) "essential to the weight and influence of his office." And, lastly, Sir Richard has quoted the words of the present Secretary of State that the present system "is contrary to right and good principle," and he has also quoted the words of the late Secretary of State, who concurs in this opinion with Lord Kimberley.

Such are the opinions of men most capable of forming a judgment on the present system of administration in India, and responsible administrators are anxious to effect a reform which will remove the evil without materially adding to the cost of administration. A practicable scheme of reform will be not unwelcome at

the present moment, and many of my countrymen and some of my English friends have asked me to state my views on the subject, as I happen to be in England just now. I ventuře therefore to suggest the leading features of a scheme which has for many years appeared perfectly feasible to myself, and which I believe will meet the views and wishes not only of my countrymen, but of most Englishmen also, who are quite as anxious for wholesome reform on this point as my countrymen.

It is necessary for me to state that I have been employed on administrative work in Bengal for twenty-two years, and that I have had ample opportunities to observe the practical working of the present system of administration during this period. Within this period I have had the honour of holding charge of some of the largest and most important districts in Bengal—like Bardwan, with its population of a million and a half, and Bakarganj, with its population of two millions, and Midnapur, with its population of two and a half millions, and Maimansingh, with its population of three and a half millions—which is equal to the population of many a small kingdom in Europe. In these extensive and thickly populated districts I have, for years past, combined in myself the functions of the head of the Police, the head Magistrate, the head Superintendent of Prisons, the head Revenue Officer, the head Tax Collector, the head of the Government Treasury, the head Manager of Government Estates, the head Manager of Minors' States, the head Engineer, the head Sanitary Officer, the head Superintendent of Primary

Schools, and various other functions. I have, for years past, directed and watched police enquiries in important cases, had the prisoners in those cases tried by my subordinates, heard and disposed of the appeals of some of those very prisoners, and superintended their labour in prisons. And during all these years I have held the opinion that a separation of Judicial and Executive functions would make our duties less embarrassing, and more consistent with our ideas of judicial fairness; that it would improve both Judicial work and Executive work; and that it would require no material addition to the cost of administration.

Bengal is divided into nine Divisions, viz.: 1. Presidency. 2. Bardwan. 3. Rajshahi. 4. Dacca. 5. Chittagong. 6. Orissa. 7. Patna. 8. Bhagalpur. 9. Chutia-Nagpur. I think it is not feasible, nor desirable perhaps for the present, to effect a separation of Judicial and Executive functions in the Division of Chutia-Nagpur, which consists of Non-Regulation Districts. It is also, perhaps, undesirable to effect such separation in the Districts of Darjiling and Jalpaiguri in Rajshahi Division; in the Hill Tracts of Chittagong Division; and in the Santal Parganas of Bhagalpur Division. In the remaining portions of the Province it is possible to effect the separation at once.

The population of Bengal (excluding Tributary States and the States of the Maharajas of Kuch Behar, Sikkim, Tipperah), is, according to the census of 1891, *seventy-one millions* in round numbers. The population of the districts alluded to in the last paragraph, in which

a separation of Judicial and Executive functions is for the present impracticable, is *seven millions* in round numbers. In the remaining portions of Bengal, having a population of *sixty-four millions*, it is possible to effect the desired separation at once.

Generally speaking, there are two senior Covenanted officers in every Regulation District in Bengal, viz., a District Judge and a District Magistrate. The District Judge is the head of all subordinate judicial officers who dispose of civil cases, and he also tries such important criminal cases as are committed to the Sessions. The work of the District Magistrate is more varied, as has been indicated above. He is the head of the police, supervises prisons, collects revenue and taxes, sells opium and settles liquor-shops, constructs roads and bridges, regulates primary education, and combines with these and other Executive duties the functions and powers of the head Magistrate of his district.

My scheme is simple. The District Magistrate, whom I will henceforth call the District Officer, should be employed purely on executive and revenue work, which is sufficiently varied, onerous, and engrossing, and should be relieved of his judicial duties, which should be transferred to the District Judge. The subordinates of the District Officer, who will continue to perform revenue and executive work only, will remain under him; while those of his present subordinates who will be employed on purely judicial work should be subordinate to the Judge and not to the District Officer.

At present the subordinates of the District officer

combine executive and revenue and judicial work. A Joint-Magistrate or Assistant-Magistrate (subordinate to the District Officer) tries criminal cases, and also does revenue and executive work. A Deputy-Magistrate (similarly subordinate to the District Officer) also tries criminal cases and does revenue and executive work. This arrangement must be changed.

I will first take the case of Joint-Magistrates and Assistant-Magistrates, who are Covenanted officers. Young civilians, as soon as they arrive in Bengal, are posted as Assistant-Magistrates; they try criminal cases and also help the District Officer in his revenue and executive work. After they have had some experience in their work and learnt something of the people, and after they have passed two examinations in Indian law and accounts, and the languages of the Province, they are promoted to be Joint-Magistrates. And the Joint-Magistrate tries all the more important criminal cases, and performs much of the important criminal work of the district. And in course of time he becomes a District Officer or a District Judge.

Referring to the Bengal Civil List for April, 1893, which is the last number that is available to me in London now, I find that the present number of Joint-Magistrates and officiating Joint-Magistrates in Bengal (excluding those acting in higher capacities, or on special duty) is only twenty-two. And the number of Assistant-Magistrates, after such exclusion, is also twenty-two. As there are over forty districts in Bengal it is clear that on the average each District Officer has only one Covenanted

Assistant (Joint or Assistant-Magistrate) and no more. In some districts there are more than one, in smaller districts there are none.

I propose that the Assistant-Magistrates should be employed purely on revenue, executive and police work, and should be subordinate to the District Officer. And when the Assistant-Magistrates are promoted to be Joint-Magistrates, they should be employed purely on judicial work, and be subordinate to the District Judge.

This proposal will not only secure the separation of functions contemplated, but will secure two other distinctly beneficial results. In the first place, young civilians fresh from England, and wholly unacquainted with the manners and habits, and even the colloquial language, of the people of India, will be stopped from trying criminal cases until they have acquired some local knowledge and experience by doing revenue and general executive work, and watching police cases and police administration. And in the second place, such young civilians will receive a more systematic and less confused training in their duties by devoting their attention during the first two or three years to purely executive and revenue and police work, and then employing themselves for some years on purely judicial work.

I next come to the Deputy-Magistrates, who are uncovenanted officers, and generally natives of India. They also combine judicial, executive, and revenue work, and are subordinate to the District Officer. The Civil List gives their number as 305 in all; but excluding those on leave, or employed on special duty, or in sub-

divisions (of which I will speak later on), there are, on an average, only four Deputy-Magistrates in the head-quarters of each district to help the District Officer. In small districts there are, perhaps, only two; in specially large districts there are as many as six.

I propose that in each district one-half of the Deputy Magistrates may be employed on purely executive and revenue work, and be placed under the District Officer, and that the other half be employed on purely judicial work, and placed under the District Judge. In some districts, where the revenue work is particularly heavy, probably more than half the Deputy-Magistrates may be placed under the District Officer. And in other districts, where the criminal work is more important, the Judge may require more than half the Deputy-Magistrates. These details can be very easly settled. But in the main it is clear and self-evident that the officers who are able to cope with revenue and criminal work which is heaped on them in a confused manner will be able to cope with it better under the system of division of labour proposed above.

The results of the proposals made above will be these. The District Officer will still be the head executive officer, the head revenue officer, and the head police officer of his district. He will collect revenue and taxes, and perform all the work connected with revenue administration with the help of his assistants and deputies. He will continue to perform all executive work, and will be armed with the necessary powers. He will watch and direct police investigations, and will be

virtually the prosecutor in criminal cases. But he will cease to try, or to have tried by his subordinates, criminal cases, in respect of which he is the police officer and the prosecutor.

On the other hand, the District Judge will, in addition to his present duties, supervise the work of Joint-Magistrates and Deputy-Magistrates employed on purely judicial work. This work of supervision will be better and more impartially done by trained judicial officers than by over-worked executive officers, who are also virtually prosecutors. And the evil which arises from the combination of the functions of the prosecutor and the judge—of which we have had some striking illustrations of late—will cease to exist when the prosecutor is no longer the judge.

The transfer of all judicial work to the District Judge will give him some additional work; but he will easily cope with it with the additional officers who will be placed under him under the proposed scheme. In important and heavy districts the Judge will have a Joint-Magistrate under him, and the Joint-Magistrate may in exceptional cases be vested with the powers of an Assistant-Sessions Judge to relieve the District Judge of his sessions work. In districts where there are no Joint-Magistrates, a senior and selected Deputy-Magistrate can do the Joint-Magistrate's work, and efficiently help the Judge in his duty of supervision of criminal work. With regard to criminal appeals, the District Judge now hears all of them from sentences passed by first-class magistrates. The few appeals from second

and third-class magistrates which the District Officer now hears may also be heard by the Judge, and the addition will scarcely be felt. In exceptionlly heavy districts, like Maimansingh and Midnapur, criminal appeals did not take more than three hours of my time in a week. A trained Judicial Officer, like the District Judge, would do it in less time, and if he required help in this matter also, his subordinate Joint-Magistrate or a selected Deputy-Magistrate might be empowered to hear petty appeals.

It only remains to deal with what are called sub-districts or sub-divisions in Bengal. The Bengal districts are generally extensive in area; and, while the central portions are managed and administered from headquarters it is found convenient to form the outlying portions into separate sub-districts or sub-divisions, and to place them in charge of Sub-Divisional Officers. Such Sub-Divisional Officers (generally Deputy-Magistrates, sometimes Assistant or Joint-Magistrates) are also completely subordinate to the District Officer, like the assistants at headquarters.

In Bengal (excluding the backward districts in which the introduction of the proposed scheme is at present impracticable) there are seventy-five sub-divisions. There is only one Sub-Divisional Officer in each sub-division, and he performs revenue and executive and judicial work in his sub-division as his superior, the District Officer, does for the whole district. The question arises, how the scheme of separation can be introduced in these seventy-five sub-divisions.

There is a class of officers, called Sub-Deputy Collectors, who are generally employed on revenue work, but sometimes perform judicial work and try criminal cases. Some of them are employed at headquarters, while others are sent to important Sub-Divisions to help Sub-Divisional Officers. For many years past the work in Sub Divisions has been increasing, and the demand for a Sub-Deputy Collector in every Sub-Division in Bengal has been growing also. It has been urged that Sub-Divisional Officers who are mainly employed on judicial work cannot find time to perform their revenue work without help. It has also been urged, with great force, that during the absence of Sub-Divisional Officers on their annual tours Sub-Divisional treasuries have to be closed, much to the inconvenience of the Postal Department, the Civil Justice Department, and all Government Departments, as well as the public. To remove all this inconvenience, and to give the necessary help to Sub-Divisional Officers, it has been urged that a Sub-Deputy Collector should be placed in every sub-division. This should now be done.

The present number of Sub-Deputy Collectors (excluding those who are acting in higher capacities) is 97. Allowing for officers on leave, there will still be 75 officers always available for employment in the 75 sub-divisions. And when a Sub-Deputy Collector is thus posted in each sub-division, he can be entrusted with the revenue work of the sub-division, and be subordinate to the District Officer, while the Sub-Divisional Officer will be subordinate to the District Judge.

I make this proposal after a careful consideration of

the nature of the revenue work which has to be done in sub-divisions. All important revenue work connected with Land Revenue, Cesses, Income Tax, Certificates, etc., is transacted in the headquarters of the district and the revenue work of sub-divisions is light and easy. Similarly, the work of control and supervision of the Police Department is done at headquarters, and the Sub-Deputy Collector will have little to do in this line. The treasury work in sub-divisions is light, and is now often done by Sub-Deputy Collectors. On the whole, therefore, I am satisfied that a Sub-Deputy Collector will, under the instructions of the District Officer, be quite competent to manage the revenue and other work of sub-divisions, when the judicial functions have been separated and made over to the Sub-Divisional Officer.

There is only one objection which can be reasonably urged against this scheme. Many Sub-Deputy Collectors are now employed at the headquarters of districts, sometimes on important work, and to take them all away for sub-divisions may be impracticable. Some District Officers may reasonably urge that they require Sub-Deputy Collectors at the district headquarters also, and, where this is satisfactorily shown, the requisition should be complied with. It may be necessary, therefore, to appoint twenty or thirty additional Sub-Deputy Collectors, and this is the only increase to the cost of administration which appears to me necessary for effecting a complete separation between Judicial and Executive functions in Bengal.

Even this additional cost may be met by savings in

other departments. Special Deputy Collectors and Sub-Deputy Collectors are employed on excise work, and their special services are wholly unnecessary in this department. It has always appeared to me, and to many others, that the services of such trained and well-qualified officers are wasted in performing work which does not require officers of their rank. If these officers were withdrawn from the Excise Department, and if the work of that department were included in the general work of the district, as was the case some years ago, it would probably be unnecessary to appoint additional Sub-Deputy Collectors, as recommended in the last paragraph.

The scheme which has been briefly set forth in the preceding paragraphs is a practicable one, and can be introduced under the present circumstances of Bengal, excluding the backward tracts. I have worked both as Sub-Divisional Officer and as District Officer in many of the districts in Bengal, and I would undertake to introduce the scheme in any Bengal District, and to work it on the lines indicated above.

I have only to add that if the scheme set forth above—with such modifications in details as may be deemed necessary after a careful consideration of it by the Government—be introduced, it will be necessary to recast the Code of Criminal Procedure so as to relieve the District Officer and his subordinates of judicial powers in criminal cases, and to vest them in the District Judge and his subordinates. The police work, the revenue work, and the general executive work can then be performed by the District Officer with greater care and

satisfaction to himself, and also to the greater satisfaction of the people in whose interest he administers the District.

Mr. Romesh Dutt wrote in INDIA for October, 1893:—

My paper on this subject appeared in the August number of INDIA. The paper has been carefully read by many gentlemen interested in questions of Indian administration, and capable of forming a proper judgment on such questions. Their opinions will help the public in forming a correct opinion on this very important subject.

The Right Hon. Sir Richard Garth, Q.C., Late Chief Justice of Bengal, has given my views his qualified support from a judicial point of view. As his remarks have already appeared in the August number of INDIA it is unnecessary for me to do more than quote one or two sentences only.

"So far," he says, "as I am capable myself of forming an opinion upon his scheme, I entirely approve of it. It seems to me the most natural and obvious means of separating the two great divisions of labour, the executive and the judicial. . . . It seems only in accordance with reason that magistrates who are employed upon executive work should be under the chief executive officer of each district, and that those who are employed in judicial work should be under the chief judicial officer."

These remarks are important, as there is no higher authority on judicial questions concerning Bengal than the late Chief Justice of that province.

In the same way there is no Englishman living who

can speak with higher authority on executive and administrative questions concerning Bengal than Mr. Reynolds, late Secretary to the Government of Bengal He passed his official life in that province, and rose from the lowest appointments in the Civil Service of Bengal to one of the highest. He held charge of some of the most extensive and important districts in Bengal, and performed those combined judicial and executive duties which a district officer in Bengal has to perform. He rose to be Secretary to the Bengal Government, and in that capacity presided over the executive administration of the province His opinion, therefore, has a unique value and importance.

Mr. Reynolds has suggested one modification to my scheme, and subject to that modification has entirely approved of it. I proposed to contrast sub-deputy collectors with the revenue and executive work of Bengal sub-divisons. Mr. Reynolds thinks that in the more important sub-divisions a deputy collector, and not a sub-deputy collector, should be entrusted with these duties. A suggestion coming from such an authority is entitled to respect, and I accept it in its entirety. Let deputy collectors be employed in the more important sub-divisions to do the revenue and executive work and sub-deputy collectors in the lighter sub-divisions This modification will require the appointment of twenty or thirty additional deputy collectors, instead of as many sub-deputy collectors, whose appointment I proposed. Thus modified my scheme has Mr. Reynolds' entire support and approval.

My scheme has been read and approved by other gentlemen, who are still in the Civil Service of Bengal. One of them made to me, independently of Mr. Reynolds, the same suggestion which Mr. Reynolds has made. One the whole, therefore, I believe, I am justified in stating that my scheme suggests a practicable way of separating the executive and judicial services in Bengal, without materially adding to the cost of administration.

I have purposely refrained from saying anything on the subject of the existing rules of promotion in the Civil Service. Whether these rules will require modification in some respects after the judicial and executive services have been separated is a matter on which the opinion of the Government of Bengal must be final and conclusive. When I joined the Service in 1871 members of the Service were promoted from the rank of joint magistrates to be district officers, and from the rank of district officers to the posts of district judges. It may be considered desirable and necessary to revert to this old rule of promotion after the district officers have been relieved of their judicial duties. It may be also considered desirable to rule that an assistant magistrate will be entitled to rise to the rank and the judicial powers of a joint magistrate only after he has served as assistant for a certain number of years. Such a rule will ensure some degree of experience and local knowledge in judicial officers, and will also prevent frequent reversions from the post of a joint magistrate to that of assistant. These, however, are matters which can be best considered and decided by the Government

of Bengal when the separation of the judicial and executive services has been decided upon. The Bengal Government will find no difficulty in shaping the rules of promotion in the Civil Service according to the exigencies of a just and proper system of administration.

With regard to the details of the administrative arrangements given in my previous paper, no modification except that of Mr. Reynolds has been suggested to me by my friends competent to form a judgment on the object. I have no doubt that the scheme as modified and supported by the late Secretary to the Government of Bengal will receive the consideration which it deserves from the authorities, both in India and in England.

XVIII. LIMITATION OF THE LAND TAX.

[Memorial submitted to the Secretary of State for India on December, 20, 1900.]

My Lord,

In view of the terrible famines with which India has been lately afflicted, we, the undersigned, who have spent many years of our lives among the people, and still take a deep interest in their welfare, beg to offer the following suggestions to your Lordship in Council, in the hope that the Land Revenue administration may be everywhere placed on such a sound and equitable basis as to secure to the cultivators of the soil a sufficient margin of profit to enable them better to withstand the pressure of future famines.

2.—We are well aware that the primary cause of famines is the failure of rain, and that the protection of large tracts of country by the extension of irrigation from sources that seldom or never fail has been steadily kept in view and acted on by the Government for many years past; but the bulk of the country is dependent on direct rainfall, and the pinch of famine is most severely felt in the uplands, where the crops fail simply for want of rain. The only hope for the cultivators throughout the greater part of India is therefore that they should be put in such a position as to enable them to tide over an occasional bad season.

3.—To place the cultivators in such a position, we consider it essential that the share taken as the Government demand on the land should be strictly limited in every Province. We fully agree with the views of Lord Salisbury, when Secretary of State for India, as set out in his Minute of April 26th, 1875 :—

"So far as it is possible to change the Indian fiscal system, it is desirable that the cultivator should pay a smaller proportion of the whole national charge. It is not in itself a thrifty policy to draw the mass of revenue from the rural districts, where capital is scarce, sparing the towns, where it is often redundant, and runs to waste and luxury. The injury is exaggerated in the case of India, where so much of the revenue is exported without a direct equivalent."

4.—Without going into tedious detail, we consider it very advisable that, in those parts of the country in which the Land Tax is not permanently settled, the following principles should be uniformly adhered to :—

(*a*) Where the Land Revenue is paid directly by the cultivators, as in most parts of Madras and Bombay, the Government demand should be limited to 50 per cent. of the value of the nett produce, after a liberal deduction for cultivation expenses has been made, and should not ordinarily exceed one-fifth of the gross produce, even in those parts of the country where, in theory, one-half of the nett, is assumed to approximate to one-third of the gross produce.

(*b*) Where the Land Revenue is paid by landlords, the principle adopted in the Saharanpur Rules of 1855,

whereby the Revenue demand is limited to one-half of the actual rent or assets of such landlords, should be universally applied.

(*c*) That no revision of the Land Tax of any Province or part thereof should be made within thirty years of the expiration of any former revision.

(*d*) That when such revision is made in any of those parts of India where the Land Revenue is paid by the cultivators direct to the Government, there should be no increase in the assessment except in cases where the land has increased in value (1) in consequence of improvements in irrigation works carried out at the expense of the Government, or (2) on account of a rise in the value of produce, based on the average prices of the thirty years next preceding such revision.

5.—Lastly, we recommend that a limit be fixed in each Province beyond which it may not be permissible to surcharge the Land Tax with local cesses. We are of opinion that the Bengal rate of $6\frac{1}{4}$ per cent. is a fair one, and that in no case should the rate exceed 10 per cent.

We have the honour to be,

My Lord,

Your obedient Servants,

(Signed)

R. K. PUCKLE,

Late Director of Revenue Settlement, and Member of the Board of Revenue, Madras.

(Signed)

J. H. GARSTIN,
Late Member of Council, Madras.

J. B. PENNINGTON,
Late Collector of Tanjore, Madras.

H. J. REYNOLDS,
Late Revenue Secretary to the Government of Bengal, and late Member of the Legislative Council of the Governor General of India

RICHARD GARTH,
Late Chief Justice of Bengal.

ROMESH C. DUTT,
Late Offg. Commissioner of Orissa Division in Bengal, and Member of the Bengal Legislative Council.

C. J. O'DONNELL,
Late Commissioner of the Bhagalpur and Rajshahi Divisions, in Bengal

A. ROGERS,
Late Settlement Officer and Member of Council in Bombay.

W. WEDDERBURN,
Late Acting Chief Secretary to the Government of Bombay.

JOHN JARDINE,
Late Judge of the High Court of Bombay.

J. P. GOODRIDGE,
Late B.C.S., and formerly Offg. Settlement Commissioner, C.P.

NOTE ON CLAUSE (*a*).

Clause (*a*) in para 4 of the above Memorial, recommending the adoption of one-fifth the produce as the maximum of the Land Tax when realized from cultivators direct, is based on a similar rule made for Bengal in 1883. Mr. Romesh Dutt addressed the following remarks on this point to the Famine Commission of 1900, in his letter dated February, 28, 1901.

"4. My recommendation ** runs thus: 'Where the state receives land revenue direct from cultivators, we ask that the rate may not exceed one-fifth the gross produce of the soil in any case, and that the average of a District, including dry lands and wet lands, be limited to one-tenth the gross produce, which is approximately the revenue in Northern India.' The first portion of this recommendation is based on a rule which was proposed for Bengal in the Resolution of the Bengal Government dated 6th August 1883. It was proposed in that Resolution that one-fifth of the gross produce should be the maximum of rent which should not be exceeded in any single case. The proposal was not embodied in the Bengal Tenancy Act of 1885, because, I believe, it was found that rents, when paid in money, seldom exceeded this proposed maximum, and often fell far short of it. In contrast to this state of things, I may be permitted to point out that in Madras the rule recognized by the Board of Revenue and the Government is that the revenue paid by cultivators should not exceed one-third the gross produce. I venture to point out that this is inequitable and unfair. Madras is not a richer or a more

fertile province than Bengal, and the limit of the Government demand [the Land Tax] in Madras should not be higher than the limit [of the Rent] which was proposed for private landlords in Bengal.* In Bombay, too, the revenue paid by many cultivators, whose cases came to my own notice during an enquiry I made in March 1900, ranges between 20 and 33 per cent. of the gross produce. I am not speaking here of District averages, but of individual cases only, and I feel certain that the Famine Commission will think it desirable to protect every individual tenant in Bombay and in Madras, as it was proposed to protect every individual tenant in Bengal in 1883. Provincial or District averages, which are so often put forward by official witnesses, afford no adequate protection to individual tenants. The only rule which applies to each individual case, so far as I am aware, is the Madras rule of one-third the produce, which is unfair to the tenants. And I earnestly appeal, therefore, to the Famine Commission to recommend the framing of a more equitable rule, which will afford adequate protection to all individual cases, and to every particular tenant, in Districts and Provinces where the Land Revenue is paid by the tenants.

"5. The second part of my recommendation quoted in the preceding paragraph relates to District averages or Provincial averages. I crave permission to point out that the figures representing these averages can never

* Sir Charles Wood, Secretary of state for India, laid down in his Despatch of 1864 that the Land Tax should be *one-half* the Rent. But it will be seen from what is stated above that the maximum Land Tax claimed by the Government in Madras is nearly *double* of the maximum Rent fixed for private Zemindars in Bengal in 1883.

be accurate, because the actual produce from year to year is never correctly ascertained. To take one remarkable instance, the Famine Commission of 1878, in Volume II, page 112 of their Report, represented the land revenue of Madras as 6 3 per cent. of the gross produce of the Province. But the evidence of the Madras Board of Revenue, quoted in Appendix III, page 394 of the same Report, shews that the real proportion of the Land Revenue to the gross produce in 10 Districts which had been settled was between 12 and 20 per cent. for dry lands, and between 17 and 31 per cent. for wet lands. The reason of this mistake made by the Famine Commission of 1878 in their estimate is obvious. Such estimates are based on the area of land under cultivation, and on the crops they are *likely* to yield, and can never be based on a calculation of the *actual* yield in every individual field in a large District or Province. Patwaris and Patels, who are sometimes employed in estimating the yield, exaggerate the capabilities of soils and villages, and villagers are allowed no chance of proving in a Court of Justice that these estimates are wrong. And thus it happens that when the revenue demand is believed to be only 5 or 6 or 12 per cent. of the gross produce of a District, in reality it bears a much higher proportion to the crops actually reaped by the cultivators from year to year. District averages and Provincial averages are therefore unsafe guides, and do not represent actual facts; and I therefore once more appeal to the Commission to recommend the adoption of a maximum limit to which every individual

tenant could appeal in each particular case for protection against over-assessment of the Land Tax."

Note on Clause (*b*).

Clause (*b*) in para 4 of the Memorial, recommending adherence to the Half-Rental Rule, when the Land Tax is realized from landlords, is based on the Saharanpur Rules of 1855. Mr. Romesh Dutt pointed out in his letter to the Government of India, dated November, 20, 1900, Paras 8 to 13, quoted below, how these Rules were departed from in the Central Provinces of India.

"8. A most serious question is dealt with in your letter when you touch upon the right interpretation of the Half-assets Rule. It is stated that, for the purposes of this rule, "the meaning attached in 1860 to the assets or rental valuation of an estate was not the actually existing rental, but the prospective or potential figure which might hereafter be reached after rents had risen in process of time, and the waste had been brought under cultivation." Permit me to state that this was not the original meaning of the Half-assets Rule when it was framed in 1855; that this was not the meaning of the rule when it was extended to eight Districts of the Central Provinces in the same year; that the Supreme Government never sanctioned such an interpretation of the rule for the purposes of the General Settlement commenced in 1863; and that Mr. Mackenzie, the Chief Commissioner of the Central Provinces, did not approve of such an interpretation of the rule when he addressd the Supreme Government, in view of the Revisional

Settlement of 1893. I am convinced, therefore, that the Government of India will not lend their sanction to an untrue interpretation of a plain and unmistakable rule.

"9. Lord Dalhousie's Government first promulgated the Half-assets Rule in 1855 in the body of rules known as the Saharanpur Rules. Rule xxxvi runs thus:

'The assets of an estate can seldom be minutely ascertained, but more certain information as to the *average net assets* can be obtained now than was formerly the case. This may lead to over-assessment, for there is little doubt that two-thirds, or 66 per cent., is a larger proportion of the *real average assets* than can ordinarily be paid by proprietors, or communities in a long course of years. For this reason the Government have determined so far to modify the rule laid down in para. 52 of the Directions to Settlement Officers, as to limit the demand of the State to 50 per cent., or one-half of the *average net assets*. By this, it is not meant that the juma of each estate is to be fixed at one-half of the *net average assets*, but in taking these assets, with other data into consideration, the Collector will bear in mind that about one-half, and not two-thirds, as heretofore, of the *well-ascertained net-assets*, should be the Government Demand. The Collectors should observe the cautions given in paragraphs 47 to 52 of the treatise quoted, and not waste time in minute and probably fruitless attempts to ascertain exactly the *average net assets* of the estates under Settlement.

The italics are mine. There is not a word in this of the "prospective or potential figure which might here-

after be reached after rents had risen." The words used are "average net assets," "real average assets," "well-ascertained net assets," and so forth. The real meaning of these words does not admit of a shadow of doubt. The Government of Lord Dalhousie meant the actual current assets of an estate, not the prospective and potential figure which might be reached hereafter.

"10. This Rule was extended to eight Districts of the Central Provinces by an Order of N. W. P. Board of Revenue, No. 74, dated the 16th February 1855, and there is nothing in this Order justifying the application of the Rule to the "prospective and potential" assets of an estate.

"11. It appears from Mr. Mackenzie's letter to the Government of India, No. 501-S, dated Nagpur, the 18th May, 1887, that the Settlement Officers of the Central Provinces violated this rule with their eyes open during the Settlement of 1863, and subsequent years. Mr. J. B. Fuller, Secretary to Mr. Mackenzie, wrote thus in para. 4 of the letter cited above :—

'Under the method of assessment which was then followed, it was, however, practically impossible for an officer in any part of the Province who saw that an enhancement of revenue was justifiable, and sought to secure this, to give full effect to a rule restricting the Government revenue to a definite share of the assets, unless the term 'assets' received a very loose and general interpretation. The 'assets' or rental value of each Mahal was in fact determined by the comparison of a number of statistical inferences, the principal of which

was that obtained by the application of soil rates to the areas under different soils in a village, which yielded the 'soil rate rental.' Whether this rental corresponded in any way with the real rental of the Mahal depended on the extent to which rents rose in the proceedings taken for rent adjustment after the assessment was given out.'

It will appear from the above extract that the Half-assets Rule, extended to some Districts of the Central Provinces in 1855, was violated in the settlement of 1863 by Settlement Officers "who saw that an enhancement of revenue was justifiable, and sought to secure this." The violation was effected by giving to the word "assets," not the interpretation intended by Lord Dalhousie's Government, but an untrue interpretation, viz., the potential rental of the estates.

"12. When the time approached for the Revisional Settlement of 1893, Mr. Mackenzie, Chief Commissioner of the Central Provinces, did not desire to attach to the Half-assets Rule the untrue interpretation which had been given to it once before, and therefore desired to do away with the rule altogether. In his letter No. 5015, dated 18th May, 1887, already referred to, Mr. J. B. Fuller, Secretary to Mr. Mackenzie wrote thus in paragraphs 10 and 11 :—

'It must, moreover, be realised that the system of settlement to which the Government has now by law committed itself will render it impossible *to evade the operation of the Half-assets Rule in the manner followed at the last settlement.* It will no longer be practicable

to adopt for the application of the Half-assets Rule a rental value which is in excess of the actual adjusted rental. *.* Mr. Mackenzie considers therefore, even in the interests of the people, that it would be safer to abrogate the Half-assets Rule altogether, *than to attempt to evade it by the calculation of hypothetical assets.*'

The italics are mine. It will appear from this extract that Mr. Mackenzie regarded the practice of 1863 an evasion of the Government Rule; that he considered such an evasion impossible in 1893 after the rents had been fixed by law; and that he desired the Rule to be abrogated. The Government of India accordingly abrogated, in 1888, the benevolent Rule which had been extended to the Central Provinces in 1855. And the letter of the Government of India, dated the 31st May 1888, to the Chief Commissioner of the Central Provinces ends thus :—

'In respect to your proposal to vary the assessment between 50 and 65 per cent. of the assets, I am instructed to inform you that the Government of India has some hesitation in allowing in any case so high a percentage as 65 to be taken, and would at least prefer that this maximum be restricted to those cases in which the former percentage was not at any rate below that fraction, and that in other estates 60 per cent. be taken as the highest admissible percentage. With this restriction your proposals are, I am to say, approved.'

"13. I have, in the preceding five paragraphs, briefly sketched the history of the Half-assets Rule in the Central Provinces from 1855 to 1888. And it will appear from

this brief sketch that the real meaning of "assets" was never recognized to be "prospective or potential" rents; that the rule was "evaded" by Settlement Officers in 1863 by an untrue interpretation of the word "assets"; that such interpretation never recieved the approval of the Government of India; and that the Chief Commissioner of the Central Provinces declined in 1887 to accept the interpretation which was given to the rule in 1863. I venture to hope that on a full consideration of all the facts of the case, the Government of Lord Curzon will not sanction an untrue interpretation of a rule the original and true meaning of which is unmistakable. It is an unwise policy to demand a share of "prospective and potential" rents, because such a policy is a direct incitement to landlords to screw up their rents from their tenants. If they succeed in doing this without there being a corresponding increase in the prices, it is an act of injustice and cruelty to the tenants. And if they fail in doing this, the State demand is an injustice and harshness towards them."

NOTE ON CLAUSE (*c*).

Clause (*c*) in para 4 of the Memorial, recommending settlements being made for not less than 30 years, is based on the general rule and practice which has been followed by the Indian Government in most Provinces in India since 1833. Mr. Romesh Dutt pointed out in his letter to the Government of India, dated November, 20, 1900, Paras 17 to 19 quoted below, how this rule has been departed from in the Central Provinces of India.

"7 In your concluding paragraph you state the reasons which have induced His Excellency the Governor-General in Council to approve of a settlement for 20 years in preference to one for 30 years I may be permitted to point out that this new policy is a departure from the generally accepted policy of the last 70 years. There is an immense amount of literature on the subject of long settlements which must be known to the Government, and I think it unnecessary to prolong this letter by narrating the history of the Thirty years Rule. It was considered desirable to save landlords and cultivators alike from frequent harassments, incident to settlement operations, by making a settlement only once during the life time of a generation. It was considered desirable to afford to landlords and cultivators alike time and opportunities and motives to make improvements and to enjoy the fruits of their improvements It was sought to foster the accumulation of some wealth in the hands of the landed and agricultural classes, and to promote the growth of an enterprising middle class interested in the soil of the country And it was sought to foster the general prosperity of the people of India, largely dependent on agricultural industry, by giving them long leases. These and similar motives induced the Government of Lord William Bentinck to accept the principle of 30 years' settlement as far back as 1833, and ever since that time, settlements have been made for thirty years in Northern India. In Bombay, too, the same healthy rule has been followed since 1837; and in Madras the general rule, I believe, is

to make settlements for thirty years. In Orissa three-fourths of which are not permanently settled, the same rule of 30 years has been adhered to, and indeed was relaxed on the occasion of a great famine. The settlement of 1836 ended in 1866, but on account of the great famine of this last year the Government of Lord Lawrence, with a benevolent desire to save the people from harassment, decided to continue the old settlement for another thirty years. A revision of the settlement therefore took place in 1896 under my supervision when I was acting as Commissioner of that Division ; and the Settlement Officer with a praise-worthy and a considerate regard for the condition of the people of that backward division, scarcely raised the existing rents in making the new settlement. It will not be contended that the Central Provinces are, after the famines of 1897 and 1900, in a better condition now than Northern India was in 1833, than Bombay was in 1837, than Madras was when the settlement operations began in 1855, or than Orissa was in 1836 ; and the same reasons which made for the policy of long leases in the earlier day of British Rule in India exist in their full force at the present day, and indeed have acquired additional force in these years of frequent famines. It would be an act of political wisdom, as well as of humanity and kindness, to let the people of India *see* and *feel* from the measures of the Government, that British administrators have no desire to recede from their generous policy of previous times ; that they have no desire to abrogate or explain away the Half-assets Rule ; that they have no intention to modify the Thirty years'

Rule, that they have no wish to impose on the produce of the soil fresh burdens in the shape of cesses, for objects not connected with the improvement of the soil.

"18. Permit me to conclude this letter with a word of apology for the length to which it has run. I desired to state all that I have said because there is a feeling of alarm and of consternation among my countrymen in view of the recent land-settlement policy of the Indian Government. I myself think the Government of India is as anxious in the present day to promote the material welfare of the people as it ever was within this century. I myself believe, that every high officer under the Government, every Member of the Viceroy's Executive Council, is deeply anxious to secure the general prosperity of the people. But what does not seem to be adequately realised is that land revenue settlements in India have a more direct bearing on the material codition of the people and affect the lives and fortunes of the agricultural people of India more intimately, than any other act of the Government. It is not adequately realised that there is a direct relation of cause and effect between the revenue settlements and the condition of the agricultural people; that the continuance of the Half-assets Rule and of the Thirty years' Rule contributes directly to the material welfare of the people; that every increase in the State demand and in the frequency of settlements necessarily makes the agricultural people more resourceless and more impoverished. These are truths which we have no representatives to lay before the Viceroy's Excutive

Council. Every Member of the Council feels for the people, but every Member, as the head of a particular "spending department," * necessarily has his attention absorbed in the task of obtaining a sufficient grant for the efficient working of his department. If an Indian gentleman, sufficiently familiar with the landed classes and the cultivators, like the Hon'ble. Sir Harnam Singh or the Hon'ble. the Maharaja of Darbhanga, had been a Land Revenue Member in the Governor-General's Council, it would have been his duty, as it would have been his privilege, to press the claims of the agricultural people before the Council, and to obtain, if not redress in every case, at least a fair hearing, before new departures from old rules were sactioned. It is our misfortune that we have in the Executive Council none to represent the interests of the agricultural people, none to urge them, none to defend them. And the sympathy of the Government for the agricultural people of India, deep and sincere as it must be, is absolutely fruitless, unless it translates itself into more liberal rules in the Land Revenue and Settlement Departments.

* *Vide* Sir Auckland Colvin's evidence before the Royal Commission on Indian Expenditure.

"19 I have not troubled you with any desire to continue an idle discussion, or to support my previous propositions. My sincere and only desire in all the steps that I have taken within the last twelve months has been to obtain from the Government of India a more lenient treatment of all classes in India connected with the land—tenants and landlords alike,—and in this

endeavour, I trust and hope, I shall not be disappointed. I have not asked for any fresh concessions or any new privileges, but have asked that the old rules may be maintained and kept inviolate. I have asked that the Thirty years' Rule, acted on in most parts of India since the time of Lord William Bentinck, may be adhered to in the Central Provinces, which to-day is about the most distressed and impoverished tract of country in Her Majesty's dominions. I have asked that the cesses imposed on the rental be limited to 6¼ per cent. as in Bengal, and confined to objects directly concerned with the improvement of agriculture. I have asked that the Half-Assets Rule, sanctioned by the Government of Lord Dalhousie, and not departed from by the Government of Lord Canning, may be adhered to for the good of the people And in one word, I have asked that the Government of Lord Curzon may be as generous to the people, in the practical working of land revenue settlements, as the former Governments of Lords Bentinck, Dalhousie, and Canning."

Note on Clause, (*d*).

Clause (*d*) in para 4 of the Memorial is based on a rule which the Marquis of Ripon, then Viceroy of India, framed in 1882. It was accepted by the Madras Government, and remained virtually in operation till the close of Lord Ripon's administration. Lord Ripon retired from India at the close of 1884, and the Secretary of State for India then cancelled this salutary rule in January 1885. The following extract from Mr. Romesh

Dutt's *Open Letter to Lord Curzon*, dated 20th February 1900, indicates the history and the purport of the rule :

"Lord Mayo was of opinion that when the quality of soil and the quantity of produce were once determined, there should be no further alterations in the assessments except on the ground of fluctuations in prices. Lord Northbrook was also in favor of a self-regulating system of assessments, and was against the system of repeating valuations at each fresh settlement. The great famine of 1877 occurred under Lord Lytton's administration, and is estimated to have carried off five millions of the impoverished population of the Madras Presidency. This calamity hastened a solution of the problem, and Lord Ripon, who succeeded Lord Lytton, proceeded on the lines laid down by his predecessors. In his despatch of the 17th October 1882, Lord Ripon laid down the principle that in Districts which had once been surveyed and assessed by the settlement Department, assessments should undergo no further revision except on the sole ground of a rise in prices. This decision was accepted by the Madras Government in 1883. And while it restored to the cultivators something of their old right to a perpetual settlement, it conferred on the Government the right to increase the revenue on the reasonable ground of an increase in prices. It was the best compromise which could be effected after the old right had been sacrificed ; it gave the cultivator some security of assessment without which agriculture cannot flourish in any part of the world ; and it did away with those harassing operations, leading to reclassification of soils

and calculation of grain outturns which are felt as the most oppressive features of settlement operations in Madras.

"Unfortunately, after the departure of Lord Ripon from India, his proposal was vetoed by the Secretary of State for India in his despatch of the 8th January 1885. The lessons of the Madras famine of 1877 were to some extent forgotten, the impoverished condition of the peasantry was overlooked, and the proposal to which both the Madras Government and the India Government had agreed, for giving some security of assessments to the Madras cultivators, was disapproved by the authorities in London. For the people of Madras, the despatch of the 8th January 1885 is one of the saddest documents ever issued from London; it reopened the question which had been wisely solved after years of mature deliberation in India; and it has thrown back the Madras cultivators into another era of uncertainty, needless harassment, and unjust enhancements."