should have the power of trying Europeans." This is corroborated by a similar passage in the opinion of Haji Khan Muhammad Shah. From the dates of these native opinions it would seem as if they, or at least some of them, had been invited after the adverse opinions of most of the officials had been received, though, for want of proof, one cannot assert that such was the case. One of those native associations, the Anjuman-i Mufid-i-Am rightly rebukes Sir Charles Aitchison for treating this as a political question between Europeans and natives in the following words :—"Under these circumstances, the opposition shown by Europeans against the Bill is in reality an opposition against Government itself, not against the native subjects of the State." We admit it, and that is the reason why natives have no right to interfere in the matter. Of the four non-official native individuals, and the four non-official native associations consulted, one non-official native individual opposes the passing of the Bill, the other three non-official native individuals and the four non-official native associations recommend the passing of the Bill. In doing so they acted under the influence of a desire to please Sir Charles Aitchison by coinciding with him in the opinion with which he had furnished them, as well as under their desire (being Muhammadans and Seikhs) for any means to be adopted, which would compel the British nation to leave the country so clearly pointed out to be their wish by Mr. J. W. McNabb, the Commissioner and Superintendent of the Umballa Division, in his terse and statesmanlike opinion. The only British Association consulted strongly protested against the passing of the Bill.

Mr. Elliott, finding himself unable to refute the earnest and cogent arguments of the officials and non-officials of his province, had the courtesy and good sense to give in his adhesion to them and to recommend the withdrawal of the Bill. Sir Charles Aitchison, with arrogant self-sufficiency, had not the courtesy to take any notice of the cogent and statesmanlike arguments of the officials of his province, but strikes out, to say the least, a novel line of argument of his own, in which he greatly distinguishes himself as an argumentative mendicant, by continually begging the question. It may, therefore, be instructive to analyse some of his arguments.

In the first paragraph of his opinion he endeavours to cut the ground from under our feet by advancing an argument in favour of proceeding with the Bill, which is ingenious, but not ingenuous. Divested of the glamour with which he surrounds it, by the use of such phrases as violent agitation, important factor, race antipathies, and burning political question, his argument amounts to this : I must first state the facts upon which his argument

is founded. The Government of India, without the slightest previous notice of its intention, introduced into the Supreme Legislative Council a Bill whereby they proposed to deprive the British population of India of rights or privileges which they brought with them from England, and which have been conceded to them by every ruling Indian power since they obtained a footing in the country, as is witnessed by the trial of Gregory Lillington, an Englishman, by his own countrymen, for murder at Surat in February 1616. The non-official British population of India, being unrepresented in the Supreme Legislative Council, opposed the passing of that Bill by means of public meetings, memorials, and articles and letters in English newspapers of the highest tone and respectability, published in India. In that opposition they have been supported by the written opinions of an overwhelming majority of the Indian officials consulted by the Government of India, by many right-thinking natives, and by an overwhelming majority of retired Indian officials, and a daily increasing body of their other countrymen in England. A number of educated and half-educated natives, principally Bengalees, forming an infinitesimal fraction of the native population of India, who as *Anjuman-I Mufid-ı-Am*, a native association, correctly points out, have no concern in the matter, have noisily intervened and published false and scurrilous attacks upon English men and women in a low order of native newspapers, which are neither read nor respected by the bulk of the population. This noisy and scurrilous intervention on the part of an infinitesimal fraction of the native population of India, who are not affected by the Bill, has, Sir Charles Aitchison says, converted a question of privilege between us and the Government into "a burning political question." In so saying, he commits an act of argumentative mendicancy by begging the whole question upon which his argument turns. His argument then, divested of the glamour above mentioned, and of the question which he has begged, amounts to this: Because the British population of India, supported as above mentioned, have unanimously opposed the Bill, and an infinitesimal fraction of the native population have abused the British people, and urged the Government to pass it, therefore it must be passed. I confess I am amazed at a gentleman, like Sir Charles Aitchison, who is an Englishman, and aspires to be considered a statesman, running his own character by advancing such an argument.

With your permission I will resume this subject in my next letter.

BRITANNICUS.

October 8, 1883.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Sir Charles Aitchison does not approve of the Ilbert Bill as it stands. He does not even wholly approve of Section 2, for though he approves of giving native District Magistrates and Sessions Judges criminal jurisdiction over European British subjects, their wives, and daughters, he thinks that "the jury system might, perhaps, be extended to the trial of all important cases affecting British subjects. But," he adds "there are several obivious objections to such a proposal." He does not, however, state what these objections are, and in asserting that there are objections without stating any, he begs the question. He further begs the question in stating that those objections are obivious, unless he means that they are obivious to himself alone. In stating that the jury system *might*, perhaps, be extended to the trial of all important cases affecting European British subjects, he, in fact, states that it might be extended to all cases, for every criminal charge is important to an Englishman, because conviction of even a minor offence injures his character. The only objections to its being made obligatory for every important criminal charge against a European British subject to be tried by the jury would be that it would deprive the native Magistrate and Sessions Judge of the power of deciding upon the evidence, that being the province of the jury, but that would be an advantage on account of the incapacity of natives for the investigation of facts, and of their inability to weigh evidence; or, in fact, to understand what evidence is, so clearly pointed out by the Chief Justice of the Allahabad High Court in the following words :— "There is, however, one peculiarity of the native mind which ought not to be kept out of view, and that is, so far as my experience in these provinces goes, their incapacity for the investigation of facts, irrespective of any consideration whatever but their truth, purely and simply. Nor can they weigh evidence; in fact, they seem to me utterly incapable of understanding what evidence is, and as I remarked lately in a civil suit (first appeal No. 143 of 1880, dated 4th July 1881) where the depositions had been shamefully taken in the subordinate native Court, the logical development of a witness's knowledge of facts is a thing utterly unknown, if it is indeed not impervious to the native mind. In this opinion the learned Chief Justice is supported by his three colleagues, Messrs. Justices Straight, Brodhurst, and Tyrrell. Or the necessity for a jury might deprive the native Magistrate or Judge of the pleasure of hearing the case at all, because it might so happen that, in consequence of there not being a sufficient number of British inhabitants to form the majority of a jury, he might have to send it to another district for trial, the Magistrate

and Judge of which might, to his great vexation, be Britons. If these are the objections to which Sir Charles Aitchison alludes as obvious, we deny that they are objections at all, and we deeply regret, for his own honour, that they are obvious to him.

In the third paragraph of his opinion, he says that there appear to him to be at least three conditions essential to the settlement of the question, the first of which is "That the Legislature shall recognise no disqualification for office on grounds only of race, religion, and colour." In support of this, he, in the fourth paragraph, quotes the Statute 3 and 4 Will. IV. Cap. 85, Sec. 87, which is as follows: "And be it enacted that no native of the said territories, nor any natural born subject of His Majesty, resident therein shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said Company." That the East India Company correctly understood this clause distinctly appears from the Despatch of the Court of Directors, to the Government of India, of December 1834, in which they interpret it to mean "that no subject of the King, whether of Indian, British, or mixed descent, shall be excluded, either from posts usually conferred on our uncovenanted servants in India, or from the covenanted service itself, provided he be otherwise eligible consistently with the rules, and agreeably to the conditions observed and exacted in the one case and in the other." But they were too wise to ruin the natives by giving them writerships in their Covenanted Civil Service. If it were not for this Despatch, the Government of India might plead in excuse for their having excluded Her Majesty's subjects of British and mixed descent from her Uncovenanted Service, and from entrance into the Public Works Department through the Rurki College, that they understood the statute to mean that natives only were to be admitted to office in those departments of the State. Such an excuse would, of course, lay them open to a just charge of crass stupidity, but the Casby-like placidity with which they have received worse charges regarding their conduct with reference to the Ilbert Bill, proves their incapability of being moved by a sense of shame. The Despatch of the Court of Directors, however, precludes the Government of India from imitating Dogberry by making such an excuse, and lays them open to the more heinous charge of having wilfully, and with malice aforethought, grievously injured Her Majesty's subjects in India of British and mixed descent by robbing them of their ability to hold certain offices of State secured to them by the Statute 3 and 4 Will. IV, Cap. 85, Sec. 87, contrary to the spirit and form of the statute in that behalf made and provided. It is passing strange that the advocates of the Ilbert Bill, some of whom are clear-sighted enough in other matters,

are unable to see the incongruity of quoting, as an excuse for any of the acts of the Government of India, a statute which that Government wilfully persists in contravening.

At the beginning of his fourth paragraph, Sir Charles Aitchison deftly makes a giant of straw, and then valiantly slays him. We have no objection to his amusing himself in that way. What we do object to is his amusing himself in that way at our expense. We object to his fathering upon us his ugly giant of straw, and then using it to get up in England the cry against us, that we want to keep "the poor dear natives out of office. We know as well as he does that the disqualification, or more correctly speaking, the disability to which he refers, was formally abolished by 3 and 4 Will. IV, Cap. 85, Sec. 87. We also know that which ignores, namely, that long before that statute was passed, the said disability, as regards natives had ceased to exist, for it had long been the practice to appoint them to honourable office in several departments of the State, so that no enabling statute was needed in their case. It is clear, then, that though, for the sake of uniformity, the statute includes natives, the disability which it really removed was that of Englishmen in India, out of the civil and military services, whom the absurd jealousy of the East India Company and their servants had treated as interlopers. That statute, then, instead of being the natives' charter, as they perversely allege, is really the charter of the British in India, out of the civil and military services. But however that may be, we hold that that statute ought to be impartially carried out. We decline, however, to allow the question of the Bill to be complicated by any discussion thereon. We deny that we ever opposed the appointment of natives to honourable office under Government for which they were fit. We knew that it was the policy of the Government so to employ them, and we trusted in the wisdom, honour, and impartiality of our rulers to act in accordance with the statute and the orders of the Court of Directors thereon. It appears, however, that our confidence was misplaced, for, not content with contravening the statute to our detriment by declaring that natives shall have a monopoly of the appointments in the uncovenanted service, and of the appointments of the Public Works Department, obtainable by passing through the Rurki College, they now, to our further detriment, propose to pander to the vicious desire of the worst kind of natives to domineer over us, by giving them criminal jurisdiction over us, our wives, and daughters. "I say," the worst kind of natives," because the best of them do not wish the Ilbert Bill to be passed. I have said that we never opposed the natives having a fair share of honourable appointments under Government. What we do object to is their having a monopoly of appointments in the Uncovenanted Civil Service to the

creation of an exclusive Civil Service to which natives are appointed by the condemned method of nomination in India, and to the new rule whereby natives who come out last on the list at the final examinations of the Rurki College, and are therefore the least competent of the candidates, shall receive appointments in the Public Works Department in preference to Englishmen and Eurasians who come out first on the same list. One of our reasons for objecting to such a course is that, in all these cases, it contravenes not only the statute above quoted, but also the order of the Court of Directors thereon, contained in the Despatch above quoted, to the effect that " fitness is henceforth to be the criterion of eligibility." Another reason is that it contravenes the said statute and order, not only to our detriment, but also to the detriment of the public service. It is most unfair, therefore, on the part of Sir Charles Aitchison to say that it has become too evident that the statute and the order of the Court of Directors thereon, which provide that the Government shall recognise no disqualification for office on grounds only of race, religion, or colour, are unacceptable to us ; for I submit that I have clearly proved that by their acts the Government have plainly shown that it is to them, and not to us, that the said statute and order are unacceptable.

Sir Charles Aitchison will, I hope, remark that his ruse, in using the word " Legislature." instead of " Government," in the first condition under the third paragraph of his opinion, has been detected and avoided. The statute removes all disability from holding any office that exists, but it does not ascertain qualification. The Ilbert Bill creates no new office. Therefore the recognition of the Legislature, of anything but the illegality of the Government in excluding the subjects of Her Majesty of British and mixed descent from office, is unnecessary.

BRITANNICUS.

October 10, 1883.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The least we had a right to expect from a gentleman holding the position of Lieutenant-Governor of a province was accuracy in stating the case under discussion. I regret to be compelled to say that the Lieutenant-Governor of the Punjab has disappointed our expectations in that respect. In the fifth paragraph of his opinion he takes great pains to mystify the subject, and, among other things, he mentions, as one of the privileges which have their foundation on social peculiarities " the exemption of native women of rank from appearance in the Civil Courts." In stating the case thus he misstates it on two points 1st.—He describes the native women exempted as " native

women of rank." He surely would not call the wife of his khansaman or butler as he would be called in England, a woman of rank, and yet, if his khansaman is a Muhammadan, the chances are that she is a purdah-nashin, and therefore exempt from attendance on the Courts. I may be mistaken, however, for perhaps he does consider her a native lady of rank, and entitled to be called "My Lady" on account of her husband's title of Khan-i-saman, Lord of the Stores. 2*nd*—It is not from attendance on the Civil Courts only, as he puts it, but from attendance on criminal Courts also, as a witness, that she is exempt. Surely Sir Charles Aitchison knew this. Then why did he misstate the case? He must also have known, not only that a purdah-nashin is not necessarily a woman of rank, and that she is exempt from attendance in criminal Courts as a witness, but also that if she does attend a Court she does so in a closed palkee, veiled from top to toe, so that during her examination and cross-examination neither Judge, Jury, nor Advocate can see her face or demeanour. I pointed this out in my letters, dated the 24th and 29th May and the 6th June last. Mr. J. K. Wight, too, the officiating Deputy Commissioner of Cachar, in his very able opinion, dated the 31st May 1883, thus remarks upon the exemption of native women:—"It is not an anomaly that a Court should be debarred from seeing the demeanour of a witness, considering the express provisions of the law (Section 363 of the Code) which enacts that the Judge or Magistrate shall record such remarks as he thinks material, respecting the demeanour of a witness?" In my letter of the 6th June last I pointed out that the purdah-nashin witness might be the witness upon whose evidence the verdict of the Jury would turn, and therefore it is essentially necessary, especially when the life or liberty of the accused depends upon their verdict, that the Judge, Jury, Advocates, and accused should see her to be sure that she is the person she represents herself to be, and should also see her demeanour whilst giving her evidence, to enable them to judge of its truth or falsehood. And yet Sir Charles Aitchison classifies this privilege as one of the personal privileges which can be enjoyed without imposing general disabilities and incapacities upon the political status of others." I opine that if he were convicted of an offence upon the false testimony of a purdah-nashin woman, the falsehood of which could not be detected, owing to the inability of the Court to see her demeanour, he would, when sentenced to imprisonment for the offence, consider that general disabilities and incapacities had been imposed upon his political status.

There is no doubt, as Sir Charles Aitchison says, a cardinal distinc-

tion between the privilege of a native purdah-nashin woman of exemption from attendance upon courts of justice, and the privileges of an Englishwoman and an Englishman to plead to a criminal charge before no one but an Englishman, for the former privilege may sometimes not injure any one, and the latter never can injure any one. The former privilege, as I have shown, may be the cause of the imposition of general disabilities and incapacities upon the political status of others, the latter privilege never can be the cause of the imposition of such disabilities and incapacities, though Sir Charles Aitchison insinuates that it can. Herein lies the unfairness of his argument. He does not put his case fairly and straightforwardly, but he uses a quantity of verbiage for the purpose of mystification, and concludes by insidiously and incorrectly classing the privilege of native purdah-nashin women among the privileges which can be enjoyed without imposing (he avoids saying without being the cause of imposing) general disabilities and incapacities upon the political status of others, and he as insidiously and incorrectly insinuates (for he does not name the privilege in so many words) that the privilege of an Englishwoman and an Englishman to be tried by one of their own countrymen is among the class of privileges which cannot be enjoyed without imposing such disabilities and incapacities. He does not attempt to support either of those propositions with an atom of proof, but in both cases he begs the whole question upon which his argument turns. He has, therefore, nobly earned the title of a mendicant in argument, or an argumentative mendicant.

The proposition which he insinuates, but neither distinctly enunciates nor attempts to prove, that the privilege of Englishwomen and Englishmen to be tried on criminal charges by their own countrymen imposes general disabilities and incapacities upon the political status of others, is without any foundation in fact. If it were a bar to the promotion of native competition or statutory Civilians to the offices of District Magistrate or Sessions Judge, or to any higher office reserved for Covenanted Civilians, there would be some truth in the proposition. But our privilege is not a bar to their promotion to such offices, and therefore it does not impose any disabilities or incapacities upon the political status of either class of native Civilians.

It must be clearly understood that my argument has been directed solely against the mischievous propositions of Sir Charles Aitchison, and not against the privilege of purdah-nashin women. I am not an advocate for depriving them of their privilege. All I mean to say is that their privilege is mischievous, whilst ours is innocuous, and therefore, as long as they are allowed to retain their privilege, we ought not

to be deprived of ours. I think, however, that the sooner purdah is abolished, the better it will be for native women, and for native men, for its abolition will accelerate their advance in the scale of civilisation by relieving native ladies of the stigma of not being fit to be trusted to move freely in society protected by that best of all *veils* for a woman, her innate modesty and purity of thought.

In the sixth paragraph of his opinion he treats the subject as if the natives were the dominant race and had adopted the English laws. In that case, of course, the British inhabitants of India could have no ground of objection to the criminal jurisdiction of native Magistrates. It is the inverting mirror in which he sees the case, or rather endeavours to show it to others, which makes his fallacious argument appear to be true. Sir Charles Aitchison is no doubt a very clever man. All his tricks of argument are ingenious The argument in this paragraph amounts to this .—In countries in which Muhammadans and heathens are the dominant races, they have conceded to Englishman residing therein the privilege of being tried by their own laws and their own countrymen, because their laws and procedure are ordinarily interwoven with their established religion and social habits ; but in India there is no need for such a concession as regards the nationality of the Magistrate or Judge, because the law and procedure are English. The fallacies of that argument are twofold 1*st* —The natives of India are not the dominant race, and have not the power to concede or withhold a privilege. And 2*nd*.— The criminal law and procedure in this country, although vastly superior to the Muhammadan criminal law and procedure, which they have superseded, are *not the criminal law and procedure of England, but inferior* to it. Therefore, although an Englishman has no objection to Indian criminal law and procedure when administered by a fellow-countryman in a case in which he is the accused, he objects to their being administered by one of the subject races, partly for political reasons, partly for the same reason that he objects to be tried by any law but that of England, and by any Judge but one of his own countrymen in countries in which Muhammadans and heathens are the dominant races ; partly on account of the very wide discretion which Indian law and procedure gives to Magistrates, who, if they are natives, are for the reasons given by the district officers and other officials consulted by the Government, far more likely to err in their decisions than English Magistrates and Judges, even though not intending to do so ; and partly because in Asiatic countries it is unprecedented for the subject races to exercise criminal jurisdiction over the dominant races, and because, if that were permitted it would degrade the dominant race and the British Government in the estima-

tion of all Asiatics, who, as in the matter of our evacuation of Afghanistan, will not attribute the action of our Government to the genorosity and philosophical philanthrophy, which they are continually parading before the eyes of those who do not understand the terms, but to the height of folly or the depth of fear, whereby not we alone but our Government also will lose prestige in the eyes of all Asiatics.

I cannot conclude this part of the subject better than by quoting the wise words of the Lieutenant-Governor of Bengal upon it: —"The political issues" he writes, "are of course of much wider consecquence. The very bad thing about the Bill is its principle—the principle that is, that by a stroke of the pen we are to establish equality, ignoring race distinction among a people who themselves repudiate the idea in their entercource with each other, with the utmost scorn and aversion. Our thoughts are not their thoughts, nor are their ways our ways, and it has been quite justly pointed out that, as long as there is such a wide divergence between Englishmen and natives, as regards moral standards, social customs and political status, any attempt to remove judical disqualifications must be as dangerous as it is premature. *Naturam expellas furcâ tamen usque recurret.*

BRITANNICUS.

October 13, 1883.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The greatest fallacy of all is contained in the seventh paragraph of Sir Charles Aitchison's opinion. It is expressed in the following words, in which he, with the complacency for which his opinion is conspicuous, erroneously lays down the law:—"The principle involved in the question has passed beyond the pale of discussion. For, as already observed, Parliament has in its wisdom decided that neither religion, nor race, nor colour nor place of birth, shall itself be a disqualification for office. In my letter of the 5th instant, published by you in your issue of the 10th instant, I pointed out that "the principle involved in the question is declared by the Government of India to be "that the time has come for modifying the existing law and removing the present bar to the investment of native Magistrates in the interior with powers over European British subjects. I also pointed out that that declaration of the principle includes native Magistrates of every grade from the highest to the lowest. In order to confer that jurisdiction upon native Magistrates, it will be necessary to issue to them Commissions of the Peace. The 87th section of the statute, referred to by Sir Charles Aitchison (3 and 4 Will. IV. Cap. 85), enacts as follows:—"That no

native of the said territories, nor any natural born subject of His Majesty's resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office or employment under the said Company. It now remains to ascertain whether, at the time when the said statute was passed, the Commission of the Peace was a place, office or employment under the East India Company, for if not, Parliament did not by passing that statute decide that Commissions of the Peace should be granted to natives in the Mufassal. In order to settle that question we must refer to Statute 33 Geo, III, Cap. 52, Sec 151, whereby it is enacted :— "That it shall and may be lawful to and for the Governor-General in Council of Fort William in Bengal for the time being, by commissions to be from time to time issued *under the seal of the Supreme Court of Judicature there, in the name of the King's Majesty, his heirs and successors, tested in the name of the Chief Justice of the said Court* * * * * to nominate and appoint such and so many of the covenanted servants of the said Company, or other British inhabitants as the said Governor-General in Council shall think properly qualified to act as Justices of the Peace within and for the same provinces and presidencies and places thereto subordinate." The words to which I desire to draw particular attention are those which I have put in italics. My reason for calling particular attention to those words is to show that the Commision of the Peace was an office held under the Crown and not under the East India Company, and those words clearly proved that to be the case for the commissions are directed to be issued under the seal of the Supreme Court of Judicature, which was a King's and not a Company's Court, and in the name of the King's Majesty, and not in the name of the East India Company, and to be tested in the name of the Chief Justice, who held his appointment from the King and not from the Company. Such was the law when the statute referred to be by Sir Charles Aitchison (3 and 4 Will. IV, Cap. 85) was passed Therefore since that statute merely enabled natives (as well as Britons and Eurasians) to hold any place, office or employment under the East India Company, it did not enable them to hold Commissions of the Peace in and for the Mufassal, because that was an office under the Crown, and not under the Company. Such being the case, I, with all due deference to Sir Charles Aitchison, submit that he erred in saying that "the principle involved in the question has passed beyond the stage of discussion, because Parliament has decided it by passing 3 and 4 Will. IV, Cap. 85.

It should be observed that the persons to whom Statute 33 Geo. III, Cap. 52, Sec 151 authorises the Governor-General in Council to issue Commissions of the Peace, are "the covenanted servants of the

said Company or other British inhabitants, and that the use of the word "other" clearly proves that the "covenanted servants" to whom such commissions are authorised to be issued must be British inhabitants. For, if the Legislature had not intended to restrict the commissions to covenanted servants who are British inhabitants, the statute would have run thus,—"to covenanted servants of the said Company or other persons being British inhabitants." Consequently, if there is no later statute upon the subject it is not competent to the Governor-General in Council to issue Commissions of the Peace in and for the Mufassal to natives.

In connection with this subject, and in allusion to the Criminal Procedure Codes of 1872 and 1882, Sir Charles Aitchison says :—"No doubt in the course of legislation in India the Imperial law" (meaning Statute 3 and 4 Will. IV, Cap. 85, Sec. 87) "has occasionally been forgotten, and provisions inconsistent with it have been allowed a place in Indian enactments." I suppose he means that he has no doubt, but I think that considerable doubt upon this point would have been suggested to any one else, to whom the idea had occurred, by the fact that the Criminal Procedure Code of 1872, with which that of 1882 coincides upon the point in dispute, had been drawn by so eminent a lawyer as Sir Fitzjames Stephen, and that he and the Hon'ble Mr. Strachey were two of the majority who passed it, and that the Criminal Procedure Code of 1862 had been drawn by so clever a draftsman as the Hon'ble Mr. Stokes. Very great doubt upon the point would also have been suggested to any one but Sir Charles Aitchison, by the fact that none of the minority who opposed the first paragraph of section 72 of the Criminal Procedure Bill of 1872 even hinted much less argued, that it was opposed to the Statute 3 and 4 Will. IV, Cap. 85. Their doubts, too, would have been greatly increased when they reflected that Sir Fitzjames Stephen was supported by so able a man as the Hon'ble Mr. Strachey, who would have been the last man in the world to support a section of an Act which was opposed to a statute, and that Sir Fitzjames Stephen was opposed by such able men as Sir Richard Temple and the Hon'ble Mr. Ellis, who, if there had been even a scintilla of soundness in Sir Charles Aitchison's objection, would not have failed to use it in opposing the first paragraph of section 2 above referred to. Their doubts would also have been still further increased by the fact of two such eminent lawyers as the Lord Chancellor of England and Sir Arthur Hobhouse having failed to urge Sir Charles Aitchison's objection in their attempts to support the Bill at home. It is certainly very surprising that none of these doubts occurred to Sir Charles Aitchison, for they seem

to be so obvious even to those who are worshippers neither of Sir Fitzjames Stephen and the Hon'ble Mr. Strachey, nor of Sir Richard Temple and the Hon'ble Mr. Ellis.

I therefore confidently assert that, so far from there being no doubt that, in passing the Codes of Criminal Procedure of 1872 and 1882, the Indian Legislature forgot the Statute 3 and 4 Will. IV, Cap. 85, allowed provisions inconsistent with it a place in the first named enactments, and enacted disqualifications which the Parliament of England had forbidden, the fact is, that the said Codes of Criminal Procedure of 1872 and 1882 contain no provision inconsistent with the said statute and enact no disqualification which the Parliament of England had forbidden, and that Sir Charles Aitchison has greatly erred in saying that they do. I also take leave to suggest to Sir Charles Aitchison that, as a gentleman, he is bound to apologise to all the members of the Supreme Legislative Council of 1872 and 1882, for having falsely accused them of having passed an Act containing provisions forbidden by the Parliament of England in a statute passed by them.

Sir Charles Aitchison, then, complacently clinches the fallacies of the seventh paragraph of his opinion by concluding that paragraph with a statement, in which he again so distinguishes himself as a medicant in argument that he ought to be arrested by the police of reason as an argumentative vagrant. For he again begs the whole question by saying: "The Bill under consideration fulfils this condition and recognises no such disqualifications." The condition which he alleges it fulfils, is the negative one of not containing provisions inconsistent with a statute, or disqualification which the Parliament of England has forbidden. But it his argument is sound, and the office of Justice of the Peace was an office held under the East India Company at the time when the Statute 3 and 4 Will. IV, Cap. 85, was passed, the Ilbert Bill does the very thing which he so complacently says it does not do. For it disqualifies all natives of India (except such as are now or may hereafter become Assistant Commissioners of non-regulation provinces not in the covenanted service, and all natural born subjects of Her Majesty, also not in the covenanted service, from holding the office of Justice of the Peace, thereby creating a disqualification which if Sir Charles Aitchison is right and all the members of the Supreme Legislative Councils of 1872 and 1882 were wrong, the Parliament of England has forbidden.

But even if so wonderful a thing should happen, as that it should turn out that Sir Charles Aitchison is wrong and the members of the Supreme Legislative Council of India of 1872 and 1882 were right, still the Bill does not fulfil the condition

of not containing provisions inconsistent with the Imperial law; for it contains provisions inconsistent with many statutes from Magna Charta down to the Act of Settlement, and it therefore proposes to enact a law which many successive Parliaments of England have forbidden, inasmuch as it proposes to subject us to the criminal jurisdiction of those who are not our peers, whilst taking advantage of the compromise of 1872, whereby we waived our right to trial by jury in certain cases on the express condition that we should be tried by Magistrtes and Judges only who are European British subjects.

BRITANNICUS.

October 14, 1883.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—In the eighth paragraph of his opinion Sir Charles Aitchison quotes the Queen's Proclamation, but he ought to know that, though Her Majesty's Proclamation is entitled to the very highest respect, it has not the force of a statute. When, however, it is in accordance with a statute, it may be said to add force to it. In the present case, the Proclamation is in accordance with the Statute 3 and 4 Will. IV, Cap. 85, but it does not, because it cannot, go beyond it. If, then, the argument contained in my letter of the 14th instant is sound, and I submit that it is so, the said statute does not empower the Governor-General in Council to issue Commissions of the Peace to natives in and for the Mufassal, and consequently the Proclamation, which merely reiterates that statute, does not do so. Indeed, it is clear that the Indian Legislature has not hitherto so interpreted either the Queen's Proclamation or the Statute 3 and 4 Will. V, on which it is founded. For in Act II of 1869 of the Government of India, "An Act for the appointment of Justices of the Peace, passed eleven years after the issue of the Queen's Proclamation, they scrupulously followed the wording of the Statute 33, Geo. III, Cap. 52, in describing the persons to be appointed Justices of the Peace. The description is as follows:—"Such and so many of the Covenanted Civil Servants of the Crown in India, or other British inhabitants, as the said Governor-General in Council or the Local Government (as the case may be), shall think properly qualified to act as Justice of the Peace." Here allow me to refer to my letter of the 14th instant with reference to the reflective force of the word "other" in the phrase, "other British inhabitants," upon the words, "covenanted Civil Servants" which precedes it. Again, under Section 3 of Act XI of 1872, an Act to provide for the trial of offences committed in places beyond India, and for the extradition of criminals, the Indian Legislature

restricted the issue of Commissions of the Peace to European British subjects in the following words: "The Governor-General in Council may appoint any European British subject either by name or by virtue of his office in any such country or place, to be a Justice of the Peace. Thus it will be seen that the Indian Legislature has never held that either the Statute 3 and 4 Will. IV or the Queen's Proclamation has authorised them to pass an Act inconsistent with the Statute 33 Geo. III, Cap. 52, and empowering the Governor-General in Council to issue Commissions of the Peace to natives in and for the Mufassal.

The above facts, further, show that so far from there being "no doubt," as Sir Charles Aitchison says, that "in the course of legislation in India, the Imperial law has occasionally been forgotten, and provisions inconsistent with it have been allowed a place in Indian enactments," the Indian Legislature have always, until the introduction of the Ilbert Bill, been most careful, at least in the matter *of the appointment of Justices of the Peace, to adhere most* closely to the Imperial law. In further support of this proposition, allow me to call attention to the closeness with which Section 4 of Act II of 1869 of the Government of India, above referred to, adheres to the wording of Section 1 of the Statute 2 and 3 Will. IV, Cap. 117, in describing the persons whom it empowers the Governor-General in Council and the Local Governments of Madras and Bombay, to appoint to act as Justice of the Peace within the limits of the towns of Calcutta, Madras, and Bombay.

If, then, there is no Satute but 33 Geo. III, Cap. 52, and I know of none authorising the appointment of Justices of the Peace in and for the Mufassal, the Ilbert Bill, if passed into law, will be the first Act passed by the Government of India inconsistent with the Imperial law, with respect to the description of persons to be appointed Justices of the Peace in and for the Mufassal, and the question will arise whether it is competent to the Indian Legislature, notwithstanding the great powers with which they are invested, wilfully and knowingly to pass an Act not only inconsistent with the said statute, but also subversive of the principle thereof, which is the reservation to European British subjects of their statutory right to be tried only by their peers, that is to say, by their own countrymen.

BRITANNICUS.

October 16, 1883.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—In the ninth paragraph of his opinion Sir Charles Aitchison says:—"The objections brought against the Bill in this respect

seem to me to err chiefly in confusing the question of individual fitness with the question of race." I confess that I am at a loss to see any confusion in the matter, but that contained in the Bill and the arguments used in support of it. The principle of the Bill, as I have already pointed out, is to remove the bar to the investment of native Magistrates in the Mufassal with criminal jurisdiction over European British subjects. That is the question of race. Dr. Hunter, the most talented of the supporters of the Bill, says, that the Bill ought to be passed, because many of the native Civil Servants who have entered the service by competition, "are more English in thought and feeling than Englishmen themselves." That is the question of individual fitness. Several of the supporters of the Bill have mixed up the two questions thus—Because some of the native Civilians, who have entered the service by competition, are fit persons to have jurisdiction over European British subjects, therefore all natives ought to be declared qualified to have jurisdiction over European British subjects. That argument might truly be styled a confusion of the question of individual fitness with the question of race. It is, in fact, a paralogism, but the supporters of the Bill are fond of that style of argument. Such a confusion of ideas, however, is not to be found in any of the arguments of the opponents of the Bill. What we say is that, in making a law of this kind, the merits of isolated individuals cannot be considered. "*De minimis non curat lex*," the law does not concern itself about trifles. Granting for the sake of argument that every one of the nine native competition civilians are fit, their fitness does not prove the fitness of the rest of the 199 millions of native inhabitants of India. And, as the principle of the Bills is to remove disqualification from the whole of the 199 millions, the fitness of nine only of that immense member bears so minute a ratio to the fitness of the whole that the Legislature ought not to concern themselves about it. Indeed, upon the principle of the legal maxim *Salus populi suprema lex*, the nine native competition civilians, even if they think it would conduce to their own individual welfare to have criminal jurisdiction over European British subjects, ought to sacrifice their wish to have that jurisdiction to the public good. Mr. Badshah, the Assistant Magistrate of Goalundo, has done this, and by so doing has done more to prove his individual fitness than Mr. Behari Lal Gupta and his seven native compeers, with all their fallacious and long-winded arguments, have done to prove theirs. As for the Statutory Civilians, there is such an "overwhelming consensus of official opinion" against their fitness, that it puts them altogether out of the runing.

The arguments, too, against the fitness of native Assistant Commissioners of non-Regulation Provinces, contained in the official opinions, are so strong that those officers cannot be taken into account in the matter. And, since the Government has pledged its word to the Commander-in-Chief that Cantonment Magistrates shall in all cases be European British subjects, nothing need be said about them.

The question, however, cannot be decided upon the argument of individual fitness. For, since the principle of the Bill is to remove disqualification from the whole of the 199 millions of native inhabitants of British India, the question ought to be decided upon the fitness of the whole; and not of a part only. In considering that question, there is a passage in an article by Mr. Laistet in *Modern Thought*, which though written by him with reference to Jews and Christians, is so applicable to the present case, that I deem it right to quote it. "The Christian," he says "could not love the Jew as a neighbour, for he would not be neighbourly; and the Jew, on his part, could not be neighbourly because his creed, while it permitted him to make all he could out of the Christians, forbade him to have anything in common with them." If we substitute "native of India" for "Jew" in the above quotation, it will exactly describe the state of affairs between Christians and natives of India. This will, I think, account for much, though not for the whole, of the repugnance of Christians to the proposed grant to natives of India of criminal jurisdiction over themselves, their wives and daughters. There are many other reasons for that repugnance, but they have been so fully stated in the official opinions, in your articles, in the articles of other high-toned English newspapers in India, in letters to the several Editors, and in memorials and resolutions of meetings against the Ilbert Bill, that it would be an act of supereogation to state them over again.

But Sir Charles Aitchison argues that if the jurisdiction were given to the classes named by him such checks might be imposed as would ensure fitness. To that proposition I beg to demur. "*Humanum est errare.*" Therefore even the Government of India might err, much more then might a Local Government do so. But granting for the sake of argument that the present Government of India, and all the present Local Governments, are as infallible as the Pope, yet it is possible that their successors, unlike the successors of the Pope, may be fallible. In that case the check and guarantee of fitness would miserably fail, and injustice would be the order of the day. We therefore prefer to remain as we are, until the native population of British India have, as a body, proved themselves to be fit to be entrusted with criminal jurisdiction

over us. As many hundred years are likely to elapse before that occurs, I think we are entitled to say, that the time has not come for modifying the existing law and removing the bar upon the investment of native Magistrates in the interior with powers over European British subjects.

BRITANNICUS

October 17, 1883.

NATIVE MAGISTRATES FOR PRESIDENCY TOWNS.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—One of the arguments upon which the Government of India most strongly relies in the matter of the Ilbert Bill, is that European British subjects have admitted that their claim to be tried in criminal cases by their own countrymen only is not a constitutional right, by allowing the law, under which native Magistrates have been appointed for Calcutta, Madras, and Bombay, to pass without opposition. For the reasons which I will presently state, I deny that the Government of India has any right to use that argument, and I assert it to be as unfair as it is possible for any argument to be.

The way in which the Local Governments obtained the power of appointing native Magistrates for Calcutta, Madras, and Bombay, was as follows:—In order to give even an English Magistrate power to try a European British subject, it was necessary that he should be appointed a Justice of the Peace. The Statute 33, Geo. III, Cap 52, Sec. 151, empowered the Governor-General in Council to appoint covenanted servants of the East India Company, or other British inhabitants, Justices of the Peace for each of the three Presidencies. This statute, however, did not empower the Governor-General in Council to appoint natives, Justices of the Peace, even for the Presidency towns. Therefore, in 1832, some authority at Home, at the instigation of the Government of India, brought in a Bill, whereby it was proposed to empower the Governor-General in Council, the Governor in Council of Madras, and the Governor in Council of Bombay, to appoint any persons resident in the territories under their respective Governments, and not being subjects of any foreign State, to act within, and for, the said towns respectively, as Justices of the Peace. It is worthy of remark that the Bill, in describing the persons to be appointed, carefully avoided the use of the word "native," but included natives under the term "any persons." It also deserves observation that the Bill, being applicable to India only, was not likely to attract much attention in Parliament, and, as

usual with such Bills, it was shovelled through on the 16th August 1832, at the end of a session, when only just enough members to pass, it were present. That Bill, when passed, became the Statue 2 and 3, Will IV., Cap. 117. In India, probably, nothing was known about the Bill until it was passed, and then most likely only a few lawyers knew anything about it, and even they, perhaps, if they thought about it at all, thought it was only intended to be used for Municipal purposes.

No use was made of that statute in the direction of appointing native Magistrates for Presidency towns, until 1856, or 24 years after it had become law, when Act XIII of that year was passed, the 22nd Section of which empowers Local Governments, with the sanction of the Governor-General of India in Council, "To appoint a sufficient number of fit persons as Magistrates of Police for the said towns." It is, again, worthy of special attention that as in the statute above alluded to, so in this Act, the use of the word "native" is carefully avoided. There was, therefore, nothing in the Bill which, on being passed, became Act XIII of 1856, to arouse the suspicion of the European British inhabitants of Presidency towns that the Bill had been brought in for the purpose of empowering the Local Governments to appoint native Magistrates for those towns. If, indeed, their suspicions had been aroused by the vagueness of the words "fit persons," and they had memoralised the Government upon the subject, the Government might have turned round upon them, and told them that their very objection cut away the ground from beneath their feet, because it admitted natives to be fit persons to be Magistrates of Police for their towns. The British communities of Calcutta, Madras, and Bombay, however, considering natives not to be "fit persons" to be Police Magistrates for their towns, and having no reason to believe that Government thought differently, took no steps to oppose the Bill, which, therefore, became law on the 13th June 1856.

It may be argued that the eyes of the British community of Calcutta were opened shortly after the passing of the last mentioned Act by the appointment, in the same year, of Roy Kissory Chand Mitter, to be the Junior Magistrate for the town of Calcutta, but they were again received by the appointment of that person to the Northern Division or the native portion of the town of Calcutta, and it seemed to them to be but right that the native town should be presided over by a native Magistrate. It never occurred to them, therefore, that by not opposing that appointment, they would be held to have consented to a native Magistrate having criminal jurisdiction over European British subjects in their town. The Governor-General in Council, however, by using

the power conferred upon him by the Statute 2 and 3, Will. IV, Cap. 117, made Roy Kissory Chand Mitter a Justice of the Peace within and for the town of Calcutta, which gave him criminal jurisdiction over European British subjects, as well as over natives.

Now, I do not mean to accuse the Government of India of having deliberately cheated the British communities of the Presidency towns in this matter, but I do most confidently assert that, if they had resolved to appoint native Magistrates for Presidency towns with criminal jurisdiction over European British subjects, and fearing opposition to their scheme on the part of the British inhabitants of those towns, they had wished to proceed with the measure in such a way as to conceal from those British inhabitants the object of their proceedings, and thereby evade the possibility of such opposition until they had effected their object, they could not have gone to work more cunningly than they did. I therefore say that the European British inhabitants of the Presidency towns, and, through them, the European British inhabitants of India, were cheated in that matter, inadvertently of course, but still they were cheated. Such being the case, the use which the Government of India have been making, both in the Supreme Legislative Council and in Parliament, of the fact of their having appointed native Magistrates for Presidency towns with criminal jurisdiction over European British subjects, is an attempt to take advantage of their own wrong. This conduct is contrary to the following maxim of the civil law: "*Nemo ex suo delicto meliorem suam conditionem facere potest.*" It is also opposed to the maxim: '*Nemo commodum capere potest de injuria sua propria.*" (Co. Lett. 1486.)

I therefore deny that the laws whereby the Local Governments were empowered to appoint native Magistrates for Presidency towns with criminal jurisdiction over European British subjects were passed with the knowledge or consent of the British inhabitants of those towns. I also deny that the British inhabitants of the Mufassal ever acquiesced in the justice of those laws. Consequently, I deny the right of the Government of India to take advantage of their own wrong by using the fact of their having appointed native Magistrates for Presidency towns with criminal jurisdiction over European British subjects as an argument against them. I also deny the right of the Government of India to take advantage of our enforced submission to the law after it had been passed, as an argument against us, for the following maxim of the civil law exonerates us from all blame in the matter: "*Ejus vero nulla culpa est, cui parere necesse est.*" I further assert that the very fact of the said argument having been ungenerously used against us evinces such a determination on the part of the Government of India

to take advantage of its own wrong that it entitles us, and renders it imperative upon us, to agitate for the amendment of Act IV of 1877, which supersedes Act XIII of 1856, by the insertion of a clause restricting the appointment of Presidency Magistrates to European British subjects.

In connection with this subject it may be as well to call attention to the fact that the experiment of appointing native Magistrates in Presidency towns has not been attended with the success claimed for it. For it so utterly failed in the case of Roy Kissory Chand Mitter, that he was removed by the Government of Bengal from the Calcutta Bench in 1858, and no native Magistrate was again appointed for Calcutta until 1879, or 21 years afterwards. Neither was the experiment more successful in Bombay, for the vagaries of Nana Morojee, the Hindu Presidency Magistrate, compelled the Government of Bombay to remove him from the Bombay Magistracy three or four years ago, and about the same time they severely animadverted upon the conduct of Mr. Dassabhoy Framjee, the Parsee Presidency Magistrate of Bombay.

BRITANNICUS.

October 18, 1883.

SIR ALFRED LYALL'S OPINION.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I have not thought it necessary to animadvert upon Reuter's late false telegram regarding the numbers of the official opinions for and against the Ilbert Bill, because far abler pens than mine have taken up that question. The attempt, however, to show that the general falsehood of the telegram was not inspired by an agent, secret or otherwise, of the Government of India, is, after the false Government telegram about the debate in the Legislative Council on the 9th March last, so childish that it merits only the smile with which one greets a child who attempts to impose upon one with a conjuring trick that he has not the manual dexterity to perform without exposing his manipulations. The only difference is that, whilst one smiles upon the child good-naturedly, so as not to hurt his feelings, one cannot prevent the scorn and contempt which one feels for that which should be a great Government, from appearing in the smile, with which one greets its attempt at imposition.

That telegram states that "the Lieutenant-Governors and Chief Commissioners approve of the Bill." Sir Alfred Lyall is one of those Lieutenant-Governors. He is the Lieutenant-Governor of the North-Western Provinces. The statement in the telegram that he approves

of the Bill is absolutely false. The following quotations from the opinion of Sir Alfred Lyall will prove the truth of my denial.

Sir Alfred Lyall in the 11th and 12th paragraphs of his opinion points out that the Bill is at present unnecessary in his province. In the 11th paragraph he says :—" In the correspondence submitted with this letter (namely the opinions of the officials in the North-Western Provinces), " it is more than once observed that the question of altering the present laws regarding European British subjects is in no way urgent. With this observation so far as it relates to those provisions, the Lieutenant-Governor feels bound to say that he concurs. Again, in the 12th paragraph, he says :—" In these circumstances the question of extending to native Magistrates the power of Justices of the Peace, cannot be said to press upon this administration.

In the 6th paragraph he condemns the principle of the Bill in the following words :—" For the reasons then set out in the preceding paragraphs, Sir Alfred Lyall would recommend the entire withdrawal of Section 1 from the Bill. And in the 9th paragraph he recommends one-half of Section 2 of the Bill to be omitted, for he says :—" On the whole, therefore, the Lieutenant-Governor does not think that the anomaly of making a distinction in this respect, between European and native Judges, furnishes a sufficient reason for charging the law, in order to give native Judges the special jurisdiction over European British subjects.

The only portion of the Bill, therefore, which Sir Alfred Lyall supports, is that portion of Section 2, which proposes to enact that "District Magistrates (which term includes natives who attain that office) " are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving. But in the 10th paragraph he says —" He would attach the exercise of jurisdiction as Justice of the Peace to the office of District Magistrate as a necessary or intrinsic function of that office itself, not of the individual who might hold it And in Section 13 he concludes his opinion with these words :—" The Lieutenant-Governor would certainly give the jurisdiction to all District Magistrates, and he believes that this amendment of the present law would fulfil all expectations and answer all practical purposes.

So far, then, from approving of the Bill, Sir Alfred Lyall actually condemns it, but as a sop to Cerberus, he offers Lord Ripon the office of District Magistrate, to which to attach the power of Justice of the Peace, and his Lordship, from whose head, as sin from the head of Satan, the Bill sprang, greedily clutches at the sop, and in Reuter's late false telegram, calls it an approval of the Bill. To such straits is Lord Ripon

brought to make his friends at home believe that he has some rational support in proceeding with the Bill, that he is unable to see that Sir Alfred Lyall, grave Ruler that he is, was actually poking fun at him when he consented to the power of Justice of the Peace being attached to the office of District Magistrate. For, in the 11th paragraph of his opinion, the Lieutenant-Governor clearly points out that in his provinces there was only one competition civilian of 1876, and four statutory civilians of 1880 and 1881, all of whom were so young in the service that they could not be trusted with the office of District Magistrate for many years to come, and certainly not within the period of his tenure of the office of Lieutenant-Governor.

In the 12th paragraph Sir Alfred Lyall says :—" On the other hand the English community in the North-Western Provinces has shown, since the Bill was published, a natural desire that criminal charges against them should, as heretofore, be enquired into and tried by English judicial officers. To this arrangement no demur, so far as the Lieutenant-Governor can ascertain, is made by the natives of these provinces at large." He adds, however, that some native gentleman "distinctly support the principle of removing class differences and disqualifications," when that removal, of course, His Honour means, will be detrimental to the British and to the prestige of the British nation in India. If, however, the class differences and race disqualifications to be removed had been those which exist between those native gentlemen and other natives of India, whom they consider inferior in caste to themselves, those native gentlemen would have been the first most strongly to condemn the principle of removing them, so that really their opinion being an intensely selfish one is not worth the time or trouble Sir Alfred Lyall expended in communicating it to the Government of India.

BRITANNICUS.

October 19, 1883.

THE OPINION OF THE GOVERNOR OF MADRAS.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—His Excellency the Governor of Madras is very hopeful about the Ilbert Bill not causing one anna of British capital to be removed from India. Nevertheless, he does *all* in his power to prevent that *Bill* from becoming law. For he says " When, however, this and other Governments were consulted a year ago, they were not consulted about what has since become known as 'Mr. Ilbert's Bill,' but about *a very different proposition.*" (The Italics are mine). And it is that " very different

proposition," to which he recommends that measure to be confined; for he says, "Why should not the change be confined, as was proposed at that time, to Covenanted Civilians only?" * * * * "Would it not be wise to be satisfied with extending the privileges to Covenanted Native Civilians? It is idle to maintain that they have not had greater advantages than the nominated Native Civilians."

The above extracts clearly show not only that Mr. Grant Duff has not the courage of his opinion that the passing of the Ilbert Bill will not cause one anna of British capital to be removed from India, but also that he disapproves of the principle of that Bill. The following extracts will further show that he does not think that "the time has come for modifying the existing law, and removing the present bar upon the investment of native Magistrates in the interior with powers over European British subjects." He says: "*Alors comme alors!* This is not a country in which it is well to take very long views * * * let us not be led to move at all quicker than we otherwise should with a view to *anticipate* demands which may some day be made, and which it will be for our successors to grant or refuse." Again, with reference to his recommendation that the powers should be restricted to competition Native Civilians he says—"I should prefer to see one step made at a time." Mr. Grant Duff's opinion then clearly proves the falsehood of the late Simla telegram, which classes him among those who approve of the principle of the Bill, or who think "the time has come" to pass such a measure.

I regret to be compelled to point out that the Governor of Madras, in quoting Mr. H. E. Stokes's very curt opinion, quotes it incorrectly, and omits the most important point of it. His Excellency says—"I agree with Mr. Stokes in considering that the much-discussed measure is perfectly "innocuous." Mr. Stokes did not use the adverb "perfectly," as Mr. Grant Duff erroneously states, but the adverb "probably," and he adds that the Ilbert Bill "is altogether unnecessary." The following is Mr. Stokes's opinion *in extenso*. "In my opinion, Mr. Ilbert's Bill will probably prove innocuous, but is altogether unnecessary. With reference to this, the Governor of Madras adds—"It does not follow, however, that because a Bill is innocuous, it ought to be passed." He might also have added that it does follow that the Ilbert Bill ought not to be passed, since, as Mr. Stokes says, and many other officials prove, it is altogether unnecessary.

Mr. Grant Duff wishes to know—"What is meant by such phrases as those used by Mr. Logan about alienating the good-will of the European community." Mr. Logan, who is the Collector of Calicut, very plainly answered the question in the same paragraph as that in which

he made the statement. He said "the evil consequences would be out of all proportion to the administrative advantages to be secured." Mr. Elliott, the Chief Commissioner of Assam, also answered the question in the following words—"Any event, which should set them (the European community) in determined opposition to the Government, would be in a high degree disastrous." If Mr. Grant Duff wishes further "to know, you know" he had better go to the Circumlocution Office, where, perhaps, his official position may induce some Tite Barnacle to explain to him the result of alienating the good-will of the European community in North America in the eighteenth century.

But, strange to say, it is this very Governor of Madras whom the Government of India, in the lying Simla telegram, claims as a supporter of the principle of the Bill, who has smitten it the most grievous blow. He says—"How could the European community remain permanently alienated from that Government whose existence and overwhelming strength alone makes the presence of the European community in this country possible." In that passage, the Governor of Madras distinctly states that the British community would be either utterly destroyed, or driven out of the country by the natives, were it not for the existence and overwhelming strength of the Government of India. And why? The answer is obvious, because in Mr. Grant Duff's opinion, the natives hate us. And yet it is to these very natives, who hate us, he advises the Government of India to give criminal jurisdiction over us, our wives and daughters, rather than withdraw the Bill. He says—"To withdraw it (the Ilbert Bill) altogether would be, as it seems to me, a grave political error." But would it not be a graver political error to hand over the British community, their wives and daughters bound hand and foot to the criminal jurisdiction of a people who, he clearly points out, hate them with so deadly a hatred that their presence in this country would not be possible, were it not for the existence and overwhelming strength of the Government of India?

And why does Mr. Grant Duff think it would be a grave political error to withdraw the Bill? The following is his answer. Because "to do so would be to give up to irresponsible people the government of a country, which should remain, where the law has placed it, in the hands of the Viceroy and his Council, under the general superintendence of the Secretary of State and his Council." Granting, for the sake of argument, that it would be doing as he says, the Radical Government at Home have afforded us several precedents of late for so acting. They gave up the Government of the Transvaal to irresponsible people. They gave up the Government of Afghanistan to irresponsible people. They gave up the Government of Zululand to irresponsible people.

They gave up the Government of Egypt to irresponsible people. Again, by withdrawing the English Criminal Procedure Bill, they gave up the Government of England to irresponsible people. And, by cancelling the late treaty with M. de Lesseps anent the second Suez Canal, they again gave up the Government of England to irresponsible people. Then why not give up the Government of India to irresponsible people also? One thing is certain. The irresponsible people could not govern it worse than the present Government of India, and the chances are that they would govern it a great deal better.

I venture to say that this is the most astounding sentiment that Mr. Grant Duff has ever uttered. Let us see what it is. It is this—To withdraw altogether the Ilbert Bill, of the principle whereof Mr. Grant Duff disapproves, and the passing whereof is opposed by an overwhelming majority of officials in India and of retired Anglo-Indian in England, by the whole of the British army in India, by the whole of the British and Eurasian non-official community in India, and by all the respectable English newspapers in India, and by most of the leading papers at Home, would be a grave political error. Mr. Grant Duff sat many years as a member of Parliament before he came to India as Governor of Madras. Can he not imagine the roars of laughter with which such a doctrine would be received in the House of Commons, if he were to apply it to a Bill of which the British people, the British army, and the leading newspapers, disapproved? If he cannot, everybody else can. And yet Mr Grant Duff aspires to be thought a statesman! Since he seems to be fond of quoting French, allow me to remind him that if he continues to be guilty of as many inconsistencies as he has been guilty of in his Minute of the 31st May last, some one will say of him, as Balzac, says of *le duc d'Orleans, Frere de* Charles VI. "*Il commettait des inconséquences et donnait de l'avantage à ses ennemis, sans même s'en apercevoir.*"

As a counter question to that contained in the 2nd paragraph of Mr. Grant Duff's Minute, allow me to ask him—"How long would the present Government of India exist, if they were deprived of the overwhelming strength of the civil, military, and non-official opponents of the Ilbert Bill?"

BRITANNICUS.

October 21, 1883.

THE OPINION OF THE GOVERNOR OF BOMBAY

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—In the 8th paragraph of his opinion the Governor in Council of Bombay justly complains that the question put to him last year had

reference to a very different measure from the Ilbert Bill, of which Mr. Quinton incorrectly stated in the Supreme Legislative Council on the 9th March last, that he had written in no qualified terms expressing his approval.

The fact is, as the Governor remarks, "that the question put to him last year was whether all native members of the Covenanted Civil Service, or at least those who have attained the position of District Magistrate and Sessions Judge, should be entrusted with jurisdiction over Europeans," and he says that he approved of only the latter part of the proposal, namely, "that the jurisdiction should be given to those only who become District Magistrates or Sessions Judges." And His Excellency adds—"To this opinion, subject to the suggestion in paragraph 16, clause *b*, the Governor in Council adheres, and it follows that he would not extend the jurisdiction either to native Assistant Commissioners in non-Regulation Provinces, or to Cantonment Magistrates. Again, in the 9th paragraph, His Excellency says, he "feels bound to state why he holds that the jurisdiction should not be extended to native Magistrates other than District Magistrates." Consequently, were it not for the suggestion contained in paragraph 16, clause *b*, the recommendation of the Government of Bombay would be, that the jurisdiction of natives over European British subjects should be confined to native District Magistrates and Sessions Judges, with the addition contained in paragraph 18, "that Europeans brought for trial before any Sessions Judge should have the right to claim a jury."

The suggestion contained in paragraph 16, clause *b*, is "to give District Magistrates and other controlling authority power to order that any case appearing to call for such procedure should be tried by a native Magistrate and a European Magistrate associated on one Bench, with provision for reference to the High Court in the event of their differing as to the verdict or sentence."

The reason assigned for the above is, that "native leaders, in the present controversy," have complained "that European Magistrates are disposed to be unduly lenient to European offenders." This is so gross a libel upon the justice and impartiality of those British members of Her Majesty's Covenanted and Uncovenanted Civil Services whom the Governor-General in Council has thought properly qualified to act as Justices of the Peace, that we should have felt extremely surprised at the Government of Bombay having entertained the charge for a single moment, instead of treating it with the scorn and contempt it alone merited, did we not know that in a late case the Government of Bombay itself had been guilty of injustice and partiality so gross as to prevent our being surprised at its believing the possibility of its British

Magisterial Officers being guilty of the gross partiality and injustice with which they are charged by natives who know the contrary of their statement to be true.

The affair to which I allude is that of Major Pedder. That gentleman was the Senior Assistant Collector in the Salt Department in charge of the Northern Frontier line of the Bombay Presidency. The case is shortly as follows:—Some years ago salt works were erected at Kharaghora, on the Northern Frontier of the Bombay Presidency, at an expense to Government of several lakhs of rupees. After their erection, disputes arose on some matters between Mr. J. B. Peile, then the Political Agent in Kattywar, but now the Secretary to the Government of Bombay, in the Revenue Department, and Mr. Pritchard, the then Collector, but now Commissioner of the Salt Department. In those disputes Mr. J. B. Peile was the aggressor, and, if he had been successful, it would have become impossible for the Salt Department to prevent the smuggling of salt from Kattywar through Baroda into British territory, and the smuggling of opium through Baroda into Kattywar. Mr. Pritchard was greatly assisted by Captain, now Major, Pedder, in foiling Mr. Peile's attempt to paralyse the action of the Salt Department on the Northern Frontier. By Resolution No. 5560 of 30th September 1874, the Government of Bombay decided the dispute against Mr. Peile. On a further reference by Mr. Peile, the Government of Bombay allowed the case to be re-discussed, and, by Resolution No. 4889 of the 31st July 1875, again decided it against Mr. Peile. In a letter, dated the 4th May 1875, Mr. Peile submitted to the Government of Bombay a new claim on behalf of the Chief or Thakor of Bajana, a fourth class Kattywar State. Mr. Peile stated the claim in the following words:—"the entire site of the new Government salt-pans, situated nominally in Kharaghora limits, is claimed by Bajana, and with great show of justice."

Those salt-pans, with the godowns and other buildings connected therewith, had cost the Government several lakhs of rupees. The Bajana claim was advocated, not simply forwarded by the Political Agent, Mr. Peile, and his Assistant, Major Watson, and defended by Mr. Pritchard, the Collector, and Major Pedder, the Assistant Collector of the Salt Department. Mr. Peile in various letters, but especially in a letter No 448 of the 29th November 1876, advocated the Bajana claim as strongly as he could, adducing as proof of it certain razinamas, which were afterwards proved by Major Pedder to be forgeries, and sarcastically asking. "Are these forgeries too? By the indefatigable and intelligent exertions of Major Pedder, Mr. Pritchard was enabled, in a letter No. 3397 of 19th June 1877, with the documents

annexed thereto, to prove that the said razinamas were forgeries, to refute all Mr. Peile's arguments, and to expose the falsehoods by which the Chief of Bajana had attempted to support his case. That letter concludes with the following words:—"In conclusion, I desire especially to bring to the favourable notice of Government the services of Captain Pedder, to whose labour and intelligence is due the whole credit of the unravelling and exposure of Bajana's claim." The case was fully discussed in the Executive Council of the Governor of Bombay, and after reading all the documents, and duly considering Mr. Peile's and Mr. Pritchard's last-mentioned letters, the Bajana claim was rejected by Resolution No. 5501 of 27th November 1877. Some time afterwards Mr. Peile became Secretary to the Government of Bombay, in the Revenue Department, and on application by the Chief of Bajana, the papers were ordered to be transmitted to the Secretary of State to enable him to judge whether any further enquiry should be held in the matter of that Chief's claim. Accordingly, all the papers were sent to the Secretary of State, with the exception, strange to say, of the most important one, namely, Mr. Pritchard's said letter No. 3897 of the 19th June 1877 and the documents annexed thereto upon which the Government of Bombay had decided the case against Bajana. In the absence of Mr. Pritchard's said letter, the Secretary of State apparently had no option but to order the case to be re-opened and an officer of experience to be deputed to decide it. Mr. Bulkeley was therefore deputed by the Government of Bombay to decide the case. Whilst the case was pending before Mr. Bulkeley Major Pedder, to his intense astonishment, discovered that Mr. Pritchard's said letter and the documents annexed to it, containing the refutation of the Bajana claim, were not among the papers sent to the Secretary of State, or given to Mr. Bulkeley to enable him to decide the case. The excuse made was that the withholding of that letter, with documents annexed thereto, was an inadvertence. Major Pedder, however, in the meantime, furnished Mr. Bulkeley with a copy of Mr. Pritchard's said letter, accompanied by a memorandum animadverting upon the conduct of Mr. Peile and Major Watson in the matter. The result was that Mr. Bulkeley also rejected the Bajana claim, and thus Major Pedder, by his indefatigable and intelligent exertions, again saved the Government from the loss of several lakhs of rupees, which Mr. Peile, if he had been successful, would have caused to be inflicted upon it. But now comes the strangest act of all, for when the curtain rose after the final rejection by Mr. Bulkeley of the Bajana claim, the public learnt that the Government of Bombay had dismissed Major Pedder from his appointment in the Salt Department without giving him any opportunity of pleading his cause, and had refused his

application to be tried publicly by some open and impartial tribunal that would patiently examine and understand the points of his defence, and afford him a chance of justifying the charges made by him against Mr. Peile and Major Watson.

The refusal of the Government of Bombay to grant Major Pedder the public and impartial trial for which he had prayed, leaves the public in doubt as to whether Major Pedder, the most indefatigable and intelligent Assistant Collector in the Salt Department of the Bombay Presidency, was dismissed for animadverting upon Mr. Peile's conduct as Political Agent in Kattywar, or as Secretary of the Government of Bombay, in the Revenue Department, or for discovering the documents to be forgeries upon which the Chief of Bajana supported his claim and Mr. Peile supported the Chief of Bajana, or for discovering the omission, inadvertent, of course, but nevertheless strange, of the Government of Bombay to send the Secretary of State the most important paper when they sent him what purported to be all the papers of the case, or for saving the Government the loss of the several lakhs of rupees of which they would have been defrauded, if Mr. Peile's advocacy of the Chief of Bajana's claim had been successful.

We cannot, therefore, feel any surprise at a Government which has itself been guilty of such partiality and injustice believing it possible for the British members of Her Majesty's Covenanted and Uncovenanted Civil Services to be also guilty of such partiality and injustice as to render it necessary for a native Magistrate to be associated with them on the Bench, to make them impartial and just whenever a European is the defendant in a criminal trial.

The wonder is that, since natives are in the habit of impugning the justice of native Magistrates in the Mufassal, by applying to have their cases transferred from a native to a European Magistrate, the Government of Bombay did not also suggest that in all cases, in which natives are defendants, a European Magistrate should be associated with a native Magistrate to try the case. Such a measure would require a double set of Magistrates, half of whom would necessarily be Europeans, and half natives. That, however, would necessitate the re-opening of the Uncovenanted Service to Europeans, or a great increase in the number of European Civilians. But the former course would render it necessary for the Government of India to act in accordance with the Statute 3 and 4, Will. IV, Cap. 85, Sec. 87, and the Queen's Proclamation, both of which are distasteful to them. And the latter course would greatly increase the expenditure which Parliament wishes to reduce.

BRITANNICUS.

October 24, 1883.

THE OPINION OF THE CHIEF COMMISSIONER OF AJMERE-MERWARA.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The Chief Commissioner of Ajmere-Merwara is opposed to the passing of the Ilbert Bill, and he has stated the grounds of his opposition in a very able Minute. There is, however, one point in his opinion to which we must demur.

The following is the point to which I allude. After saying, in the 5th paragraph of his opinion :—" That the arguments against the measure are full of force and difficult to controvert," he says : —" It must of course be admitted that the statute of Will. IV from which I have quoted, and of which the substance was repeated, though with a slight modification in the Queen's Proclamation of 1850, raises an argument against maintaining in our laws any disabilities founded upon distinctions of race which is theoretically very strong. The statute quoted by him in the 3rd paragraph of his opinion is 3rd and 4th Gul. IV, Cap. 85, Sec. 87. He quoted that section correctly down to the word "employment," and then, instead of concluding, as the section concludes with the words " under the said Company," he substituted the words " under the Government of India." This is inadmissible. In quoting a statute the very words must be quoted. Any interpretation the quoter may wish to put upon those words should be stated afterwards. In dealing with Lieutenant-Colonel Bradford's opinion upon the point above quoted, I must read his quotation of the statute in the 3rd paragraph of his opinion as if he had concluded the quotation correctly.

In my letters of the 14th and 17th instant, published by you on the 19th and 22nd instant respectively, I submit that I proved that, at the time when the statute, above alluded to was passed, the office of Justice of the Peace was an office held under the Crown, and not under the East India Company, and therefore that office was not one of the offices which either that statute, or the Queen's Proclamation, which as Lieutenant-Colonel Bradford correctly states, repeats the substance of that statute, enables a native to hold. Consequently it cannot be admitted, on the contrary it is strenuously denied that the said statute raises any argument against withholding from natives the office of Justice of the Peace in and for the Mufassal.

In further support of my argument upon that point, allow me to call attention to the fact that in the statute 3 and 4 Gul. IV., Cap. 85, the restriction contained in the statute 33 Geo. III., Cap. 52, Sec. 151, to the issue of Commissions of the Peace to British inhabitants only within and for the Mufassal, is not specifically removed, as it would have been, if it had been intended by the first mentioned statute to enable

natives to hold Commissions of the Peace within and for the Mufassal, the more especially as in the previous year, by statute 2nd and 3rd Gul. IV, Cap. 117, the Commission of the Peace authorised to be granted to natives was restricted to Presidency towns

Moreover, it is perfectly clear that the Indian Legislature of 1869 did not consider that either the statute 3 and 4 Gul. IV., Cap. 85, Sec. 87, or the Queen's Proclamation, authorised the issue of Commissions of the Peace within and for the Mufassal to natives. For if they had done so, Section 4 of Act II of 1869 would have been omitted as unnecessary, and Section 3 would have described the persons who may be appointed Justices of the Peace within and for any part of British India, as "such and so many inhabitants of British India, as &c.," and would not have restricted the appointment to "such and so many of the Covenanted Civil Servants of the Crown in India, or other British inhabitants, as &c." I think, too, that Mr. Ilbert will agree with me that the legal member of the Supreme Council in 1869 was not inferior to himself either in talent or legal knowledge, and I am not aware that any of the other members of the present Supreme Legislative Council arrogate to themselves, as Sir Charles Aitchison does, talent or legal knowledge superior to that possessed by the members of the Supreme Legislative Council who passed Act II of 1869. Therefore, we are entitled to conclude, 1*st*, that the Supreme Legislative Council of 1869 passed Act II of that year with full knowledge and recollection of all the statutes as well as of the Queen's Proclamation above referred to; and 2*nd*, that, by restricting the office of Justice of the Peace within and for the Mufassal to "the Covenanted Civil Servants of the Crown in India, or other British inhabitants," they, by implication, deliberately declared that neither the statute 3 and 4 Gul. IV. Cap. 85, nor the Queen's Proclamation, authorized the issue of Commissions of the Peace within and for the Mufassal to natives.

In my letters of the 14th and 16th instant I have already pointed out that, both in the statute 33 Geo. III., Cap 52, Sec. 151, and in Act II of 1869, the use of the word "other" restricts the meaning of the term "*Covenanted Servants of the said Company*" in the statute, and of the term "Covenanted Civil Servants of the Crown in India" in the Act to British inhabitants who are such servants, and therefore, neither the statute nor Act enables "Covenanted Civil Servants of the Crown in India," who are natives, and, therefore not "British inhabitants," to hold the office of Justice of the Peace. Such being the case, the argument is not only not strengthened in the case of the native members of the Covenanted Civil Service, but actually fails on both points.

BRITANNICUS.

October 27, 1883.

THE OPINION OF THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Sir John Morris, the then Chief Commissioner of the Central Provinces, in reply to the Government of India, dated 17th March 1883, wrote his opinion on the Ilbert Bill, dated 23rd April 1883. In that opinion he states that, in April 1882, his opinion was asked on a proposal to relieve native members of the Covenanted Civil Service of such restrictions on their powers as are imposed by Chapter XXXIII of the New Code of Criminal Procedure, and he complains that, by the present Bill, the scope of the measure is materially enlarged.

He further says, that the fact of His Honour the Lieutenant-Governor of Bengal, the head of the Government most strongly affected by the Bill, having expressed his inability to see any administrative necessity for this measure, and his grave doubt as to the propriety of entrusting such powers as it contemplates to native officers, materially modifies the position of the question. And he concludes with the opinion that, in consequence of the very strong agitation against the Bill on the part of the Europeans, it would be better, in his opinion, to withdraw the Bill than to legislate on the basis even of the original proposition.

It appears that this opinion did not please the Government of India; therefore, in the beginning of July 1883, upwards of two months afterwards, Mr. W. B. Jones, who succeeded Sir John Morris, supplemented the latter gentleman's opinion with one of his own. This was contrary to the rule laid down by the Government of India with reference to Bengal, whereby the present Lieutenant-Governor was not allowed an opportunity of supplementing the opinion of his predecessor, Sir Ashley Eden, upon Mr. B. L. Gupta's application, with one of his own, though such an opportunity might have been given to him when the other Local Governments were consulted about it.

The only part of the Bill, then, of which Mr. Jones approves, is that native District Magistrates and Sessions Judges should be made Justices of the Peace.

If, however, Government should desire to "seek to secure the ends at which the second proposal aims in some other way" than that set forth in the Bill, Mr. Jones makes two proposals.

First, "that cities with a European population exceeding a certain number should, for the purpose now in hand, be regarded as Presidency towns," in which case, says Mr. Jones, the European communities of those cities "can scarcely object to be treated like their countrymen in

Calcutta, Madras, and Bombay." On the contrary, I opine, the European communities of those cities can scarcely submit to be treated in the way, in which I showed, in my letter of the 18th instant, published by you on the 24th instant, their countrymen of Calcutta, Madras, and Bombay, have been treated.

Second, that in places outside such cities and Presidency towns, "Government should take power to appoint any one, European or native, Justice of the Peace; but that cases in which, a European British subject being the accused, a native might be the complainant, should be heard by a Bench consisting of one European and one native Justice of the Peace; difference of opinion, whether as to finding or sentence, being referable to the Magistrate of the District.

The way in which Mr. Jones arrives at his proposal that a native who has attained the position of District Magistrate or Sessions Judge might be entrusted with power to try European British subjects, is somewhat peculiar. He takes great pains to prove that they are not so fit for that work as British Magistrates and Judges, and then he proposes that the powers shall be given to them.

He says the question which this Bill raises is troublesome, on account of the passions it excites, and the absolute difficulty of arriving at a satisfactory conclusion regarding it, and, he adds, "an impartial tribunal would find it most difficult to draw the line between the conflicting claims of the European and native. But the question which this Bill raises is whether or not natives have a right to be empowered to try European British subjects in criminal cases. That question Mr. Jones himself satisfactorily answers in the 3rd and 4th paragraphs of his opinion. In the 3rd paragraph he says: "The exercise of the judicial power is not one of the natural rights of man. In the 4th paragraph he says: "No one has a right to try other people, and no native has the smallest right to feel aggrieved, because such cases are not entrusted to him; and "that the European is generally fitter than the native to try cases in which Europeans are accused, appears to me to be abundantly clear. It is manifested then, that, according to Mr. Jones, natives have no claim to be empowered to try accused European British subjects, and that if they had any their claim would be outweighed by the superior claim of European British subjects to be tried by British Magistrates, on account of the superior fitness of the latter for the work.

In the second clause of the 4th paragraph of his opinion, Mr. Jones gives unanswerable reasons for holding that British Magistrates and Judges are fitter to try Europeans than native Magistrates and Judges are. Those reasons have been so ably stated by many other opponents of the Ilbert Bill that it is needless to repeat them.

In the 5th paragraph Mr. Jones erroneously says that the honourable members who argued against the Bill in Council were led somewhat astray, owing to their having thought too exclusively of the accused person, and that they overlooked the fact that the effectual and impartial administration of justice is attained by a system which secures justice as between complainant and accused, or between society and the accused, and not by a system which affords a maximum of security to the accused. But since those honourable members argued for the retention by European British subjects of their privilege to be tried by British Magistrates and Judges, and Mr. Jones himself proves that British Magistrates and Judges are fitter than native to try European British subjects, the honourable members who argued against the Bill in Council, so far from overlooking the fact referred to by Mr. Jones, or supporting a system which affords a maximum of security to the accused, advocated a system whereby the effectual and impartial administration of justice not only would be attained, but is proved to have been already attained. And so far is that system from affording a maximum of security to the accused that if he is guilty it is as certain as any earthly means can possibly be to secure his conviction. Therefore, instead of the present system being injurious to natives as Sir Evelyn Baring dishonestly insinuates, for he does not dare to say so openly, it is actually beneficial to them, inasmuch as it, as far as it is possible for any earthly system to do, secures the conviction of guilty accused European British subjects.

In the same 5th paragraph, Mr. Jones greatly assists the arguments of those honourable members by saying:—"I am compelled to admit what they greatly insisted on, that the European in this country is exposed to the danger of false accusation to a great extent, and is very helpless against it, and that this fact affords some additional reason for the privilege which the law now confers upon him.

In the 6th paragraph Mr. Jones draws a most illogical conclusion from the premises, which, strange to say, he calls the logical issue of the struggle between the principle that race distinctions between Europeans and natives (though they abound to an incalculable extent between natives and natives) are to be condemned, and the principle that the fittest judge (whom in the 4th paragraph he proves to be the European) is to be preferred, is that the disabilities now imposed by law on natives (it would be more correct to say the ability not extended by law to natives) should be removed, and that it should be left to the Government to select fit persons. But he correctly adds—Europeans will not trust the Government. Surely this is not at all wonderful, considering the *Punica fides* with which they have hitherto been treated by the

Government of India. But, says Mr. Jones, it cannot be helped. He therefore proposes that the power to try European British subjects shall be extended to native District Magistrates and Sessions Judges. In making that proposal he forgets that those officials are selected by Government, and that, therefore, the same objection exists against them as against any other person selected by Government.

His proposal merely diminishes the number of the natives from among whom the Government may select persons to hold the office of Justice of the Peace. That is all. And since, as Mr. Jones truly says, we cannot trust the Government at all in the matter of making selections, we object to any selections of natives, however few, made by them.

Granting for the sake of argument that native Magistrates possess all the judicial qualifications claimed for them by the supporters of the Bill, and that they are, as they ought to be, well acquainted with the manners, customs and habits of their fellow natives, the present system which gives native Magistrates criminal jurisdiction over their fellow natives, is one whereby the effectual and impartial administration of justice is attained, inasmuch as it secures justice as between complainants and accused natives, and between society and accused natives. Surely, then, European British subjects have a right to ask the Government to afford them an equally effectual and impartial administration of justice by refraining from interfering with the present system, whereby justice is secured between complainant and accused European British subjects, and society and accused British subjects, by means of the trial of the latter before Magistrates of their own race, who are well acquainted with their manners, habits and customs.

The only defect, if defect it be, in the present system is, that British Magistrates have concurrent jurisdiction with natives Magistrates over natives, not that native Magistrates have not concurrent jurisdiction with British Magistrates over European British subjects. That, however, is proved to be no defect at all by the fact stated by several of the district officers consulted by the Government of India, that natives frequently apply to have their cases transferred from the court of a native Magistrate to that of a British Magistrate. No official, even among the supporters of the Bill, has alleged that any European British subject has ever applied to have his case transferred from the court of a British Magistrate to that of a native Magistrate. If European British subjects had been in the habit of making such applications, that fact would lend reason to the Bill, of which it at present is utterly devoid.

With reference to the false and libellous charge made by native newspapers to the effect that British Magistrates do not do justice in

cases in which natives are complainants and European British subjects the accused, I am greatly astonished to find Mr. Jones saying that, though the native press greatly exaggerates, he is unable to say that the charge is altogether without foundation. For it is notorious that the impression amongst Europeans is, that, whenever a British Magistrate is prejudiced, it is the native, and not the European, in favour of whom he is so. This may arise, not from any desire to do injustice, but from the generous impulse of an Englishman to side with the weaker of the two opponents. The impression in European circles above-mentioned is testified to by the Officiating Chief Commissioner of Curg in the following words :—"*It is well known that in European non-official and military circles in India, the Civilian Judge is very commonly believed to be prejudiced in favour of the natives in disposing of such cases,*" that is, cases in which natives are complainants and European subjects the accused.

BRITANNICUS.

October 30, 1883.

THE OFFICE OF JUSTICE OF THE PEACE.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—One of the points most strongly insisted upon by the supporters of the Bill is, that the office of Justice of the Peace is an adjunct of the office of District Magistrate. But it is not so. Act II of 1869 enacts that "the Governor-General of India in Council, so far as regards the whole of British India (other than the towns of Calcutta, Madras, and Bombay) and every Local Government, so far as regards the territories subject to its government or administration (other than the towns aforesaid) may, by notification in the official *Gazette*, appoint such and so many of the Covenanted Civil Servants of the Crown in India, or other British inhabitants, as the said Governor-General in Council, or the Local Government (as the case may be) shall think properly qualified, to act as Justices of the Peace within and for the territories mentioned in such notification."

The word "may" in the Act is permissive and not obligatory. Therefore it is not obligatory upon any of the Governments mentioned in the Act to appoint any particular British Covenanted Civil Servant of the Crown in India a Justice of the Peace. Consequently even a *British District Magistrate cannot claim as a right to be appointed a* Justice of the Peace. Much less, then, can a native District Magistrate claim as a right to be so appointed. It is clear, then, that the office of Justice of the Peace is not an adjunct of the office of District Magistrate, as the supporters of the Bill incorrectly allege.

Since, then, it is not obligatory upon any of the Governments mentioned in the Act to make an English District Magistrate a Justice of the Peace, much less ought it to be made obligatory upon any such Government to make a native District Magistrate a Justice of the Peace. And since, as Mr. Jones, the Chief Commissioner of the Central Provinces, truly says in the 4th paragraph of his opinion, "no one has a natural right to try other people," neither the British nor the native District Magistrate, whom the Government may refrain from appointing a Justice of the Peace, would have the smallest right to feel aggrieved at the Government so refraining.

Since, then, the office of Justice of the Peace is not an adjunct of the office of District Magistrate, and since it empowers the holder to try European British subjects, and the power of trying them ought to be held only by those persons who are the fittest to try them, and Mr. Jones proves that British Magistrates are the fittest for that work, the logical inference is that the office of Justice of the Peace ought not to be conferred upon a native Magistrate, even though he be a District Magistrate, but ought to be restricted to competent British Magistrates.

No administrative inconvenience can possibly arise from withholding the office of Justice of the Peace from a native District Magistrate, because, as the Governor of Bombay correctly points out, Section 455 of the Code "would enable him to take the same cognizance of an offence committed by a European as he could if committed by a native; and also to issue process to compel his appearance, provided it be made returnable before a Magistrate having jurisdiction to try the case."

Neither would the fact of a native District Magistrate not having the power to try the accused European himself lessen his dignity, because the natural course for him to pursue even if he had the power to try him, would be to make the process to compel his appearance returnable before a British Magistrate and Justice of the Peace. For as the Lieutenant-Governor of Bengal correctly points out "It may be asserted beyond contradiction that, from the beginning of the year to the end a Magistrate of a district rarely, if ever, thinks of dealing with criminal cases."

The argument that the fact of native District Magistrates not having the power to try European British subjects himself lessens his dignity is too absurd. He might, with equal justice, say that his not being able to inflict with his own hands corporal punishment upon the native offenders whom he sentences to receive stripes, lessens his dignity. Section 445 of the Code, as above stated, authorises the native District Magistrate to send an accused European British subject to a British Magistrate subordinate to himself for trial. The Code also authorises

the District Magistrate to send a native offender sentenced to receive stripes to a person subordinate to himself to inflict them. If, then, he loses dignity by not trying the European himself, he must also lose dignity by not inflicting the stripes himself. Mr. Behari Lall Gupta had then better bring that fact also to the notice of Government, and ask for an Act to be passed, authorising him to inflict corporal punishment himself upon all native criminals. Such an application would not be a whit more ridiculous than his application dated 30th January 1882, which the Government of India has used for the purpose of upsetting the friendly relations which were gradually growing up between Europeans and Natives.

BRITANNICUS.

October 31, 1883.

THE OPINION OF THE CHIEF COMMISSIONER OF CURG.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—There appears to be something in the air of Curg which causes those who breathe it to oppose oppression. Last year Sir James Gordon, the Chief Commissioner of Curg, disapproved of the proposal of the Government of India to subject European British subjects to the criminal jurisdiction of native Covenanted Civil Servants. This year he is strongly opposed to a Bill which embodies a much more extended measure. Last year Mr. Lyall, when he was Financial Commissioner of the Punjab, was in favour of the above-mentioned restricted measure. This year that gentleman having breathed the wholesome air of Curg, in the capacity of Officiating Chief Commissioner of that Province, is opposed to that restricted measure, and advocates the entire withdrawal of the more extended measure embodied in the Ilbert Bill.

Mr. Lyall points out the unfair way in which the Government of India submitted the limited measure of last year for the approval of the Local Governments. He says that they submitted only "Mr. Gupta's extracts from the debate in the Legislative Council, which occurred when a similar amendment of the law was proposed in 1872. His extracts were from speeches by the 'Ayes' only." Since then he says he has "read the speeches by the 'Noes.'"

Moreover, that clear-sighted and thorough English gentleman, the Hon'ble Lyttleton H. Bayley, Acting Chief Justice of Bombay, has pointed out, "that it was not difficult to see in what manner it was wished that the questions (put last year) should be answered." It is not at all surprising then that, in the press of important official

business, Mr. Lyall was entrapped into uttering an opinion favourable to the limited measure of last year. This, however, is not the way in which a great Government would act. But the present Government of India has proved by many acts, which would be called pettifogging in an attorney, that it is not a great Government. Let us then pity it, and hope for better things hereafter.

The opinion of the Officiating Chief Commissioner of Curg is so statesmanlike a paper that justice could not be done to it without extracting it in its entirety. But as it would take up too much space for me to do so in this letter, I hope I shall be pardoned for quoting only a few passages, to which I desire to draw particular attention, because they refute opinions expressed in favour of the Bill.

In the 5th paragraph he says :—" Many absurdities and anomalies have to be tolerated in India, and as the race-disqualification does not prevent a man from becoming a Judge, but only from trying a very small class of accused persons, it is not a disqualification of which the race can seriously complain."

In the 6th paragraph he says :—" The Ilbert Bill is supported (as any measure supposed to be unpalatable to Europeans will be) by those native gentlemen educated or uneducated who are disaffected to the British Government, or who feel a race antipathy to the English. But in the Punjab, where I had opportunities of conversing with native gentry of various kinds, I came to the conclusion that a large number of sensible and well-affected native gentlemen were of opinion that the proposed change of the law was an unwise one. The great mass of the people are, I think, everywhere uninterested in the question."

In the 7th paragraph he says :—" It seems to me that the English Covenanted Civilian is in a position which makes it easier for him than a native to be an efficient and impartial Judge in criminal trials of Europeans." * * * * " On the other hand, a native Judge trying a criminal charge against a European, about which race-feeling has been aroused, is in a much more difficult position. He is generally by birth a man of the native middle-class, between which class and the non-official European a jealous sentiment is apt to exist. The country is his home, and he lives among the people, and is exposed by their customs and habits to outside pressure and solicitations of the strongest kind." * * * * " In fact all the surrounding circumstances and all his national sympathies are likely to bias him in favour of the prosecution, particularly if the prosecutor is a man of his own class or of good position in native society." * * * * " I am of opinion that the average conscientiousness and firmness of character of the educated English gentleman is, at present, much higher than that of the educated native

gentleman." * * * "Whatever the cause may be, I do not think the fact of the difference will be questioned by any impartial person of Indian experience."

In the 8th paragraph he says :—"For the above reasons, I hold that the English Judge or Magistrate in India is naturally better qualified to try cases in which Englishmen are accused, than the native Judge or Magistrate. That is what we have said from the commencement of this controversy We say also that we are entitled to the most effectual and impartial administration of justice which the Government can afford, and that we have it in the present system. We, therefore, object to the Ilbert Bill, because it proposes to substitute for it a system which will give us a less effectual and impartial administration of justice than that which the present system affords us.

In the 9th paragraph Mr. M. Lyall says :—"The real question is one of sentiment only as far as the natives are concerned, and it is only a very small class which is interested in it. I do not intend to maintain that national or race sentiment should be disregarded in legislating for India. I hold the contrary opinion very decidedly; but the strong sentiment in the case is on the side which resists the proposed change, and which may be materially affected by it." Justice also is on our side, for, as I have said above, we are entitled to the *best system which the Government can afford*; the present system is the best which the Government can afford; the system proposed by the Ilbert Bill is an inferior system, and not less expensive to Government; therefore we are justified in asking Government not to substitute the inferior system proposed by the Ilbert Bill for the *present superior system*.

In the 9th or concluding paragraph he says.—

"In studying its (the Bill's) provisions including those which, merely to avoid the least appearance of preferring English to native Magistrates, disqualify a number of competent European Magistrates who are not Covenanted Civilians, one might be forgiven for suspecting it to be the outcome of a very exaggerated idea of the sensitiveness of the natives in respect to race distinctions, and of over regard for such sensitiveness amounting to timidity. There is always some danger in India in any appearance of timidity. On the other hand, there will be no danger in disregarding that clamour which will be raised if the Bill is withdrawn, by the particular classes of natives who are now showing interest in it. *It is impossible to conciliate by concessions those who are at heart radically hostile to the British Government.*" The italics are mine. This is wise and statesmanlike advice to the Government of India. I do not believe,

however, that they are really actuated by timidity in refraining from withdrawing the Bill. I believe the fear of the clamour that will be raised by the native supporters of the Bill, who are a mere drop in the ocean of the native population of India, to be nothing more than a pretence. None know better than they do the importance of those native supporters for evil They needed not the evidence of Mr. Forjett, late Commissioner of Police of Bombay, all-powerful and convincing though it is, that they have but to frown upon such native agitators to make than quail, and desist from agitation. Nay more, they know full well that, if they were to give the slightest encouragement to the expression of native opinion adverse to the *Bill*, thousands of sensible and well-affected natives would come forward to oppose it. Therefore I repeat that fear of any evil resulting from the withdrawal of the Bill is a mere pretence. It is in fact only one of the many ruses to which the Government of India has unworthily resorted, to excuse its proceeding with a Bill which it knows to be not only utterly indefensible, but also certain to do an immense amount of mischief.

BRITANNICUS.

November 1, 1883.

DR. HUNTER'S FALLACIES IN THE *TIMES*.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Dr. Hunter has written to the *Times* in support of the Ilbert Bill. As might have been expected, his letter is a very clever one. But its cleverness consists in its special pleading, and in the adroitness with which it begs the question in matters upon which his argument turns. One of his objects seems to be to refute some of the arguments of the Calcutta High Court against the Bill. In that bold attempt he has miserably failed. The whole letter is a proof of the demoralising effect of the Ilbert Bill upon a man erst while honourable. That alone ought to be sufficient ground for the destruction of the poisonous reptile.

In the first paragraph of his letter Dr. Hunter says, "I feel that the Indian Legislature is now compelled either to give effect to the principle embodied in the Ilbert Bill, or to break a long series of pledges granted by successive Secretaries of State by Parliament and by Her Majesty the Queen to the Indian people." In that sentence Dr. Hunter begs the whole question. It must be borne in mind that the principle embodied in the Bill is declared by the Government of India in "*the Objects and Reasons*" to be "that the time has now come for modifying" the existing law, and removing the present bar upon the invest-

ment of native Magistrates in the interior with powers over European British subjects. The series of pledges, then, which Dr. Hunter asserts have been granted by successive Secretaries of State, by Parliament, and by Her Majesty the Queen, are pledges that native Magistrates in the Mufassal shall have criminal jurisdiction over European British subjects. Dr. Hunter's letter proves that he is in the confidence of the Government of India. One naturally expects, therefore, to find in his letter some evidence, never yet given to the public, in support of this startling statement. If any one indulged in such an expectation he would have been sadly disappointed, for no such evidence is adduced. The statement, then, that such pledges have been given rests entirely upon Dr. Hunter's unsupported assertion, and as the whole argument turns upon that proposition, we decline to admit it to be true until it is proved to be so.

Incidentally, however, in the same first paragraph, Dr. Hunter refers to Her Majesty's Proclamation as evidence that such pledges have been given. The following is the passage to which I allude, "The question before the Indian Legislature is, whether it will, in opposition to Anglo-Indian race feeling, carry out the policy laid down by Her Majesty's Proclamation, or whether it will acknowledge a disqualification based on race and creed in defiance of the pledges given by successive Secretaries of State." In this passage, the Queen's Proclamation is connected with the alleged pledges, as if they were made or authorised in it. It must be remembered that that Proclamation was issued shortly after the quelling of the rebellion of 1857, a rebellion in the quelling of which Her Majesty's gallant soldiers had been aided by her loyal British and Eurasian Indian subjects. And yet Dr. Hunter has in his letter under discussion maligned Her Majesty by trying to make the British electors believe that, immediately after the rebellion had been quelled, our gracious Queen pledged herself to subject the loyal and gallant quellers of that rebellion, their wives and daugthers, to the criminal jurisdiction of native Magistrates, who, if not disaffected, were at least lukewarm during the rebellion. Such a proposition is so preposterous that it could not have emanated from the brain of any one but a man whose moral vision, like Dr. Hunter's, has been rendered oblique by a long and favourable contemplation of that distorted abortion, the Ilbert Bill.

The Proclamation is of so generous a nature that I do not believe it could have emanated from any potentate but our generous-hearted Sovereign. It virtually says to the peoples of India,—"I forgive your rebellion, and notwithstanding that rebellion I will carry out the generous policy which Parliament imposed upon the East India Company in

the Statute 3 and 4 Will. IV, Cap. 85, Sec. 87, that is to say, as far as may be, natives of India shall, equally with my British and Eurasian subjects, be freely admitted to all the offices in my Indian service formally thrown open to them by that statute, namely, all places, offices, or employments which, before I assumed the Government of India, were held under the East India Company." In my letter of the 14th October published by you on the 19th of the same month, I proved that the office of Justice of the Peace was not an office held under the East India Company, consequently that was not one of the offices thrown open to natives either by the statute above referred to or by the Queen's Proclamation; and since the Code enacts that "no Magistrate shall have such jurisdiction" (jurisdiction to enquire into a complaint or try a charge against a European British subject) "unless he is a Magistrate of the first class and a Justice of the Peace," it naturally follows that Her Majesty did not in her Proclamation pledge herself to give native Magistrates in the Mufassal criminal jurisdiction over European British subjects. I have also in my letter of the 14th ultimo, above referred to, proved that Parliament gave no such pledge in the Statute 3 and 4 Will. IV., Cap. 85. In the late debate in the House of Lords on the Bill, Lords Cranbrook and Salisbury, two former Secretaries of State, and Lord Lytton, the late Viceroy, virtually denied that any such pledges had ever been given by successive Secretaries of State. Therefore Dr. Hunter's startling statement to the effect that, a long series of pledges have been granted by successive Secretaries of State, by Parliament, and by Her Majesty the Queen, to give native Magistrates in the Mufassal criminal jurisdiction over European British subjects," is not only unsupported by evidence, but is actually contradicted by Secretaries of State, by Parliament, and by Her Majesty the Queen. Consequently, if the Government of India withdraw the Ilbert Bill, they will not break any pledges given by successive Secretaries of State, by Parliament, or by Her Majesty the Queen.

In the latter part of the first paragraph of his letter Dr. Hunter misstates the question before the Supreme Legislative Council in the following words :—"The question before the Indian Legislature is whether it will in opposition to Anglo-Indian race-feeling, carry out the policy laid down by Her Majesty's Proclamation, or whether it will acknowledge a disqualification based on race and creed in defiance of the pledges given by successive Secretaries of State. But it is not so. The question before the Indian Legislature is whether in Indian Legislature will substitute, for the present system which secures to European British subjects the most effectual and impartial administra-

tion of justice which the Government can afford to give them, another system, which an overwhelming consensus of official opinion proves, and they believe to be, a system which must inevitably give them a less effectual and impartial administration of justice than the present system gives them.

Dr. Hunter next, by means of an interpolation unauthorised by the context, twists a statement of the Judges of the High Court of Calcutta into an admission which they never made. The following is the passage in his letter in which he does this :—"In regard to the first argument the Judges of the High Court of Calcutta rely on 'the Codes of 1861 and 1872, in both of which this restriction (on the jurisdiction of native officers) was deliberately enacted.'" The words between brackets constitute the unauthorised interpolation above referred to, for they do not appear in the original, namely, the conclusion of the 11th paragraph of the opinion of the Judges. Neither do those words correctly represent the restriction referred to in the words "this restriction." For the context proves that the restriction referred to, is the restriction to European officials of jurisdiction over European British subjects in the Mufassal charged with offences. What the Judges, then, said was that the Codes of 1861 and 1872 limited the jurisdiction in such cases to European officials. But Dr. Hunter wanted to imbue the British electors with the idea that native Magistrates had had their jurisdiction curtailed. He, therefore, represented the Judges as saying that a restriction on the jurisdiction of native officers had been deliberately enacted by the Codes of 1861 and 1872. This is an allegation by Dr. Hunter of a restriction on jurisdiction, which, he well knew at the time he penned the passage native officers had never possessed! If Dr. Hunter is not ashamed of having been guilty of such an unfair piece of special pleading, I am sorry for him.

Dr. Hunter then lumps together the Competition and Statutory Civilians, and tells us that there are 33 of them. But of these 9 only are Competitive Civilians, and only 4 of that 9 have more than 4 years' service. Of the remaining 24 Statutory Civilians, 2 only have more than 4 and less than 5 years' service, and of the remaining 22 a few have 3 years, some only 2 years and the rest only 1 year's service. Therefore 4 only of the 33 native Civilians, or less than one-eighth of their number, can with any truth be said to be "of considerable standing in the service," and yet Dr. Hunter tells the British electors that "many" of those 33 are so! The Ilbert Bill must have a very demoralising effect to cause an honourable man like Dr. Hunter so to pervert the truth.

Again, the Judges of the Calcutta High Court said :—"The Convenanted Native Civilians who have passed into the service by the

competitive examination constitute, it is apparent, a small and dwindling class." The way in which Dr. Hunter tries to persuade the British electors that those Judges have misstated the fact, is to jumble together the competition and Statutory Civilians, and then to say: "Now the united body of native Civil Servants, instead of "dwindling" has "increased as follows," and then he points out that they have "risen to 33." But even of that united body of 33 several are only nominated probationers, since they have not yet passed the examinations necessary to entitle them to appointment to the service, and as it is possible that they, or some of them, may fail, Dr. Hunter has no right to include them among the number of those appointed to the native Civil Service. Therefore, I say that this paragraph is another piece of special pleading.

In the next paragraph Dr. Hunter says :—"Nearly a sixth of the native Civilians (or five, including an officer on furlough) have now attained to the grade when, by seniority, they have a claim equally with the European Covenanted Civilians to the offices of District Magistrate or Sessions Judge." To those five he then adds three who have not yet attained the grade, when by seniority they would have a claim to the office of District Magistrate or Sessions Judge, and alleges that a question which, he says, affects District Magistrates and Sessions Judges, but which I shall presently show, does nothing of the kind, "affects one-fourth of the whole number of native Civil Servants." Thus by another piece of special pleading he tries to make the British elector believe that a question, which he has failed to prove affects one-sixth of the native Civil Servants, or in fact even one of them, affects one-fourth of them.

At the end of the same paragraph Dr. Hunter makes another desperate attempt to wrest from Sir Charles Aitchison the title of argumentative mendicant *par excellence* of India, by begging the whole question in the following words :—"The Government of India now finds it impossible to withhold from the native Civilians *the jurisdiction over Europeans appertaining to the offices of District Magistrate and Sessions Judge.*" The italics are mine. They contain the assertion which begs the whole question. That assertion is that jurisdiction over Europeans, that is to say, the office of Justice of the Peace, appertains to the offices of District Magistrate and Sessions Judge. I deny that that proposition is true.

In my letter of the 31st ultimo, written before I had seen Dr. Hunter's letter to the *Times*, I submit that I clearly proved that the office of Justice of the Peace, by means whereof alone criminal jurisdiction over European British subjects in India is acquired, does not appertain to

the office of either District Magistrate or Sessions Judge. I will not, therefore, trespass upon your valuable space by repeating the argument contained in that letter, but I will content myself with referring to it, and requesting it may be read in conjunction with this letter.

In continuation of the argument contained in my said letter of the 31st ultimo, I refer to Section 35 of the Code of Criminal Procedure of 1872, re-enacted by the Code of 1882, which provides for the appointment of District Magistrates :—"In every district there shall be a Magistrate of the first class, appointed by the Local Government, who shall be called the Magistrate of the district, and shall exercise throughout his district all the powers of a Magistrate." The Act does not add "and Justice of the Peace," nor does it proceed to enact, like Act IV of 1877, in the case of Presidency Magistrates, that "Every such person shall, by virtue of his office, be a Justice of the Peace," &c. On the contrary, the Code contemplates the possibility of a District Magistrate, or more correctly speaking, a Magistrate of the District, not being a Justice of the Peace, and therefore not possessing criminal jurisdiction over European British subjects ; for Section 72 of the Code of 1872, re-enacted by the Code of 1882, enacts that "No Magistrate shall have such jurisdiction unless he is a Magistrate of the first class and a Justice of the Peace" Consequently a British Magistrate of a District, who is not also a Justice of the Peace, would not have criminal jurisdiction over European British subjects. The same remarks apply to the office of Sessions Judge. The Code does not enact that he shall be appointed a Justice of the Peace, much less does it enact that he shall, by virtue of his office, be a Justice of the Peace. Therefore, the proposition in which Dr Hunter begs the whole question, namely, the proposition that jurisdiction over Europeans appertains to the offices of District Magistrate and Sessions Judge, has no foundation in fact. Dr. Hunter's premisses then being false, it naturally follows that the conclusion which he draws therefrom is also false. Therefore, it is not obligatory upon Government to make native Civilians Justices of the Peace. Consequently, it is not impossible for the Government of India to continue to withhold from native Civilians that criminal jurisdiction over European British subjects in the Mufassal to which they have no right, and which neither they, nor any of their fellow-natives, have ever possessed.

BRITANNICUS.

November 3, 1883.

DR. HUNTER'S PLEDGE.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I am very glad to learn from Dr. Hunter's letter to the *Times* that he is an advocate for the strict redemption of pledges. My reason for so rejoicing is that I am about to ask him to redeem a pledge which he gave eight months ago. On the 9th March last, Dr. Hunter said in the Supreme Legislative Council, "If a distinct administrative necessity had not arisen, I should decline to support a measure which must be painful to an important section of the community. The administrative necessity to which Dr. Hunter referred, was that put forward by the Supreme Government on that occasion. Mr. Gibbs, a member of that Government, illustrated it, or, to use his own words, explained it, more fully, by means of apocryphal railway works at Carwar. He said if a European, an apocryphal one I suppose, upon those apocryphal works, "commits a crime" (an apocryphal one) "which requires more punishment than the District Magistrate can award," that apocryphal European "must be committed to the Sessions Court, * * * but the Sessions Judge there (being a native) could not try him," and it would therefore be necessary to send him elsewhere for trial, to Tanna for instance, a two days' voyage by steamer, and a twenty miles journey by railway. I have called the crime "apocryphal" because Mr. Gibbs said, "There are very few cases in which Europeans come before them (the Criminal Courts) and those of a simple nature, petty thefts and assaults, which do not require more punishment than a District Magistrate can award."

Since Dr. Hunter gave that pledge the Government of India has obtained the opinions of the Local Governments and the District officers upon the subject. Out of regard for Dr. Hunter's prejudices I will not quote the opinions of the District officers, because their heterodoxy according to the learned Doctor, is manifest, inasmuch as they are unwise enough to be "guided by considerations different from those which constrain the action of the responsible Governments, and of members of the Viceroy's Legislative Council." In order to prove that heterodoxy and unwisdom the wise Doctor tells us, that a District officer actually "thinks of the wishes of what section of the community under his care who will be affected by the measure," instead of consulting the wishes of those whom it will not affect, and whom therefore it does not concern. To use the Bombay Borah Barrister's beautifully blundering figure of speech, "Could the height of absurdity further go?" without toppling over. Dr. Hunter ought to advise those foolish District officers to study Moore's imitation of Lord

Castlereagh's style in the *Fudge Family in Paris*, in order that they may learn that

"The level of obedience slopes
Upward and downward as the stream
Of Hydra faction kicks the beam."

They will then be prepared to imitate the learned Doctor by trimming their opinions on all occasions so as to conform to those of the Government of India.

In deference, therefore, to Dr. Hunter, I will restrict myself to quoting the opinions of the "responsible Governments." If, however, any of these reponsible Governments should happen to be silent upon the point, I shall be compelled to have recourse to some of the highest officials of that particular Province to show what the opinion of the Province is.

The Governor of Madras says: "Let us not be led to move at all quicker than we otherwise should with a view to anticipate demands *which may some day be made, and which it will be for our successors to* grant or refuse." His Excellency also refers to the opinion of Mr. Webster, of which he approves, and therefore the opinion of Mr. Webster may be taken as that of the Governor of Madras It is this, "with respect to Madras requirements I am not aware that any administrative difficulty has as yet been felt, or is likely to arise, from the want of native Magistrates or Judges endowed with powers to try European British subjects." It is quite clear that this opinion must be correct, because the Lieutenant-Governor of Bengal tells us "that there is not a single member of the native Covenanted Service who has entered it by competition in Madras.

Moreover, the Chief Justice of Madras says, "It" (administrative difficulty) "has not been experienced in Madras"

The Governor of Bombay says "administrative inconvenience may be undoubtedly incurred if the native Sessions Judges are denied the jurisdiction, but the proportion of European Magistrates in the districts will always be so large that no necessity need be anticipated of the employment of native Civilian Magistrate in the trial of Europeans." But as the Lieutenant-Governor of Bengal informs us there are but two native Competition Civilians in the Province of Bombay, one only of whom is a Sessions Judge, the other being a very junior officer, we may disregard that part of the Governor's opinion which refers to Sessions Judges as inapplicable to Bombay. The result, then, is that in the opinion of the Governor of Bombay no administrative necessity exists.

The Acting Chief Justice of Bombay agrees with the Lieutenant-Governor of Bengal, whose opinion he quotes, that no administrative

necessity has arisen. Mr. Justice Pinhey says, "I have already said that I think the extension of the criminal jurisdiction of native Civilians unnecessary, impolitic, and inopportune." The other Judges of the Bombay High Court express no opinion upon the question of administrative necessity.

The Remembrancer of Legal Affairs, Bombay, says, "I am, for these and other reasons, of opinion that the proposed change in the Criminal Procedure is quite unnecessary."

The Lieutenant-Governor of the Punjab is silent upon the question, but Mr. Justice Elsmie, whose position as Senior Judge of the Punjab Chief Court affords him ample means of judging, says, "So far as the Punjab is concerned, I think I may safely say that no necessity whatever has as yet arisen for making the proposed changes in the law."

The Lieutenant-Governor of the N. W. Provinces and Oudh says: "In the correspondence submitted with this letter, it is more than once observed that the question of altering the present law regarding jurisdiction over European British subjects is in no way urgent. With this observation, so far as it relates to these Provinces, the Lieutenant Governor feels bound to say that he concurs."

The Chief Justice of the Allahabad High Court says: "Nor have I been able to discover in the discussion of the Bill in the Legislative Council, as published in the *Gazette of India* any adequate reason for it. Mr. Justice Oldfield says:—"I am bound to say that I can find no immediate necessity for its introduction into these Provinces." Messrs. Justices Straight, Brodhurst, and Tyrrel say:—"Had any enquiries been addressed to us we could have shown, what we now have to point out that there are no circumstances either of administrative or judicial inconvenience existing within the jurisdiction of this court necessitating legislation." The Judicial Commissioner of Oudh says: "The present time does not appear to be favourable for a change in the existing law. As far as I am aware no practical inconvenience has hitherto been experienced."

The Chief Commissioner of Ajmere-Merwara says:—"It has been urged in support of the Bill that if not at once in the course of a few years when full effect shall have been given to the rules passed under the Statute 33 Vic., Cap. 3, administrative convenience will require that native Judges and Magistrates shall be invested with the powers it is now proposed to confer upon them. I cannot think this argument is well founded."

Sir J. Morris, the Chief Commissioner of the Central Provinces, agrees with the opinion expressed by the Lieutenant-Governor of Bengal in the Legislative Council on the 9th March last, to the effect that