PREFACE.

THIS reprint of the Literature on the subject of the Bill to amend the Civil Procedure Code has been undertaken to satisfy the generally expressed demand of the European Public in India. The extracts (brought up to March 9) are from the London *Times*, and from the *Englishman*, *Times of India*, *Madras Mail*, *Pioneer*, *Civil and Military Gazette*, and *Indian Daily News*, representing European opinion in Bengal, Bombay, Madras, the N.-W. Provinces, and the Panjab. Full reports also are given of the public m[illegible] in the Town Hall, Calcutta, the official proceed[illegible] including the debate in Council on March 9, [illegible] nected with the Bill, and reports of other pub[illegible] meetings held in different parts of India to pro[illegible] test against the Bill. References to the debates in Council in respect of the Criminal Procedure Bill, 1872, have been so frequent during the present controversy that it has been thought advisable to include proceedings in Council in connection with the former measure. A short history of the criminal jurisdiction over European British subjects will be found in the Introductory Chapter. Letters from BRITANNICUS, published in the *Englishman* subsequent to March 9, which have been attracting much attention, have been added in the Appendix.

INTRODUCTION.*

By the existing law for the administration of criminal justice in British India European British subjects charged with the commission, without the local limits of jurisdiction of the High Courts of Judicature of Bengal, Madras, Bombay and Allahabad, and of the Chief Court of Judicature of the Punjab, of offences against the criminal law, are entitled to be tried on such charges in the above-named High Courts or Chief Court, in case of offences punishable with death or transportation for life, and by European Judges and Magistrates in case of offences not so punishable, with the proviso that, should such cases require a sentence of more than one year's imprisonment from a Judge or three months from a Magistrate, they are to be sent for trial to the High Court.

The right of British accused persons in India to be tried by Judges being themselves European British subjects is not of recent introduction, but coeval with the establishment in this country of British Courts of Criminal Judicature. Criminal jurisdiction over all persons subject to their rule was conferred by the Charters of 1661 and 1669 on the Governors and Councils of Madras, Bengal, and Bombay, who were constituted Courts of Oyer and Terminer, and the limits of whose jurisdiction were defined by the Charters of 1726 and 1753. The jurisdiction of the Governors' Courts was transferred in Bengal to the Supreme Court at Fort William, established in 1774 under Statute 13, Geo. III. c. 63, with criminal jurisdiction over all British subjects in Bengal, Behar and Orissa, and in Madras and Bombay to the Recorders' Courts established in those towns in 1797 under Statute 37, Geo. III. c. 142, with criminal jurisdiction over all British subjects residing within the factories subject to, or dependent upon, the Governments of those Provinces. The last

* The history of the criminal jurisdiction over European British subjects in India is taken from the proposed Petition to the Houses of Parliament.

mentioned Courts were themselves replaced by the Supreme Courts established at Madras in 1801, and at Bombay in 1823, under the Statutes 39 and 40, Geo. III, c. 79, and 4 Geo. IV. c. 71 respectively, with a similar criminal jurisdiction as regards European British subjects to that theretofore exercised by the Recorder's Court.

The criminal jurisdiction over British subjects of these several Courts, whose Judges were themselves British subjects, was extended by various enactments to the new territories acquired from time to time by the East India Company.

The Charter of 1726 and the Acts and Charters under which the Supreme Courts were created, constituted the Governors and Councils of Madras, Bengal, and Bombay, the Governor-General and the members of his Council, and the Judges of the Supreme Courts, Justices of the Peace; but, as these provisions were found insufficient for the due administration of justice, so far as related to offences committed by British European subjects at a distance from the Presidency towns, in order to facilitate the commitment of such offenders for trial, the Statute 33 Geo. III. c. 52 empowered the Governor-General in Council to appoint Justices of the Peace from the Covenanted Servants of the East India Company, *or other British inhabitants*, to act within the Provinces and Presidencies of Bengal, Madras, and Bombay, and places subordinate thereto; and a later Statute 47 Geo. III. c. 68, conferred on the Governors in Council of Madras and Bombay similar powers within their respective Presidencies in supersession, to that extent, of the abovementioned powers of the Governor-General in Council, but with the like restrictions as to the persons who might be appointed to act as Justices of the Peace outside the Presidency towns. The powers thus conferred have been confirmed and extended to the Local Governments established in India since the date of these Statutes by various Acts of the Indian Legislature, the last of which, being the existing Code of Criminal Procedure passed on the 6th day of March 1882, came into force on the 1st of January of the

present year. Every one of these Acts prescribed that only European British subjects should be appointed Justices of the Peace outside the Presidency towns. Native members of the Covenanted Civil Service have, it is true, been appointed Justices of the Peace in pursuance of powers supposed to be given by Act 11 of 1869, but such appointments, it is urged, are entirely contrary to the spirit and in violation of the express language of that Act, identical in this respect with the words of the Statutes above-mentioned, and which clearly indicates that the Civil Servants appointed thereunder shall themselves be British inhabitants. Down to the 6th of March 1882, therefore, the Indian Legislature fully recognised the inexpediency —to use no stronger expression— of conferring on natives outside the Presidency towns even so limited a jurisdiction as that of committing European British subjects for trial. In the Presidency town, where such powers are exercised under the direct supervision of the British Government and the watchful control of a large European community where the Supreme Court was a Criminal Court of Oyer and Terminer, and where immediate redress for a wrongful commitment is obtainable, the same necessity for special tribunals for Europeans did not exist, and accordingly the Statutes 2 and 3, Will. IV. c. 71 authorised the appointment, as Justices of the Peace for such towns, of any persons resident within the Company's territories without distinction of races. Considerations of a similar character appear to have prevailed in the occasional appointment by the Government of natives of India to the Magistracy of the Presidency towns.

The criminal jurisdiction of the Supreme Courts over European British subjects was transferred to the High Courts established at Calcutta, Madras and Bombay in 1862, and at Agra in 1865, under the Statutes 24 and 25 Vic. c. 104 and 28 Vic. c. 15, and, as regards the Punjab, to the Chief Court of that Province, created by Act IV of 1866 of the Supreme Council. Under Act XXI of 1863 a Recorder's Court was established at Rangoon with criminal jurisiction over European British subjects in British Burmah in respect of all offences not

punishable with death, jurisdiction in the case of capital offences being reserved to the Calcutta High Court. The only statutory qualification for the Recorder's Office is that the Judge must be a Barrister of not less than five years' standing. It must be remembered, however, that, when this Act was passed, there was no native Barrister in India, and no native, as a matter of fact, has ever been appointed Recorder, and it is submitted that it was not in the contemplation of the Legislature that such an appointment ever could be made, and that, therefore, no special provision was deemed necessary, and it is generally recognised that it would be highly inexpedient to make such an appointment.

The exclusive criminal jurisdiction over British subjects of the Courts established by Royal Charter continued till 1812, when the Statute 53 Geo. III. c. 155 empowered Zillah Magistrates (who were Justices of the Peace and therefore Europeans) to try British subjects for petty assaults or injuries accompanied with force committed on natives at a distance from the Presidency towns, and to punish such offenders by fine not exceeding Rs. 500, or, in default of payment of the fine, by simple imprisonment for a period not exceeding two months. The criminal jurisdiction of the Company's Courts over European British subjects outside the Presidency towns was never further extended.

The Criminal Procedure Code of 1861 (Act XXV of 1861) was passed, leaving criminal jurisdiction over European British subjects practically as it was before.

On the 17th December 1870, a Bill to consolidate and amend the law relating to the Procedure of Criminal Courts of Judicature not established by Royal Charter was introduced into the Legislative Council of India by Sir J. F. Stephen, then Legal Member of Council, and was referred to a Select Committee. This Bill, as originally framed, did not touch the jurisdiction of the Charter Courts. On the 16th of December 1871 Mr. Stephen informed the Council that "the Select Committee had received a large number of opinions from the Local Governments and persons connected with the administration of justice in reference to

the Bill, and amongst others they had received a most important paper from the Government of Bengal. That paper contained a suggestion that European British subjects should be made to a greater degree amenable to the ordinary Criminal Courts of the country." A reference to the paper * alluded to shows that the Bengal Government advocated such an extension of jurisdiction to the Mofussil Courts on the express ground *that these Courts were presided over by British officers.*

The history of the "compromise" arrived at on the proposal of the Government to extend to Mofassil Courts criminal jurisdiction over European British subjects is fully given by he Hon'ble Mr. Evans in his speech at the meeting of the Governor General's Council held on March 9.

The following is a summary of the portion of his speech which relates to that compromise.

The Hon'ble Mr. Evans said:—In 1871, a revised Criminal Procedure Code was being prepared by Sir J. F. Stephen. He was in Calcutta at the time, and knew both Sir J. F. Stephen and Mr. Stewart, and, speaking from memory, without any notes of what passed, he would give the Council his impression of the state of things that led to the settlement of 1872. The influx of a poorer class of Europeans from England and Australia had rendered it an inconvenience to send them all for trial to the High Court in Calcutta for petty offences. The moderate and sensible men among the European British subjects fully recognised the necessity for giving some jurisdiction to some Mofussil Courts, and the Government pressed urgently for it.

The amount of jurisdiction proposed to be given to the Mofussil Courts over European British subjects was three months' imprisonment to be inflicted by a Magistrate's Court, and one year to be inflicted by a Sessions Court.

The European British subjects could not successfully object to the jurisdiction of the Sessions Judge, provided he was a European, as his duties were purely judicial. But they could well object to the jurisdiction of the Magistrates' Courts,

* Supplement to *Gazette of India*, Dec. 23, 1871 p. 1656.

for the reason touched on by Sir James Colville in 1857,* that is the combination of executive and judicial functions in the same person. The Magistrate was head of his district, had to keep the peace, to see that crime and lawlessness was detected and put down, to hold secret inquiries, to act as practical head of the police, to decide on ordering prosecutions to be instituted, and then, when his mind had been thoroughly saturated and biased by the result of secret inquiries and police reports, to try the accused.

Further, Sir J. F. Stephen was very anxious to introduce by his new Code summary trials, as in Petty Sessions in England, in which there should be no regular record of evidence, save such précis of it as the Magistrate might record in his judgment.

Sir J. F. Stephen justly feared a strong onslaught by the European British subjects on Magistrates' justice. He knew, and all knew that the finances of India could not afford the severance of the executive and judicial functions of Magistrates, which the interests of justice loudly called for.

The European British subjects were likewise entitled to object to summary trial without a proper record of the evidence, as tending to nullify in practice the much prized right of appeal to the High Court in all cases, which they possessed and still possess.

But there was, further, the danger, nay the certainty, of a fierce agitation by the European British subjects against being subjected to the criminal jurisdiction of Natives in the Mofussil. Any proposal to do this would (it was well known) revive the fire of race hatred and the memories of the Mutiny, which had been waning and dying out slowly, and do much to interrupt cordial relations between Natives and Europeans, and between the European community and the Government of India.

Sir J. F. Stephen was quite willing to concede that European British subjects should not be tried by the ordinary Native Deputy Magistrates, and in this all responsible Government officials agreed with him, and still agree. But Natives had begun to enter the Covenanted Civil Service, and the European

* Proceedings in the Legislative Council of India, Vol. III p. 143.

British subjects utterly objected to entrust their personal liberty to Natives, whether covenanted or uncovenanted.

This was the problem which Sir. J. F. Stephen and Sir John Strachey, and the other experienced men who made the settlement of 1872, had to decide—"Was it worth while, for the sake of asserting the principle (if principle it be) that all Covenanted Civilians should be empowered to try Europeans as soon as they became full-power Magistrates, to risk explosion which would inevitably have ensued, and, and which would have done incalculable mischief. Bearing in mind that it was admittedly impossible, and politically dangerous, to carry out in its integrity, in the Mofussil, the broad principle that no man should be exempted from the jurisdiction of any Criminal Court by reason of birth or descent; and further, bearing in mind that every one connected with Government was agreed that it was neccssary to sanction a similar anomaly in the case of Uncovenanted Magistrates, and to enact in effect that full power Unconvented Magistrates, who were Europeans, might try the European British subjects, but that the Uncovenanted Magistrates, who were not Europeans, should not have that power, the strong practical intellects of Sir J. F. Stephen and Sir John Strachey perceived that, to risk such evils to avoid this petty anomaly, which caused no practical inconvenience, after sanctioning so many departures from the only broad principle which could be appealed to, would indeed be to strain at a gnat after swallowing many camels. They knew also the strong practical objections which exist to entrusting this jurisdiction to Natives.

Accordingly, they informally proposed to the European community, through the non-official members, that, if they would consent to submit to the jurisdiction of the Magistrates' Courts and to the summary trials without opposition, they (Sir J. F. Stephen, Sir J. Strachey and others) would agree that no Natives, not even Covenanted Civilians, should have power to try European British subjects. The European community, to whom the proposals were informally made, assented, and the arrangement was embodied in the report and resolution of the Select Committee.

This arrangement was come to, so far as he remembered during the interregnum between the lamented death of Lord Mayo and the arrival of Lord Napier of Merchistoun, when Sir J. Strachey, as senior member of the Council, practically officiated as Viceroy, and it had Sir J. Strachey's fullest approbation, as appears by his remarks in the debate of 1872.

It was a wise, a statesmanlike compromise, and he felt well assured that the present Government of India, had they had the least idea of the lamentable results that would arise from endeavouring to upset it, would never have brought in this unfortunate Bill.

The debate of 1872 had been entirely misunderstood by Mr. Ilbert in his speech introducing the Bill, and Mr. Ilbert had unconsciously misrepresented the attitude of Sir J. F. Stephen and Sir J. Strachey in that debate.

All the opponents of the compromise in that debate admitted the principle, that only Natives who had become Europeanised in thought, and thoroughly acquainted with European manners and customs, could be permitted to try Europeans. So that a great portion of the proposals in the present Bill were directly opposed to the opinions of the eminent authorities who were appealed to, and relied on in support of it. In particular, so much of the present measure as provided that all Sessions Judges, whether Covenanted Civilians or not, should try European British subjects, was opposed to all authority.

Subordinate Judges from the Uncovenanted Service were now being promoted for their legal ability and aptitude in trying civil cases to be Sessions Judges. Many of them were men of high caste, saturated with caste prejudice, and had never been brought into social contact with Europeans, and were totally ignorant of their manners, customs and habits of thought. This was also the case with the Natives now being admitted into the Covenanted Service under the new statutory rules without competition and without going to England.

The Commander-in-Chief, in that debate in 1872, although he advocated the admission of Europeanised Native members of the Covenanted Service, yet was altogether opposed to the trial of Europeans by the Magistrates' Courts in the Mofussil,

and had moved an amendment to confine the jurisdiction over European British subjects to the Sessions Courts, as suggested in 1857 by Sir A Buller.*

The silence of Mr. Stewart, the non-official member, during the debate on the compromise, was due to a desire not to say things which are best left unsaid unless there is necessity, and to the assurance of Sir J. F. Stephen that a majority of the Council would stand by the compromise, and it was, he believed, the effect of the compromise that led Mr. Stewart to go against the Commander-in-Chief in the division on the subsequent amendment.

He made these observations, as they were necessary to a correct undertanding of the nature of the settlement of 1872 now sought to be reopened. He did not put forward that compromise as anything legally or morally binding on the present Government; but he thought it was hard on the European British subjects to take away by a separate Act, that concession by which their acquiescence in many of the provisions of the Code had been obtained, leaving in the Code provisions and powers which they were not prepared to entrust to any Native Magistrate in the Mofussil.

The power to direct prosecutions on suspicion and then try the case summarily, without record of evidence and without (in a large class of cases) any right in the accused to cross-examine after charge framed, unless the witnesses happened to be present in Court, were instances of powers which European British subjects were not prepared to entrust into the hands of Natives.

He hoped it was not likely that any Local Government would be so indiscreet as to appoint a Native Magistrate to any district where Europeans were strong and numerous (a fact, if he was right, which went to show how useless the Bill was); but these powers in the hands of Natives would render the position of the lonely pioneers of European enterprise in remote places untenable and unsafe.

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* *v.* Proceedings of the Legislative Council of India, Vol III. p. 130.

CRIMINAL PROCEDURE BILL

1872.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Tuesday, the 30th January 1872.

PRESENT:

The Hon'ble John Strachey, Senior Member of the Council of the Governor General of India, *presiding.*
His Honour the Lieutenant Governor of Bengal.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
Major General the Hon'ble H. W. Norman, C. B.
The Hon'ble J. F. D. Inglis.
The Hon'ble W. Robinson, C.S.I.
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.
The Hon'ble F. R. Cockerell.

OATHS AND DECLARATIONS ACT AMENDMENT BILL

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CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN also presented the preliminary report of the Select Committee on the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter. He need not remind the Council of the circumstances connected with the introduction of this Bill, and of the course which was taken when it was

introduced. The Committee had received, as MR. STEPHEN had mentioned on a former occasion, a strong recommendation from more Local Governments than one, including that of Bengal, that the existing state of things with regard to the jurisdiction over European British subjects should be altered. These recommendations had been carefully considered, and the Committee had arrived at the conclusion that the time had come when the law on this subject might properly be altered, and they had prepared a preliminary report for the purpose of giving the widest publicity to their views in order that the matter might receive full consideration by the public before the amended Bill was prepared and brought up before the Council for consideration with the view of its being passed into law. The Committee wished to secure the fullest possible discussion, at the earliest possible period, of the substantive changes which it was proposed to make in the law. In a Bill of so large an extent, there must of course be a large number of administrative changes in which the Committee must act for themselves, and on which it would be idle to consult the public at large. But with regard to general questions of broad principle, he thought it was very desirable that the public should have every opportunity of giving expression to their views. He proposed therefore to state now what the Committee recommended on the subject he had mentioned; and on one or two others of considerable importance. It was not proposed to pass this Bill until the end of March; he hoped that the early opportunity which was taken of giving publicity to the conclusions to which the Committee had come, would be sufficient to afford ample time for the fullest discussion of them by the public.

The Committee recommended with regard to jurisdiction over European British subjects:—

"(1.) That a full-power Magistrate, being a Justice of the Peace, and being, in the case of Mofussil Magistrates, a European British subject, should be empowered to try European British subjects for such offences as would be adequately punished by three months' imprisonment and a fine of rupees 1,000.

MR. STEPHEN.

"(2.) That a Sessions Judge, being a European British subject, should be empowered to pass a sentence on European British subjects of one year, or fine; and that, if the European British subject pleads guilty or accepts the Sessions Judge's jurisdiction the Court may pass any sentence which is provided by law for the offence in question.

"(3.) That a European British subject convicted by a Justice of the Peace or Magistrate, should have a right of appeal, either to the Court of Session, or High Court, at his option.

"(4.) That in every case in which a European is in custody, he may apply to a High Court for a writ of *habeas corpus*, and the High Court shall thereupon examine the legality of his confinement and pass such order as it thinks fit."

MR. STEPHEN did not wish to enter at length into the reasons which had led the Committee to these conclusions. He might, however, say that an early amendment of the law in the way of a reasonable extension of the criminal jurisdiction over Europeans seemed to him absolutely necessary. As the law stood, a British subject could not be criminally punished by any tribunal other than the High Courts—a procedure which involved an immense deal of trouble and expense—except in a limited class of cases, such as petty assults and the like, by fine extending to rupees 200, and, on non-payment of the fine, by imprisonment extending to two months. He could well understand how such a state of things came to exist. In former times, almost all the Europeans in the country held official positions, and would be liable to be punished by removal from their offices for any misconduct on their part, which was a considerable guarantee for their good conduct. The only other European residents were military men, who, of course, were subject to military tribunals and military discipline. But the number of Europeans now to be found in India had very largely increased, and their position in life was very different from what it was before. The decree in which they were subject to Government control, either as military men or persons in official employ, was weakened: and there was a much larger number of men over

whom the Government had no hold whatever. It appeared to him, therefore, that every one would agree that the old state of the law was unsuitable to the state of things now existing, and that the only question as to which there could be any difference of opinion was the degree to which the criminal jurisdiction over British subjects should be extended: it was a matter in which no absolute line could be drawn; but a sort of rough analogy might be found in the jurisdiction of Magistrates and Courts of Quarter Session in England. The extent to which jurisdiction was proposed to be given over Europeans in the Mofussil was, in the case of conviction by a Justice of the Peace, imprisonment for three months, which taking the imprisonment of a European in India as being twice as severe a punishment as his imprisonment in England, would be equal to imprisonment for six months in England. A Court of Session was empowered to pass a sentence of imprisonment for one year, which would correspond to two years' imprisonment in England. Since the passing of the Consolidation Acts of 1861, two years' imprisonment was in almost every case the greatest extent to which a person could be imprisoned in England. Therefore, what the Committee proposed might be said broadly and roughly to consist in subjecting Europeans in India to such punishments at the hands of the ordinary Courts as could be inflicted on them at home by Magistrates in petty or quarter Sessions.

With regard to that portion of the resolution of the Committee which related to writs of *habeas corpus*, what the Committee proposed was to render a matter certain which was now attended with considerable doubt and uncertainty.

There was another important subject upon which the Committee had come to the following resolution:—

"Resolution 2.—We think that the provisions of the Code ought to be extended to proceedings in the Presidency towns, but not so as to vary the procedure now in force in trials by jury in the Presidency towns. We are not, however, as yet in a position to say whether this can be more conveniently done in the present Bill or in a separate measure."

MR. STEPHEN.

The grounds of this recommendation were sufficiently obvious. There was an obvious importance in having one system in force throughout the whole country, and though the English system was no doubt originally better than the Indian system he thought that the Indian system was now the better of the two. They did not propose, as at present advised, to interfere with the procedure in trials by jury in the Presidency towns. The conditions which rendered trials by jury desirable did exist to a considerable extent in such towns: they had in fact been in existence in Calcutta for he did not exactly know how long, but he believed for a hundred years and more, and in Madras and Bombay for a very considerable time. But setting aside the procedure as to trials by jury, if the other parts of the Code of Criminal Procedure were examined, there would be found very little reason why a similar procedure should not be observed in all Courts. When a crime was committed, the offender would be arrested with or without a warrant according to the nature of the offence. He must be taken before a Magistrate who must commit him for trial before the Court of Session or the High Court; he would be tried, and if convicted, sentence would be passed. These were the steps to be observed under the Criminal Procedure Code, and it appeared to MR. STEPHEN that there was no good reason why there should be one system in one part of the country and another system in another part of the country. The matter would require to be very carefully considered in order that no mistakes should be made, and it might be found advisable to deal with the subject in a separate measure.

The third resolution had reference to a question which was referred to the Local Governments when this Bill was introduced; it was a question connected with the jury system in the Mofussil. The jury system as the Council were aware, was introduced by the Criminal Procedure Code passed in 1861. It was then felt to be an experiment, because the whole system of trial by jury implied the existence of a state of things which was

peculiar to a community of Englishmen, or a people with English ideas; and if it did succeed it would succeed in spite of difficulties peculiar to India. The Committee had considerable doubts as to the course which ought to be taken in regard to the jury system in the Mofussil, and whether it ought to be maintained at all. There was, however, one point upon which they felt clear. They thought that the Judge, in cases in which he differed from the jury, should have power to refer the case to the Court, and that the High Court should be empowered to pass final orders. In trials by jury a decree of finality attached to the verdict which attached to the decisions of no other tribunal in the country, and which was entirely opposed to the general spirit of the administration of justice in India. If a man was convicted before a Session Judge, he had an appeal to the High Conrt, where they discussed the whole matter, and if they thought justice had not been done, they would revise the decision. In England this could not be done, and the effect was that an irregular appeal to the Home Secretary, was in practice, allowed, by which the ends of justice were often defeated. Here if a jury convicted, their verdict was absolutely final; and the only remedy available when a man was unjustly convicted in that way was a petition to the Local Government or to the Governor General in Council, as the case might be, for the exercise of the prerogative of mercy. That was a power to which MR. STEPHEN thought there was the very strongest possible objection. The administration of the law was one thing, and the exceptional setting aside of the law was quite a different thing. He admitted that there might be exceptional cases where, owing to peculiar circumstances, it would be proper for the Government to interfere to mitigate sentences which the Judge was bound to pass. But it appeared to MR. STEPHEN altogether improper that a man should be permitted to say "the Judge thinks I am guilty, but I tell you that I am innocent." Substantially that was an appeal but it was an appeal to a person who ought not to accept the appeal; such questions ought to be left to the judi-

cial authorities. The information before the Committee upon this subject, and the experience of the members of the Committee led strongly to the conclusion that failures of justice resulted from this circumstance.

Such were the resolutions of the Committee as to the three points of change in substantive procedure which they recommended, and they were brought forward in this way in order to give them the very widest publicity that they could have.

INDIAN EVIDENCE BILL.

* * * * *

The Council adjourned to Tuesday, the 13th February 1872.

CALCUTTA;
The 30th January 1872.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

LEGISLATIVE DEPARTMENT.

WE, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to which the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter was referred, have the honour to report that we have considered the Bill and the papers noted in the Appendix and have come to the following resolutions, which we now submit in the form of a preliminary report.

RESOLUTION 1.—We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might with advantage be extended in the case of European British subjects.

We recommend—

(1). That a full-power Magistrate, being a Justice of the Peace, and being, in the case of Mofussil Magistrates, an European British subject, should be empowered to try European British subjects for such offences as would be adequately punished by three months imprisonment and a fine of rupees 1,000.

(2). That a Sessions Judge, being an European British subject, should be empowered to pass a sentence on European British subjects of one year or fine ; and that, if the European British subject pleads guilty or accepts the Sessions Judge's jurisdiction, the Court may pass any sentence which is provided by law for the offence in question.

(3). That an European British subject, convicted by a Justice of the Peace or Magistrate, should have right of appeal, either to the Court of Session, or High Court, at his option.

(4). That in every case in which an European is in custody, he may apply to a High Court for a writ of *habeas corpus*, and the High Court shall thereupon examine the legality of his confinement and pass such order as it thinks fit.

RESOLUTION 2.—We think that the provisions of the Code ought to be extended to proceedings in the Presidency Towns, but not so as to vary the procedure now in force in trials by jury in the Presidency Towns. We are not, however, as yet in a position to say whether this can be more conveniently done in the present Bill or in a separate measure.

RESOLUTION 3.—We think that if the jury system in the Mofussil is to be maintained the Judge should in cases in which he differs from the jury, have power to refer the case to the High Court, and that the High Court, should be empowered to pass final order in the case.

J. F. STEPHEN.
G. CAMPBELL.
J. STRACHEY.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 30th January 1872.

LEGISLATIVE DEPARTMENT.

We, the undersigned, the Members of the Select Committee of the Council of the Governor-General of India for the purpose of making Laws and Regulations to which the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter was referred have, in addition to the papers enumerated in our preliminary report of the 30th January last, considered the papers margninally noted,* and beg to make the following recommendations:

2. With regard to European British subjects, we have, except in one particular, maintained the arrangements proposed in the first resolution of our preliminary report. We recommend (*a*) that a Magistrate of the first class, who is a European British subject and a Justice of the Peace, shall have power to try European British subjects for offences of the class usually tried by Magistrates, and, on conviction to pass any sentence warranted by law, not exceeding three months' imprisonment and one thousand rupees fine.

(*b*) That a Sessions Judge, who is a European British subject, may try European British subjects for offences which are not punishable with death or transportatian for life, and which can, in his opinion, be adequately punished with a sentence of one year's imprisonment and fine. In case the Sessions Judge considers that such punishments are inadequate, he will transfer the case for disposal to the High Court.

3. In trials of European British subjects before a Sessions Court, the Judge will follow his ordinary procedure, and the trial will be either with assessors or by jury. Not less than half the assesssors or jurors, as the case may be, are to be European British subjects. To obtain this number we have allowed the Judge to summon persons who could, in other trials, claim exemption.

4. We maintain the proposal referred to in the preliminary report, Resolution 1, clause 4, that any European British subject may apply to a High Court for an order to bring the applicant before it and to examine the legality of his imprisonment; and we have empowered the High Court to make the necessary inquiries, by affidavit or otherwise either before or after the issue of such an order, with a view to ascertaining the state of the case.

* Omitted in this publication.

5. We consider such an order preferable to the common law writ of *Habeas Corpus* on account of the intricacies of procedure connected with the issue of and returns to that writ.

6. We propose, accordingly, that no writs of *Habeas Corpus* or Mainprise shall be issued beyond the Presidency towns. Whether, as the law now stands, they can be issued, may be regarded as a moot point; but we think the existence of such a power would be unsuited to this country. The provisions of the Penal Code on "Wrongful Restraint" appear to us to be quite sufficient protection for personal liberty in all common cases.

7. We have cleared up the doubt which has hitherto existed as to whether all portions of the Code apply to European British subjects, by providing that, except in respect of the special privileges above described, and in respect of orders under chapter thirty-seven to give security in cases of bad livelihood, the Criminal Procedure Code shall be applicable to all persons alike.

8. With regard to the second Resolution of the preliminary report we have, after communication with the several High Courts, come to the conclusion that it would not be convenient to deal in this Bill with the procedure of Police Magistrates in Presidency towns, and of High Courts in the exercise of their criminal jurisdiction within the like limits. The subject is, however, one which in our opinion, calls for early legislation; and we recommend that a Bill which has been prepared in the legislative department, dealing with these matters, should be taken into consideration at the first convenient opportunity.

9. As to Resolution 3, we do not recommend the abolition of the jury system; but we think that the opinion of a majority of the jurors with the concurrrence of the Judge should decide the case; and that if a Judge differs from the verdict of the majority of the jury, he should have power to refer the case to the High Court, which may pass such order thereon as it think fit.

[The Report proceeds and deals with the details of the Bill.]

J. F. STEPHEN.
G. CAMPBELL.
J. STRACHEY.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
P. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 12th March 1872.

Abstract of the Proceedings of the Council of the Governor General of India, &c., held on the 16th April 1872.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. T., *presiding* [Lord Napier of Merchistoun.]
His Honour the Lieutenant Governor of Bengal [Sir George Campbell.] (1)
His Excellency the Commander-in-Chief G. C. B., G. C. S. I., [Lord Napier of Magdala.]
The Hon'ble John Strachey (2).
The Hon'ble Sir Richard Temple, K. C. S. I. (3).
The Hon'ble J. Fitzjames Stephen, Q. C. (4).
The Hon'ble B. H. Ellis (5).
Major General the Hon'ble H. W. Norman, C. B. (6).
The Hon'ble J. F. D. Inglis.
The Hon'ble W. Robinson, C. S. I. (7).
The Hon'ble F. S. Chapman.
The Hon'ble R. Stewart.

* * * * *

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN presented a supplementary report of the Select Committee on the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter.

The Hon'ble MR. STEPHEN also moved that the reports of the Select Committee on the Bill be taken into consideration. In the course of his speech Mr. Stephen, referring to the subject of Criminal Jurisdiction over European British subjects, said:—

(1) Now M. P. for Kircaldy District. (2) now Sir John Strachey G.C.S.I (3) now Sir Richard Temple, Bart., G.C.S.I., (4) now Sir James Stephen, K.C.S.I., one of the Justices of the High Court in England. (5) now Sir Barrow Ellis, K.C.S.I., Member of the Council of the Secretary of State for India. (6) now Lieutenant General Sir Henry Norman, K.C.B., Member of the Council of the Secretary of State for India. (7) now Sir W. Robinson, K. C. S. I.

"The last of the preliminary topics with which we propose to deal is one which has caused some discussion and attention. It relates to the subject of criminal jurisdiction over European British subjects. The proposals of the Committee upon this subject have been before the public for a considerable time, and I think I am entitled to say that on the whole they have been very favourably received.

I see, from the amendments put upon the paper, that two at least of the members of Council who were not members of the Committee, my hon'ble friend Mr. Ellis and His Excellency the Commander-in-Chief, object to what we propose. My hon'ble friend Mr. Ellis thinks that, in requiring the Judges and Magistrates by whom Europeans are tried to be themselves Europeans, we concede too much to the feelings of Europeans. My hon'ble friend the Commander-in-Chief thinks that, in empowering first class Magistrates, being also Europeans, and Justices of the Peace, to inflict upon them three months imprisonment, we make too great a concession to the opposite view of the subject.

"My Lord, I cannot undertake to justify upon principle the terms of a compromise. A compromise must be essentially a matter of more or less give-and-take, and this measure is not the less a compromise, because we have been obliged to suggest its terms without actually consulting the parties or their representatives. I need not remind your Lordship and the Council of the extreme warmth of feeling which discussions upon a measure of this nature excited at no very distant date; nor need I insist on the great importance to the Government of this country, of the existence of harmony between the Government and the general European population. I think I am entitled to say that the manner in which our proposals, made six weeks ago or more, have been received by the public in general, proves that they were not made injudiciously and I should be sorry, after putting forward these proposals

for the express purpose of obtaining an expression of public opinion upon them, and after obtaining what I am entitled to describe as a favourable expression of opinion, to make any material alteration in them at a time when the public views on the subject can hardly be collected. As to the particular proposals made, I shall reserve what I have to say about them till my hon'ble friends bring forward their amendments. Thus much I think I may say in general, and particularly by way of answer to a petition which has been received from certain persons at Bombay, declaring that the maintenance of any distinction at all between Europeans and natives in this matter is a great injustice, and contrary to the principles on which the British Government ought to rule. I cannot think so: I do not wish to say anything offensive to any one, but I must speak plainly in this matter. In countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal as opposed to territorial laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Mahomedan has his personal law, the Hindu has his personal law. Women, who according to the custom of the country, ought not to appear in Court, are excused from appearing in Court. Natives of rank and influence enjoy in many cases privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? That whilst English Courts are to respect, and even to enforce a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which rightly or otherwise they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim

for absolute identity of law for persons of all races and all habits comes with so bad a grace as from the natives of this country, filled as it is with every distinction which race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinctions.

"It may be replied, that to use this argument, is to desert the characteristic principles of English Government, and to make a point against an antagonist by surrendering what we ourselves believe, my answer is that the general principle that all persons should be subject to the same laws is subject to wide exceptions, one of which covers this case. It is obvious enough, but possibly the best way of stating it will be to show how it applies to the particular matter before us. The English people established by Military Force a regular system of Government, and in particular, a regular system for the administration of Justice in this country, in the place of downright anarchy. The system for administering justice was, and is beyond all question, infinitely better than any system which the English people found here; but it neither is, nor can be, the English system. It must of necessity differ from it in its characteristic features, and although I am not one of those who blindly admire the English system of Criminal Justice, I say that if English people in India like it, which they notoriously do, they have a perfect right to have it. I cannot see how the mere fact that a man has, at great expense and trouble, provided the people who live on his estate with drinking water, of which under previous landlords they never had enough, is to prevent him from keeping a cellar of wine for his own drinking, and even if I thought water better for his health than wine, it would be for him to judge.

"There is no doubt one way in which the present system is a great and real grievance to the natives. It extends practical

impunity to English wrong-doers. I think, however that the provisions of the Bill effectually dispose of this, for they will subject every European in the country to an effective Criminal Jurisdiction, able to inflict prompt and severe punishment upon him for any offence which he may have committed.

* * *

The Motion was put and agreed to.

THE HON'BLE MR. STEPHEN also moved that the amendments mentioned in the supplementary report be adopted.

The motion was put and agreed to.

The HON'BLE MR. ELLIS said that there were three amendments in his name on the notice paper. But the second of those amendments was not connected with the other two in any way: he would not therefore refer to that amendment at present. He proposed at present to ask the Council to consider the first and third amendments which were substantially the same in purport and effect. As a premliminary, he begged leave to express his sense of the great ability with which the hon'ble member in charge of the Bill, and the Select Committee had dealt with the subject, and his appreciation of the very great labour they had bestowed on it. He thought that the thanks of the Council were due to them in a special degree for the new provisions in respect of which he had to move these two amendments. With the hon'ble member in charge of the Bill, he was exceedingly glad to notice the excellent spirit in which these new provisions with regard to the jurisdiction over European British subjects had been received by the public generally—a spirit which was very different from that in which some similar propositions had been received a few years ago. The matter seemed to have been looked upon at the present time very properly as a simple question of administration. The difficulty attending the conviction in the mofussil of offenders, being European British subjects, was admitted to be a great evil, and the question was how to remove the evil without risk of injustice being done to those concerned. The provisions

which had been devised by the Committee for solving the problem how to deal with such cases were not in the main objected to by Mr. Ellis, on the contrary he thought the Committee had shewn much wisdom in framing the sections in the manner in which they had been drawn. He did not hold with those who conceived that it was necessary to deal with Europeans and natives in precisely the same manner. There were to his mind administrative reasons that would justify a difference, but he did not believe that it was necessary to deal with the question on the broad basis in which the Hon'ble Member in charge of the Bill had dealt with it. It appeared to him that there were abundant reasons why we should not trust native Tehsildars and Deputy Collectors to deal with the class of European offenders. They were often ignorant of the language and always ignorant of the feelings and customs of Europeans, and he thought therefore that it would be very imprudent to give them any power to deal with Europeans of the class with which they would be brought into contact. That being so, he cordially endorsed the main principle of the sections drafted by the Committee ,and he considered that the Committee had done rightly in limiting the cognisance of such cases to Justices of the Peace and high officers in the position of Sessions Judges. But then, he thought the Committee had made an invidious distinction which was not called for, and which he desired to see removed. Admitting that the officers who should take cognizance of offences by Europeans should not be of a lower standing than Justices of the Peace and Sessions Judges, he saw no reason why natives, who were qualified to be appointed Justices of the Peace, should not have cognizance of these cases in common with their European compares. The only subject of making a person a Justice of the Peace, was to enable him to deal with European British subjects ; the appointment had no other significance whatever, and if it was admitted that a Native could under any circumstances be appointed a Justice of the Peace, it must be admitted that he would then be qualified to

deal with offences committed by European British subjects. The point then for the consideration of the Council was, who should be appointed Justices of the Peace? Setting aside the cause of the Presidency Towns, which was alien to the subject under consideration, the only persons who could be appointed Justices of the Peace were European British subject and Covenanted Civil Servants. It was as a Covenanted Civil Servant, and in that capacity alone that a native could take cognizance of those cases as a Justice of the Peace.

Mr. Ellis might be allowed to paraphrase the words of his Hon'ble colleague, Mr. Stephen, in discussing the Brahmo marriage Bill, and address the Native Civil Servant in these words.—"We have instituted schools and universities for your benefit; we have taught you the arts and sciences, we have thrown open the services to you by which you can obtain a high position in the land. We have not only done that, but we have urged your going to England, to make yourselves acquainted with our institutions and people and to learn their usages and manners. We have done all this and when you return, having by your ability attained to the dignity of a member of the Covenanted Civil Service, we tell you that you are not fit to deal with a European British subject, and to sentence him to one week's imprisonment". Mr. Ellis thought that all this was inconsistent and anomalous. When you admitted natives to be Justices of the Peace, you ought not to place any bar to the powers which they might exercise in common with other Justices of the Peace. But it might be urged that, in the position of a Sessions Judge, any native would be empowered by the proposed amendment to exercise jurisdiction over European British subjects. In answer to this he would say that if a native be appointed to this office, he must be appointed exceptionally, showing that he was by his judicial knowledge and other qualifications competent to exercise

jurisdiction equal to that of the Covenanted Civilians with whom he would be associated. Mr. Ellis would say therefore that, in making the invidious distinction which was now proposed, if we excluded any Justice of the Peace from the exercise of certain powers, we were really casting a stigma on the whole educated native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that if you had Native Covenanted Civil Servants, you ought not to bar them from exercising the powers of a Civil Servant amongst which powers is the jurisdiction of a Justice of the Peace over European British subjects. By Act II of 1869, certain natives might be appointed Justices of the Peace, and on what ground he would ask was it proposed to restrict their powers as Justices of the Peace? The only argument that he had heard adduced was that we were conferring new powers on Justice of the Peace, and not taking away old powers, and that this being a compromise, the Committee were pledged to act as they had proposed in their preliminary report, and that we ought not to disturb that promise. In answer to that, he would assert that we were not merely conferring new previleges. By Act II of 1869, Justices of the Peace (and Natives might attain that position) had the privilege of dealing with Europeans in certain cases for instance, they could fine for a certain amount, they could commit for trial to the High Courts, and exercise all other powers of a Justice of the Peace. These powers though conferred so recently as 1869, would be taken away by the present Bill. But the second objection was perhaps a more important one, and in regard to that he might say in the first place, that he did not see that any pledge had been given, or if given, that it was only given to an extent which was quite compatible with the amendment which he now proposed. He was not aware to whom that pledge was supposed to be given; he presumed it was not to the Native public, though they were

deeply concerned in the proper administration of justice on wrong-doers. Was it then the European public to whom the pledge was given? He could not consider that the European public outside these walls, consisting of Government Officials, of merchants, traders, planters and the likewere in any way more interested in the matter than the members of this Council themselves were. They all had the good of the country at heart, and desired that some steps should be taken to remedy the present inconvenient state of things with respect to Europeaus in the Mofussil, and that the remedy should be as effectual as it could be consistently with security against injustice. The only persons, therefore, to whom any pledge could possibly be held to have been given was the class of persons most interested—he meant the class of Europeans who by misfortune had fallen into crime; and with regard to them, he objected wholly to its being supposed that new sections which the Committee had devised, tended only to their prejudice, detriment and hurt. In one respect these sections might be supposed to act to their detriment, for under the present system, the criminal frequently escaped conviction, but that was nothing to the boon which was conferred upon the European criminal by these sections, by giving him the opportunity of having speedy justice administered, and the chance of a very much lighter punishment than he might otherwise have obtained. Mr. Ellis would mention one instance which had occurred in the Bombay Presidency. A European stole a common blanket worth two rupees: he was committed to the High Court for trial; but as the Sessions had only just concluded, he was kept in confinement for upwards of two months awaiting trial. When he was tried and convicted, the Judge discharged the prisoner, because he had suffered more punishment than should have been awarded him for his offence. The poor man had been in jail for upwards of two months, but even if a Native Civil Servant were acting as a Justice of the Peace, the amount of punishment that would have been awarded under the proposed amended system, would have been one week's imprisonment at

the outside. Therefore, Mr. Ellis said that the provisions which had been devised by the Committee were a boon to the criminal; for while he would have speedy justice, with the chance of three months' imprisonment, he might otherwise have been sent up to the High Court and got a year's imprisonment. Thus the provisions that had been proposed should be adopted in the interests of the European himself. But all the boons promised to the criminal by the preliminary report had not been given by the Bill as drawn; the first recommendations of the Committee having been materially altered. The first recommendation held out a hope to the criminal that, by confessing his crime, and not objecting to the jurisdiction he would get off with a less amount of punishment. That provision had been omitted. Thus the recommendation in the preliminary report had not been adhered to. But on the other hand, the formal Resolution in that report had been adhered to; and to this Resolution his proposed amendment was in no way opposed. In fact, he fully concurred in it, and wished to carry it out precisely as framed by the Committee. The Resolution was worded thus:—

"We are of opinion that the jurisdiction of Magistrates and Sessions Judges, who are Justices of the Peace might, with advantage, be extended in the case of Eurepean British subjects."

There was not a word in this restricting the power to European Justices, and why the Committee should consider themselves pledged to subsidiary recommendations which they themselves had altered, he could not understand. Moreover great stress had been laid upon the circumstance that the compromise had been assented to by the public, and that the provisions as sketched out in the preliminary report had met with general approval, the evidence of this being the little opposition offered by the Press. But Mr. Ellis claimed for his amendment precisely the same admission; he would claim for it general acceptance, for in the Bill as originally drafted there was no such limitation that a Justice of the Peace should be a European British subject. In Section 44 it was provided:—

"Any Justice of the Peace may, and no other person shall, commit or hold to bail, any European British subject to take his trial before a High Court."

Section 47 also enacted :—

"Every person exercising the full powers of a Magistrate shall have power to enquire into and determine in a summary way complaints of offences committed by a European British subject outside the Local limits of the ordinary original criminal jurisdiction of the High Courts, and on which a summons ordinarily issues in the first instance, and in case of conviction, to inflict on the offender a fine not exceeding five hundred rupees, and in default of payment, imprisonment for a term not exceeding two months in some place of confinement within the district, which in the opinion of the Magistrate is fit for receiving such offender, or if there be no such place, then in the Presidency Gaol."

Now to these sections no more opposition had been offered than to the subsequent report of the Committee, and therefore he might say with safety, that if it was asserted that no objection had been taken to the Bill in the form in which it had been presented to the Committee, his proposition had also been accepted by the public, and no ground of pledge or compromise could be urged against the amendment which he proposed. He would therefore move—

(1). That the first paragraph of section 72([1]) be omitted.

That instead of the second paragraph of the same section the following be substituted :—

"No Magistrate shall have 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.

(2). That section 77([2]) be omitted, and that the second paragraph of the present section 76([3]) be numbered 77.

([1])72. No Magistrate or Justice of the Peace, or Sessions Judge, shall have jurisdiction to enquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

([2])77. If the Sessions Judge of the Sessions Division within which offence is ordinarily triable be not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court.

([3])76. 2nd cl. If at any stage of the proceedings the Sessions Judge thinks

The Hon'ble Mr. CHAPMAN agreed with very much that had fallen from his hon'ble friend, but he felt himself unable to support the amendment for the very plain and conclusive reason that he, as a member of the Select Committee, considered himself bound to adhere to the pledge he had given the European Community, that under the altered law an Englishman should retain his privilege of being tried by an Englishman. It must be remembered that the Bill before the Council would deprive our countrymen of privileges which they had hitherto exclusively enjoyed, and on which they set the highest value, without in any way interfering with the rights of the natives of this country. He (Mr. Ellis) was old enough to remember the loud outcry with which the proposal to withdraw from Englishmen their right to be tried exclusively by the Supreme Courts of the several Presidency towns was received some two and twenty years ago; and Mr. Chapman could not help being struck with the consideration, loyalty and good sense with which the present proposed alterations had been generally accepted by the Press and public. He could not consent to an amendmendment which might have the appearance of drawing back in the slightest degree from the pledge which he considered had been held forth. For his own part he disclaimed any race or caste feeling in the matter.

The Hon'ble MR. ROBINSON said: "MY LORD, I must express great regret that our hon'ble colleague has brought forward this motion, and put the matter before us on what appears to be an incorrect issue.

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the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the Committing Magistrate to bind over, the complainant and witnesses to appear before such High Court.

MR. ROBINSON.

"The facts, as it appears to me, are simply these. In the provinces European British subjects, ever since the commencement of our rule, have been and still are, for all practical purposes, subject to the Criminal Jurisdiction of Justices of the Peace of English extraction alone.

"I am not going to discuss the theory or policy of this condition. This is a matter which is, I think, foreign to a revision of the Criminal Procedure Code. But such is the actual state of things with which the Select Committee on the Bill had to do when the subject of dealing with European British offenders came under their consideration.

"The Committee deliberately resolved not to alter the exsisting and practical condition of matter with reference to any accidental state of the *personnel* of any special branch of the public services in India.

"The exigencies of the time clearly call for an extension of the jurisdiction of up-country Justice of the Peace in respect to the trial and punishment of European British offenders; and the Committee adopted this view. They therefore resolved to propose to increase the powers of that class of officers who now alone have practically any jurisdiction over European British subjects, and to make some useful adaptations of the existing courts when presided over by English Justices of the Peace, in respect to the disposal of cases in which European British subjects are defendants.

"The Committee proposed to give English Justices of the Peace who may be first class Magistrates powers to pass sentence of imprisonment up to three months; and to English Justices of the Peace who may be Sessions Judge, power to pass such sentence up to one year, as against European British offenders. Beyond this, the Committee resolved to leave the jurisdiction over European British subjects where they found it, namely, with the High Court in its original jurisdiction.

This is all that has been done.

"These proposals were placed before the Council, and before the European community in our preliminary report some time ago. And the right time for our hon'ble colleague to have taken objection to the principle so adopted was when that report was presented.

"The proposals went out from this Council with the Hon'ble Member's concurrence, and they have met with singularly considerate acceptance at the hands of our European British subjects, with whom alone we have to do in this matter. We cannot, I think, simply on some after thought of our hon'ble colleague, pass into this Bill an amendment, which will have the effect of transgressing the broad principle of the existing practice, and of surprising our European fellow subjects into a condition which they were not asked to consider.

"But I will look at this matter from a practical point of view, presuming that I believe my hon'ble colleague will acquit me for any want of respect for or confidence in our intelligent Native Public Officers, least of all the class to which he alludes.

"I have had much to do with Native Magistracy of all classes, superior Native Police Officers and the like, and I can only say that these would as a rule far rather have nothing to do with cases in which Europeans are implicated, and their unpleasant concomitants.

"The European British wrong-doer is not always an agreeable inmate in any court, howsoever presided over. The persons who take part in cases in which Europeans are implicated are by no means always attractive neighbours, and the kind of interest and criticism evoked above, around and below in any up-country station by an European case is, as a rule, anything but pleasant. Be this as it may. The cases in which Europeans

are involved are almost invariably troublesome and invidious even when we ourselves are the Judges of our countrymen's conduct.

"Now, Native Magistrates have not, I believe, the slightest misgivings in the matter of impartial justice being done by every European Magistrate, even when a fellow-countryman is the defendant, nor do they think that Native interests do not receive quite as efficient protection at their hands, as they could at the hands of any Native Magistrate. I believe therefore that there is scarcely a Native Magistrate in the country, not even excepting those on whose behalf jurisdiction over European offenders is sought by the Hon'ble MR. ELLIS, who would not infinitely rather have nothing to do with such defendants and such cases, who would not far rather pass them on to the broader shoulders of their European equals or superiors. Practically therefore I think that the Hon'ble Member's motion is futile, and we ought not to postpone the passing of this Bill until this material change in the principle of what has already been published under the authority of this council can be promulgated for discussion. I think also that the discussion would be productive of more harm than good."

The Hon'ble MR. INGLIS said that he regretted that the Hon'ble MR. ELLIS had thought it necessary to raise a discussion on the question to which the amendment proposed by him referred. He did not intend to go into the question on its merits, as he considered he was bound by the terms of the recommendation he had signed with the other members of the Select Committee in January last, and which was subsequently printed in the Government Gazette for the information of the public. The Committee in this paper distinctly stated that they proposed to give power to try offences committed by the European British subject only to Judges and Magistrates who were themselves European British subjects. The hon'ble members accepted the proposals then laid before them in a manner

which reflected much credit on their liberality and good sense. The condition that a European British subject was to be tried only by his fel ow-countrymen was no doubt considered by them as one of great importance, and he thought they had no right now at this eleventh hour to go back from the terms of the compromise proposed two months ago and accepted by the public.

His Honor THE LIEUTENANT GOVERNOR seldom had greater difficulty in making up his mind than upon the motion before the Council. The fact was that this was one of those matters of sentiment with which it was very difficult to deal, although in practice, its decision would affect only this single question, whether the Local Governments should have the power of appointing a very few Native gentlemen, who were members of the Civil Service to be also Justices of the Peace, for the purpose of dealing with the limited number of cases of which they were likely to have cognizance under these provisions. He entirely acquiesced in the general view of the case which was put forward by the hon'ble member in charge of the Bill; as he truly stated, the real and practical evil was that at present Europeans in the Mofussil committed petty offences with impunity. That had been found to be a practical evil, and these provisions were designed to meet that evil as far as it was possible to meet it. For the sake of vesting the powers of a Justice of the Peace in the three or four Native gentlemen who had entered the Civil Service, HIS HONOR should not have thought it necessary to disturb the decision of the Select Committee. But he found that owing to ignorance of the law, he had put his name to a report which he should not have signed if he had known of the existtence of Act II of 1869. He found now that that Act in effect settled this question, that was to say, the Government should not have the power to appoint any person a Justice of the Peace who was not either a European British subject or a Convenanted Civil Servant. That being so, he should most decidedly have said that it was much better not to re-open this question, and that the Council should adhere to the decision which had been

come to by the passing of Act II of 1869, namely that a Justice of the Peace must be either a European British subject or a Covenanted Civil Servant. To re-open that question, and to limit the powers that might be exercised by any Justices who were Covenanted Civil Servants, appeared to His Honor to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light, he should be inclined to vote for the motion before the Council.

Then came the consideration that there was said to be some sort of pledge to the European community, and the fact that they had in the most handsome manner accepted the proposals of the Committee. Here His Honor found himself in some difficulty, because as his hon'ble friend Mr. Elllis had pointed out there was some sort of contradiction in the resolution of the Committee. The Resolution to which his hon'ble friend had referred was as follows :—

"We are of opinion that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might with advantage be extended in the case of European British subjects."

There was not a word in that Resolution limiting the legal definition of a Justice, but in the subsequent paragraphs the Committee in their recommendation had added the words "and a European British subject," it so happened that neither the European nor the Native community had commented upon those words.

Under all the circumstances he felt so much doubt, that he would inform his conscience by listening to the opinions of these who were to follow him before deciding which way he should vote.

Major General the Hon'ble H. W. Norman regretted his inability to support, the amendment of his hon'ble colleague

Mr. Ellis. In proposing the amendment he had not the slightest doubt that his hon'ble friend was actuated by a sincere desire to avoid the appearance of want of confidence in the entire impartiality of native Magistrates or of favoritism towards Europeans. Major General H. W. NORMAN was aware that in the Presidency towns the trial of Europeans by Native Justices was not infrequent, and, as far as he had heard, it had been attended with no bad results: but he did not think it desirable that the powers exercised by Native Justices in the Presidency towns should be extended to the Mofussil. He had the highest regard for the native of the country and particularly for those who had attained the very important position of a Magistrate of the first class; but looking to the peculiarities of our position here, and to the great differences of character between Natives and Europeans, he thought it was undesirable to allow the trial of European British subjects by natives in the Mofussil.

The Hon'ble Mr. STEPHEN had only a very few words to say upon this subject. He would first point out that there was no kind of relation between the case of the native who had learned to abjure the idolatry of his fathers, and thus placed himself under a disability to contract a lawful marriage, and the native who had entered the Civil Service, and was unable to exercise certain jurisdiction over European British subjects. He said then, and he said now, that it was a cruel thing to make a man give up his caste and then place him under civil disabilities by telling him that he could not contract a valid marriage. The privilege of jurisdiction was the privilege of the prisoner, not the privilege of the Judge. The European had an objection to be tried by a Native. Considering the position in which he stood, the question was whether you would put him in a position in which he did not at present stand. You placed no slight upon the native by saying that he could only try a man of his own race. What was then against the feelings of the native in saying that? Why should any one feel a slight because he was told that this particular man was to be tried in a certain way? On the other

hand it was a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen

The Hon'ble Mr. STRACHEY would merely say that he was unable to support the motion of his hon'ble friend Mr. Ellis. It appeared to him that no question of principle was really involved in the amendment. Nobody pretended for one moment that the provisions of the Bill as they now stood were symmetrical: on the contrary they represented a compromise which was open to criticism of every kind. It appeared to him, that if his hon'ble friend's amendment were accepted, it would be just as much a compromise as the provisions of the Bill now were, and he did not see that the matter of principle would be altered one way or another. He felt himself bound to adhere to the compromise, which he understood had been accepted by the public two or three months ago, and for his own part he never had any doubt whatever as to the meaning of the Resolution of the Select Committee of which he had been a member. Under these circumstances he felt himself bound to vote against the amendment.

His Excellency THE COMMANDER-IN-CHIEF said that the native members of the Covenanted Civil Service having been to Europe, having become acquainted with European feelings, ideas and customs and having qualified themselves to take their places with the European members of the Civil Service, His Execellency would frankly accept them as real members of the Covenanted Civil Service, and allow them to exercise all the functions which the European members exercised.

HIS EXCELLENCY understood that the amendment of his hon'ble friend Mr. Ellis did not extend the power of Justice of the Peace to any Native Magistrates who were not Covenanted Civilians out of the Presidency Towns, and under this understanding would vote for the amendment.

His Excellency THE PRESIDENT said that his vote would be given in conformity with the opinion which had been expressed by His Excellency the Commander-in-Chief. He was

not a competent judge of the force which might attach to the engagement or compromise which it was said had been entered into with the public, because he was not here at the time when the preliminary report of the Committee had been presented, and he had taken no share in the recommendations of the Committee. He did not know what the effect of that declaration had been in the public feeling, and in the expression of public sentiment on that subject. He could not, however, agree with the hon'ble member in charge of the Bill in thinking that the educated native community of the country would not deem themselves exposed to some degree of slight or stigma or discouragement by the restrictions which would be imposed upon them if this amendment should not be passed. His Excellency thought that the restriction would embody a stigma on the native community in general. It was equivalent to stating that under no circumstances, as far as the administration of the law was concerned, could the native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the power of trying European British subjects. His Excellency thought that the proposed restriction would be held to be offensive and discouraging to the educated classes of the native community. He thought also that it would be unjust and discouraging to those enterprising members of the native community who at great expense to themselves, and at great sacrifice, had gone to England and had devoted themselves to the attainment of those qualifications which had enabled them to pass a severe competitive examination for admission to the Civil Service. He thought it would be a grievous discouragement to say to them "you are not competent to administer justice to European British subjects." He thought that by the restriction we, in effect, said to the European "you are not to be tried in the Mofussil by the agency by which you are tried in the High Courts and in the Court of the Magistrates in the Presidency towns, with the general approval and sanction of

the European and Native communities." It was saying in effect that the native who had attained to the position of a Sessions Judge was not competent to try a European British subject, but that he might try him when he became a Judge of the High Court and sat beside a European Judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject than in permitting Native Justices in the Presidency towns to try them. There appeared to His Excellency to be no such broad distinction whatever between the conditions of society and of public opinion in this respect between the Presidency towns and the Mofussil. There were now a great number of public spirited men and a great deal of public spirit all over the provinces. Communications by rail, the disseminations of newspapers both in English and the Vernacular, and a great variety of other circumstances, had destroyed that distinction which formerly existed between the Presidency towns and the Mofussil. There was not that distinction of light and darkness which existed formerly ; there was now almost equal light in the Mofussil and in the Presidency towns. His Excellency did not himself consider that there was the slightest possibility that in the rare case of a Civil and Sessions Judge trying a European British subject in the Mofussil there would be an abuse of justice. It had been said that if this distinction was obliterated it would be offensive or hurtful to our European fellow-subjects. He thought that there might be some dissatisfaction, but he did not think that the irritation or dissatisfaction would be of a sustained character. He believed that the actual cases, in which the penalty of imprisonment would be awarded, would be extremely rare, there would not be a frequency of those cases which were likely to cause dissatisfaction. On the other hand His Excellency had the greatest confidence in the justice and generosity of his countrymen, he thought that the generosity which

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they had extended to the exercise of judicial functions by Natives in the presidency towns would very soon be extended to the exercise of justice by Natives in the Mofussil, and that there would be no permanent dissatisfaction or irritation or grievance caused by the obliteration of the distinction which now existed. His Excellency's very hearty concurrence would therefore be given to the hon'ble Mr. Ellis' amendment.

The Hon'ble Mr. Ellis said that after the observations which had fallen from His Excellency the President in favor of the amendment, he hardly required to say anything further on the subject. But he desired with reference to what had fallen from his hon'ble friend, General Norman, to add his testimony to the efficiency with which Native Magistrates had performed their duties in the presidency towns in the administratien of justice to both Europeans and Natives, and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European Magistrates. And if they had done that, he saw no reason why natives in the position of Covenanted Civil Servants or Sessions Judges should not be equally competent to administer justice to the European in the Mofussil. His hon'ble friend Mr. Stephen had remarked that in this matter we were not to consult the feelings of the Judge but of those who were subjected to the jurisdiction; in answer to that, Mr. Ellis would say that he saw no reason why that which did not hurt the feelings of European, in the presidency towns should hurt them in the Mofussil.

His Honour the Lieutenant Governor said that as his hon'ble friend Mr. Ellis had put it, the first Report of the Committee had placed before the public certain matter for consideration. Under all the circumstances he should not have thought himself justified in now making any radical alteration in the propositions put forward by the Committee. But it appeared to His Honour that what was now proposed was

a minimum of change. It was not proposed to impose upon the European public the general liability to be tried by Native Magistrates, but only the possibility of being placed under the jurisdiction of three or four natives who had qualified themselves for admission into the ranks of the Covenanted Civil Service, and who, under the existing law, might be Justices of the Peace. After consideration and having listened to the arguments and given due weight to the weighty considerations which His Excellency the President had placed before the Council, His Honor was prepared to vote in favor of the very limited change which was proposed by the amendment.

The Hon'ble Sir Richard Temple said the reason why he had not expressed any opinion at an earlier stage of this debate was this, that he felt that this question did slightly involve that larger and graver question as to whether the civil appointments of the higher classes should be thrown open to the natives. But that had already been decided by the supreme authority of Parliament. That having been decided he thought that the inference was undeniable that, if the natives were eligible to all the great offices of the administration it seemed improper and unreasonable to say that they should not sit as judges over Europeans in the Mofussil for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance. After what had fallen from hon'ble members, he felt that he ought not to give a silent vote on this subject. He would vote in favor of the amendment of his hon'ble colleague Mr. Ellis.—

The question being put,

The Council divided.

Ayes.	Noes.
His Excellency the President.	Hon'ble Mr. Strachey.
His Honor the Lieutenat Governor.	Hon'ble Mr. Stephen
His Excellency the Commander-in-Chief.	Major Gen. the Hon'ble H. W. Norman.
Hon'ble Sir R. Temple.	Hon'ble Mr. Inglis.
Hon'ble Mr. Ellis.	Hon'ble Mr. Chapman.
	Hon'ble Mr. Robinson.
	Hon'ble Mr. Stewart.

So the amendment was negationd.

The Hon'ble MR. ELLIS then moved that in section 76 instead of the words "but not assistant Sessions Judges," the following be substituted :—

"And when specially empowered in that behalf by Government, assistant Sessions Judges, who have been assistant Sessions Judges, for not less than three years."

In doing so he said that there were assistant Sessions Judges who had held their office for many years.

These Assistant Judges exercised very many of the functions of District Judges. Moreover, in the scheme framed for the judicial administration of the Panjab, it was proposed to place whole districts in charge of Assistant Judges; but under the wording of this Bill, those Assistant-Judges would not be able to take cognizance of cases against European British subjects; therefore in one half of the Districts of the Punjab there would be no judicial officer empowered to try such cases. The matter was a simple one of administration, not involving any new principal, and he would not therefore, dilate on it.

The Hon'ble MR. CHAPMAN said he quite concurred in what had fallen from his hon'ble friend Mr. Ellis. He believed that the proposal now made would be a very valuable addition to the Bill.

The motion was put and agreed to.

His Excellency the COMMANDER-IN-CHIEF moved :—

That the second paragraph of section 74(1) be omitted.

That section 79(2) be omitted.

(1) 74. If the offence complained of is a Magistrate's case, and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is hereinafter in this code directed, according to the nature of the offence, and on conviction may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

(2) 79. Any European British subject, who is convicted by a competent Magistrate of any offence, may appeal either to the Court of Session or to the High Court.

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He said that he felt under a great disadvantage in moving the amendments of which he had given notice, because a large majority of the Council were Members of the Select Committee and were pledged to the Report—the whole Report and nothing but the Report of the Committee. Therefore the amendment which he now proposed could only be regarded as his protest against an extension of the powers of Magistrates for dealing with European British subjects.

His Excellency objected to the increased powers proposed to be given by Section 74 to Magistrates for the punishment of European British subjects. He considered the Magistrate had at present quite as wide powers as it was necessary to give them. He was not aware of any reason why European British subjects required more repression than heretofore.

He could not but think that the complete silence with which the public had received the intimation of the increased powers which it was proposed to give to Magistrates, was owing to the supposition that they were intended only for the suppression of the loafer, the troublesome and irrepressible European vagrant. But as his hon'ble friend, Mr. Chapman, had remarked it was not only the loafer, but persons of the highest respectability who might be subject to this jurisdiction.

If it was the loafer against whom these powers were directed he certainly would never be able to pay a large fine; his lot would invariably be imprisonment, which is not likely to render him in person or character better able to gain a livelihood than before.

He thought the manner of dealing with loafers should be a different one. His Excellency was of opinion that, as in the case of persons brought from Australia in charge of horses, those who brought out and let loafers loose on the country should be bound to provide for their deportation and thus prevent their becoming a nuisance to the country.

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If the person against whom the increased Magisterial powers are directed is the European settler, planter or merchant, he would ask what have they been doing lately to require greater severity of treatment.

His hon'ble colleague, MR. ELLIS, had rather dilated on the delight which the European should feel at being promptly put into Jail for three months, but an imprisonment for three months in the hot weather was a very serious punishment.

It might be the case of a poor man unable to make a proper representation of his case, or he might be ignorant of his right of appeal.

In by far the greater number of Magistrate's jurisdictions, there are no places in which an European could be imprisoned without injury to his health in the hot weather in India. HIS EXCELLENCY would ask whether the Government were prepared to supply every Magistrate with a prison suitable for the confinement of European offenders during the hot weather, or whether the prisoner, when sentenced, is to be sent to the place of confiment for prisoners sentenced by the higher Courts? If so, HIS EXCELLENCY thought it would be better if the prisoner were to be sent at once to the higher Court to be tried there. He said he was jealous of the liberty of the European British subject in India because he laboured under great disadvantages. In places where Europeans are numerous there is a chance that there may be European witnesses, but in remote places there is every probability that he may be at the mercy of native witnesses.

HIS EXCELLENCY objected to trust the fate of the European offender to the single judgment of one Magistrate. He had no objection whatever to the Sessions Judge, as he is an officer of wider experience, and he has a jury or assessors to assist his decisions, but a Magistrate who has resided for some time

in remote districts is very apt to adopt peculiar notions which might effect his decisions.

His Excellency could mention a case which came under his own knowledge.

A full-powered Magistrate, whom he would, for the sake of convenience, call Mr. Full-power Magistrate Robinson, and who was not in any way connected with his hon'ble colleague, reviewed the case of a soldier who was pursuing some life-convicts who were effecting their escape. In the dark night he overtook them, having outstripped his comrades, and they, seeing but one man, mobbed and tried to disarm him: being obliged to use his weapons, he bayonetted his most troublesome assailant, giving him three stabs. Mr. Full-power Magistrate wrote a severe report on the soldier's proceedings because he gave three stabs when, in the opinion of the Magistrate, one would have been sufficient. His Excellency was convinced from the Magistrates report that he was a good and humane young man, but His Excellency much feared that he would have punished the soldier, had he had the power, very severely.

In another case, a Magistrate, in a secluded district, acquired a dislike, almost amounting to hatred, of Europeans and would not let one come near him or enter his presence. His Excellency with another officer (now living) was refused admittance to him, although they called on public business. His Excellency could not help fearing that if that gentleman had had to sentence a European, the sentence would have been a hard one.

In another case a Magistrate was personally concerned, and endeavoured to bring the case on for trial in the Courts of his own station, presided over by his brother Magistrate, where local feelings were naturally in a state of irritation.

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His Excellency had mentioned these instances to show that it was not expedient to trust a Magistrate with these extended powers, considering the extreme severity of the punishment of imprisonment to Europeans in this country.

His Excellency thought that it might be assumed that Military Law was severe enough. But the Commanding Officer of a Regiment, who seldom attained that position under twenty years service and often not until a much longer period, and is an officer of long administrative experience, could only sentence a soldier to imprisonment for twenty-eight days.

A Regimental Court-Martial, consisting usually of five and never less than three officers, could only sentence to forty-two days' imprisonment. His Excellency did not see, therefore, why a Magistrate of only a few years service should have power to inflict a sentence of imprisonment for so long a period as three months, on his own unaided judgment.

In making these remarks he desired to guard himself against being thought to underrate the value of the Civil Service to which the Magistrates belong.

His experience during many years service had enabled him to verify the high opinion expressed by his hon'ble colleague, Mr. Stephen, of the Civil Service, which His Excellency had been associated with under circumstances that had enabled him to appreciate their high honor and rectitude, and their devotion to their duties. His Excellency had the highest respect and regard for the Civil Service of India, and he believed that it was unsurpassed by any similar body in the world. His Excellency trusted that he should not be misunderstood, because he objected to an extension of power which might fall into the hands of young Magistrates, who were placed under circumstances not tending to develop a mature judgment.

The Hon'ble Mr. Stewart said that he was one of the Committee which drafted the Resolutions upon which these

provisions had been based, and he took very much the same view of the subject as the Hon'ble Member in charge of the Bill. He thought that practically they were bound by the recommendations of the Committee in that preliminary report.

The Hon'ble MR. CHAPMAN said that the papers before the Council were exceedingly voluminous, and HIS EXCELLENCY the COMMANDER-IN-CHIEF had not perhaps read the whole of them. The testimony which they bore to the subject under discussion was quite concurrent from all quarters that the evil must be dealt with, and the Committee had stopped far short of the recommendation of the local authorities. He thought that if HIS EXCELLENCY would duly consider the inconvenience and expense of sending down a host of witnesses in every trivial case of theft, he would admit that it was a great hardship upon them.

With reference to HIS EXCELLENCY'S remarks as to their being no suitable place for the confinement of Europeans, if he referred to the Bill he would find that it was provided that sentences of imprisonment of Europeans were only to be carried out in places where the Local Government considered fit for the purpose. A Magistrate had the power of sentencing a Native to imprisonment for two years, to order him to be flogged and to fine him. Surely the same man was competent to deal with the case of a European British subject and sentence him to three months' imprisonment. Mr. Chapman thought that the class of men who would be entrusted with these powers were fully qualified to exercise them. He thought that they were quite as qualified to sentence a European to imprisonment for three months as the Sessions Judge was to inflict a much severer punishment; and it very frequently happened that the Magistrate of the District was a man of quite as much experience, if not greater experience, than the Sessions Judge.

HIS HONOUR the LIEUTENANT-GOVERNOR said, that he would only notice two points in connection with the remarks

of HIS EXCELLENCY the COMMANDER-IN-CHIEF. HIS EXCELLENCY asked whether planters and merchants in the Mofussil were a worse or better class of men now than they used to be. HIS HONOUR would answer, most decidedly, that he admitted that they were a better class of men than they were formerly. It must, however, be remembered that since the year 1853 the Government were under a statutory obligation imposed by the British Parliament to improve the administration of justice in the country, and they were now fulfilling that obligation. And as regards planters and merchants in the country, although they were not a worse class of men, but on the contrary a more loyal and much better class of men, yet they were now a much more numerous class: the loafer also was a much more numerous class and it was necessary for the peace of the country that he should be made amenable to the law.

On the other point, as regards the provision of suitable accommodation for the confinement of Europeans, HIS HONOUR hoped and believed that there were very few places in which suitable places had not already been provided for the purpose by the erection of Central Jails all over the country. Besides, as his hon'ble friend, MR. CHAPMAN, had observed, under the provisions of the Bill, sentences of imprisonment imposed upon Europeans could only be carried out at places appointed by the Government for the purpose; and the Government would be bound not to permit the imprisonment of a European in a place that was not suitable for the purpose; European prisoners would be sent to a place where there was good accommodation. It was well known that the greatest difficulty and inconvenience had been found in the prosecution of European British subjects charged with offences in consequence of its being necessary to bring down to the High Court all the witnesses in the case. But under the provisions now under consideration, the prisoner having been sentenced to imprisonment, the grievance to him to be sent to the place of confinement would not be a very great one, and his deportation would not be attended with very great

expence to the State, now that there were increased facilities for travelling by rail and steamer.

The Hon'ble Mr. ELLIS said, the observations which he desired to make had in a great measure been anticipated by the remarks which had fallen from HIS HONOUR the LIEUTENANT-GOVERNOR, and his hon'ble friend, MR. CHAPMAN. But he did not wish to give a silent vote upon this question. He grieved to say that he was unable to concur in the arguments which had been adduced by HISEXCELLENCY theCOMMANDER-IN-CHIEF; in fact, HIS EXCELLENCY would perhaps already he prepared for the announcement Mr. ELLIS had made. He could not look upon this chapter of the Code altogether in the light of an injury to the criminal. He thought that under these provisions the European would enjoy more liberty than he did at present, there being so many cases in which he would enjoy speedy justice, and be dealt with lightly with the view of saving the witnesses from long and harassing journies, and on the whole he thought that the criminal would not be worse off under the proposed than under the existing system. He could not view the regulations which the Council were making at all in the light that they would affect planters and such classes of Europeans in a prominent degree, or that they were likely to be concerned in a large number of cases of the description contemplated. He considered such classes of Europeans as far above such considerations. It was with the loafer and the unfortunate people who from want of proper means of subsistence had been driven to crime that we had to deal. And as means of punishment were provided, by the existence of that very means of punishment, we should prevent a great deal ofcrime being committed by that class of men. The knowledge that punishment would swiftly follow crime was the best deterrent of crime.

With reference to HISEXCELLENCY the COMMANDER-IN-CHIEF'S remark as to the amount of imprisonment that could be awarded by the Commanding Officer of a regiment, Mr. ELLIS would

observe, that there was this difference between the powers that might be entrusted to a Military Officer and the powers that were exercised by a Magistrate, that a Commanding Officer's business was to be martial, not judicial-minded. It was a Magistrate's business, on the other hand, to be judicial-minded; he was accustomed to administer justice, and in that respect he might be considered to be far better qualified than the Commanding Officer of a regiment. On those grounds MR. ELLIS regretted that he was unable to concur in the amendment of HIS EXCELLENCY the COMMANEER-IN-CHIEF.

The Hon'ble Sir RICHARD TEMPLE said that, although he was unwilling to trouble the Council with any remarks upon this subject, yet as a member of the Government he felt bound to add his testimony, and to say that, from his experience of very many parts of the country, it appeared to him that there was great necessity for those provisions of the Bill which empowered Magistrates to try Europeans for petty offences. He believed that those provisions arose out of the necessities of the age and the progress which we had made in the development of the resources of the country, considering that the expansion of railways all over the country and the immense increase of industrial enterprise had caused the influx of a large number of our countrymen: without any disparagement to them as a body, it must be admitted that some of them occasionally fell into trouble and evil ways. That was a fact which there was no shutting their eyes to. The increase of Europeans of what might be called the working classes had been very great; in was one of the necessary circumstances concomitant with some of the greatest improvements of the age. If, unhappily, individuals of European classes, then, committed offences, the Council had to consider not only the offenders themselves, but also the persons with whom they might come into contact. He did not believe that the offenders themselves would be placed in any worse position by the enactment of these provisions than

that in which they would otherwise be. He admitted that sometimes a Magistrate might be hasty in respect to affairs of this nature, but still he was confident that through the great progress of public opinion in the country, that opinion would be brought to bear upon them, and that there was little or no danger of Magistrate's abusing or misusing the powers entrusted to them. At the same time the Council were bound to remember that, under the present state of the law on the subject, a great many who committed crimes escaped punishment, and a great many innocent persons suffered in consequence. We must not only think of the criminal but we must think of the unhappy circumstances of those criminals. They were persons who came into contact with those who at least had as much claim upon our sympathy as any other class, and they would receive considerable relief by these new provisions.

On those grounds he felt it his duty not only to vote for the provisions contained in the Bill, but also to take the first opportunity of expressing his views on the subject.

His Excellency the Commander-in-Chief observed that his hon'ble friend, Mr. Chapman, had spoken of the experience of Magistrates, but His Excellency was informed that Magistrates of only two or three years might be invested with the full powers of a Magistrate and Justice of the Peace on passing the necessary examinations.

With reference to the remarks of his hon'ble friend, Mr. Ellis, that these provisions were directed against the lower orders of the European population, His Excellency would observe that a fine of Rupees one thousand was not a punishment which might be said to be directed against a poor man but rather against the higher classes of Europeans.

His Excellency the President, regretted that he was not able to support the amendment of His Excellency the

Commander-in-Chief; his inability to do so was not from any want of sympathy or consideration for the class of persons in whose behalf the Council were desired to interfere, but from a sincere conviction of the necessity of some provisions such as those contained in the Bill. A great deal had been said about the loafer, and a bad name had been given to a class of Europeans who did not always deserve the stigma that had been cast upon them. It was in Madras that an attempt was first made to afford some place of refuge to an injured class of our countrymen in this country, and then the discovery was made what the real condition of these unfortunate people was. When first what was called the "Loafers Home" was established at Madras, a great deal of laborious attention was paid to it by his hon'ble friend, Mr. ROBINSON, and THE PRESIDENT thought Mr. ROBINSON would concur with him when he said that in the great majority of cases the members of the humbler orders of our countrymen were more unfortunate than guilty. MR. ROBINSON discovered a great number of valuable elements in the character of these men who found it impossible in this country to maintain a respectable state in society. THE PRESIDENT did not wish to apply harsh terms to the humble orders of his countrymen, it must, however, be allowed that there was a class of Europeans now in this country in reference to whom a temperate, but speedy means of justice was necessary; and he could not doubt that the class of Magistrates in whom it was proposed to vest these powers were quite competent to inflict the petty sentences which were contemplated by this Code. He agreed with His Excellency the Commander-in-Chief in thinking that there was something inconsistent in reference to the amount of fine which it was proposed by these provisions to authorize the Magistrate to inflict, and if His Excellency had confined his amendment to a reduction in the amount of fine, THE PRESIDENT would have been glad to support the proposition; but if His Excellency was

determined to press the whole of his amendment, THE PRESIDENT would feel himself compelled to vote against it. THE PRESIDENT could not admit the force of the objection which his Excellency the Commander-in-Chief had raised on the ground that there were no proper places for the detention of European prisoners. THE PRESIDENT believed that the institution of Central Jails which were nearly completed over the whole of India, provided proper places for the imprisonment of European British Subjects of the humbler orders, and in such places as those in which Central Jails had not yet been provided, it appeared to him that there would be no difficulty in transporting a prisoner to some adjacent prison.

The question being put,

The Council divided—

Aye.	Noes.
His Excellency the Command-in-Chief.	His Excellency the President. His Honor the Lieutenant Governor. Hon'ble Mr. Strachey. Hon'ble Sir R. Temple. Hon'ble Mr. Stephen. Hon'ble Mr. Ellis. Major-General the Hon'ble H. W. Norman. Hon'ble Mr. Inglis. Hon'ble Mr. Robinson. Hon'ble Mr. Chapman. Hon'ble Mr. Stewart.

So the amendment was negatived.

CRIMINAL PROCEDURE CODE BILL, 1883.

OFFICIAL PAPER. *

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* Published 13th February 1883.

From Officiating Secretary to Government, North-Western Provinces and Oudh, to Secretary to Government of India, Home Department, dated 27th May, 1882.

Note by W. Duthoit, Esq., Officiating Judicial Commissioner, Oudh, dated 19th May, 1882.

From W. M. Young, Esq., Secretary to Government, Punjab, to Secretary to Government of India, Home Department, dated 5th August, 1882.

From A. H. L. Fraser, Esq., Officiating Secretary to Chief Commissioner, Central Provinces, to Secretary to Government of India, Home Department, dated 15th May, 1882.

From E. S. Symes, Esq., Junior Secretary to Commissioner, British Burmah, to Secretary to Government of India, Home Department, dated 11th May 1882.

From C. J. Lyall, Esq., Secretary to Chief Commissioner, Assam, to Secretary to Government of India, Home Department, dated 26th May 1882.

From Major H. Wylie, Secretary to Chief Commissioner, Coorg, to Secretary to Government of India, Home Department, dated 16th May, 1882.

From W. B. Jones, Esq., Resident at Haidarabad, to Secretary to Government of Home Department, dated 24th August 1882.

From A. P. Howell, Esq., Commissioner, Haidarabad Assigned Districts, to Secretary for Birar to Resident at Haidarabad, dated 1st June, 1882.

From A Tulloch, Esq., Deputy Commissioner, Amraoti, dated 27th May, 1882.

From Lieutenant-Colonel H. C. Menzies, Deputy Commissioner, Buldana, dated 29th May, 1882.

No. 1411., dated Calcutta, the 20th March 1882.

From Horace A. Cockerell, Esq., C.S.I., Secretary to the Government of Bengal, Judicial, Political and Appointment Departments.

To the Secretary to the Government of India, Home Department.

I am directed to submit, for the consideration of the Government of India, the accompanying copy of a note* by Mr. B. L. Gupta, of the Bengal Civil Service, representing the anomalous position in which the Native members of the Covenanted Civil Service are placed under the provisions of the Code of Criminal Procedure, which limit the jurisdiction to be exercised over European British subjects in the interior to judicial officers who are themselves European British subjects. Chapter VII of Act X of 1872, which deals with the subject, has been reproduced in the new Code of Criminal Procedure (vide Chapter XXXIII of Act X of 1882.)

* Dated the 30th January 1882.

2. The question raised in Mr. Gupta's note is one which requires full consideration, and on which the Government of India will probably deem it desirable to obtain the opinions of all the Local Governments and Adminstrations, inasmuch as it may not be expedient to apply to the Madras and Bombay Presidencies a rule which may be applicable to Bengal. Mr. Gupta desired that the question of the jurisdiction to be exercised by Convenanted Civilians over Europeans in the Mofussil might be considered in connection with the Bill to amend Act X of 1872 ; but the Lieutenant Governnor felt that a discussion on the subject could not with propriety be raised at the final reading of the bill. Sir Ashley Eden is, however, of opinion that the matter should receive full and careful consideration whenever, on any future occasion a fitting opportunity occurs.

3. As a question of general policy, it seems to the Lieutenant-Governor right that Convenated Native Civilians should be empowered to exercise jurisdiction over Europeans as well as over natives who are brought before them in their capacity as Criminal Judges. Now that Native Convenated Civilians may shortly be expected to hold the office of District Magistrate or Sessions Judge, it is also, as matter of administrative convenience, desirable that they should have the power to try all classes of persons brought before them. Moreover, if this power is not conferred upon Native members of the Civil

Service, the anomaly may be presented of a European Joint Magistrate who is subordinate to a Native District Magistrate or Sessions Judge, being empowered to try cases which his immediate superior cannot try. Native Presidency Magistrates within the Presidency towns exercise the same jurisdiction over Europeans that they do over Natives, and there seems to be no sufficient reason why Covenanted Native Civilians, with the position and training of District Magistrate or Sessions Judge should not exercise the same jurisdiction over Europeans as is exercised by other members of the Service.

4. For these reasons Sir Ashley Eden is of opinion that the time has now arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXIII of the new Code of Criminal Procedure, or when at least Native Covenanted Civilians who have attained the position of District Magistrate or Sessions Judge should have entrusted to them full powers over all classes, whether European or Native, within their jurisdiction.

Jurisdiction over European British subjects.

As the law now stands—Chapter VII Act X of 1873,* no Magistrate or Sessions Judge has jurisdiction to enquire into a complaint or to try a charge against a European British subject unless he is a Justice of the Peace and himself a European British subject. An exception to this rule is allowed within the limits of Presidency towns where, under Act IV of 1877, a Presidency Magistrate, whether himself a European or not, has the same jurisdiction over Europeans as over Natives of the country.

* Section 72.

Previous to the passing of Act X of 1872 (the present Criminal Procedure Code) no Magistrate or Justice of the Peace, even though a European himself, had jurisdiction (outside the limits of the Presidency towns) to try a charge against any European British subject. But all Magistrates who were also Justices of the Peace had jurisdiction to enquire into

charges against Europeans and to commit them to the High Court for trial. (See sections 39, 41, and 40 of Act XXV of 1861, the old Criminal Procedure Code.) And by section 3, Act II of 1869, the Government was empowered to appoint any Covenanted Civil Servant to be a Justice of the Peace. Under Act X of 1872, however, a Covenanted Civil Servant, even though a first class Magistrate and a Justice of the Peace, would have no jurisdiction over a European British subject unless he himself is a European British subject.

This provision of the law would give rise to an invidious distinction, and to many practical inconveniences in the case of those Natives of the country who in the course of time expect to attain to the position of a District Magistrate or of a Sessions Judge. Hence, when the Bill for Act X of 1872 was still before the Council, an amendment to section 72 in favour of the Native members of the Covenanted Service was proposed by the Hon'ble Mr. Ellis. The† amendment was put to the vote and lost by a majority of *seven* against *five*. But it is remarkable that the minority in that instance comprised the highest officials of the State. The President and Governor General, the Commander-in-Chief, the then Lieutenant-Governor of Bengal, and his successor in office, all voted for the amendment, and I would humbly invite attention to the utterances of those dignitaries on that occasion. Nothing can be added to the eloquence or the sound reasoning of those speeches, and I shall content myself with appending a few extracts for ready reference.

† See proceedings of the Governor General's Council on the Criminal Procedure Bill at a meeting held on the 16th April 1872, published in the Supplement to the *India Gazette* of the 4th May 1872, page 572.

The Bill of the new Criminal Procedure Code now before the Council‡ proposes to perpetuate the distinction noted above, and the disability under which myself and other Indian members of the Service labour. The arguments which were uttered in 1872 for its removal present themselves with redoubled force after an interval of ten years. They are too obvious to require men-

‡ Section 443.

tion, and they would lose all their grace and much of their force if repeated by one who is personally interested in the matter. My only sentiment on the subject is, that if you do entrust us with the responsible office of a District Magistrate or of a Sessions Judge, do not cripple us in our powers. The question affects seriously the efficiency of District administration; and I make bold to trust that the expediency of a change in the law cannot but be recognised if the matter be put before the Council in its present true light.

Since the passing of Act X of 1872, however, the constitution of the Civil Service has undergone an important change, with reference to which a few words need be said. Under a recent measure of Government, Natives of India have been appointed to the Covenanted Civil Service under a system of nomination, and without the test of any competitive examination or a compulsory journey to England. This fact somewhat alters the aspect of the question discussed in the Council in 1872, and under existing circumstances, stronger objections would probably be raised against any proposal to extend generally the criminal jurisdiction over European British subjects, to all Native members of the Covenanted Civil Service. I would therefore venture to make a suggestion which would probably meet the urgent requirements of the case, at the same time that it would obviate all reasonable objections, and command a general assent. I would propose that the extension of jurisdition over European British subjects be limited to Natives of the country holding the office of a Magistrate of the district, or of a Sessions Judge.

The 30th January 1882.

B. L. GUPTA.

Extracts from speeches of the Members of the Legislative Council upon an amendment proposed by the Hon'ble Mr. Ellis to Sections 72, 76, and 77 of the Bill for the present Criminal Procedure Code (Act X of 1872) *at a meeting held on the 16th April* 1872 (*see* "Supplement to Government of India Gazette" *of the 4th May* 1872)

THE HON'BLE MR. ELLIS.—In making the invidious distinction which was now proposed, if we excluded any Justices of the Peace from the exercise of certain powers, we were really casting a stigma on the whole educated Native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that, if you had Native Covenanted Civil Servants, you ought not to bar them from exercising the powers of a Civil Servant, among which powers is the jurisdiction of a Justice of the Peace over European British subjects. By Act II of 1869 Natives might be appointed Justices of the Peace, and on what ground, he would ask, was it proposed to restrict their powers as Justices of the Peace?

HIS HONOUR THE LIEUTENANT-GOVERNOR.—The Council should adhere to the decision which had been come to by the passing of Act II of 1869, namely, that a Justice of a Peace must be either a European British subject or a Covenanted Civil Servant. To re-open that question and to limit the powers that might be exercised by any Justices who were Covenanted Civil Servants, appeared to His Honour to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light, he should be inclined to vote for the motion before the Council.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF said that the Native members of the Covenanted Civil Service having been to Europe, having become acquainted with the European feelings, ideas and customs, and having qualified themselves to take their places with the European members of the Civil Service, HIS EXCELLENCY would frankly accept them as real members of the Covenanted Civil Service, and allow them to exercise all the functions which the European members exercised.

HIS EXCELLENCY the PRESIDENT said that his vote would be given in conformity with the opinion which had been expressed by HIS EXCELLENCY the COMMANDER-IN-CHIEF. HIS EXCELLENCY thought that the restriction would embody a stigma on

the Native community in general. It was equivalent to stating that under no circumstances, as far as the administration of the law was concerned, could the Native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the powers of trying European British subjects.

He thought that by the restriction we in effect said to the European:—"You are not to be tried in the mofussil by the agency by which you are tried in the High Court and in the Courts of the Magistrates in the Presidency towns, with the general approval and sanction of the European and Native communities." It was saying in effect that the Native who had attained to the position of a Sessions Judge, was not competent to try a European British subject, but that he might try him when he became a Judge of the High Court and sat beside a European Judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject, than in permitting Native Justices in the Presidency towns to try him. There appeared to His Excellency to be no such broad distinction whatever between the conditions of the society and of public opinion in this respect between the Presidency towns and the mofussil. There were now a great number of public-spirited men, and a great deal of public spirit all over the provinces. Communications by rail, the dissemination of newspapers both in English and the Vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the Presidency towns and the mofussil. His Excellency did not himself consider that there was the slightest possibility that in the rare case of a Civil and Sessions Judge trying a European British subject in the mofussil there would be an abuse of justice.

The Hon'ble Mr. Ellis.—But he desired to add his testimony to the efficiency with which Native Magistrates had performed their duties in the Presidency towns, in the administration of justice to both European and Natives, and he had

no hesitation in saying that they had performed their duties with as much credit and efficiency as the European Magistrates. And if they had done that, he saw no reason why Natives in the position of Covenanted Civil Servants or Sessions Judges should not be equally competent to administer justice to the European in the mofussil. His hon'ble friend, Mr. Stephen, had remarked that in this matter we were not to consult the feelings of the Judge, but of those who were to be subjected to the jurisdiction. In answer to that Mr. Ellis would say that he saw no reason why that which did not hurt the feelings of Europeans in the Presidency towns should hurt in the mofussil.

His Honour the Lieutenant-Governor.—After consideration, and having listened to the arguments, and given due weight to the weighty considerations which His Excellency the President had placed before the Council, His Honour was prepared to vote in favour of the very limited change which was proposed by the amendment.

The Hon'ble Sir Richard Temple.—He thought that the inference was undeniable that if the Natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as Judges over Europeans in the mofussil for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance. After what had fallen from Hon'ble Members, he felt that he ought not to give a silent vote on the subject. He would vote in favour of the amendment of his hon'ble colleague, Mr. Ellis.

The question being put, the Council divided—

Ayes.	*Noes.*
His Excellency the President.	Hon'ble Mr. Strachey.
His Honour the Lieutenant-Governor.	Hon'ble Mr. Stephen.
His Excellency the Commander-in Chief.	Major-General the Hon'ble H. W. Norman.
Hon'ble Sir R. Temple.	Hon'ble Mr. Inglis.
Hon'ble Mr. Ellis.	Hon'ble Mr. Robinson.
	Hon'ble Mr. Chapman.
	Hon'ble Mr. Stewart.

So the amendment was negatived.