

tion will be given, have altered during the ten years. The administrative necessity for the change, which was then remote, has now arrived, and will soon become urgent. Even before 1872, criminal jurisdiction over British subjects had been given to native Magistrates in Calcutta; and both Hindu and Muhammadan gentlemen have exercised these powers in the Calcutta Courts. But it was not considered safe to entrust the same powers to native Magistrates in the Districts, because it was feared that public opinion, which would check any miscarriage of justice in Calcutta, might not act with equal force upon District Magistrates. I think that this was a good argument in 1824. But new enterprises have since then brought an influx of Englishmen into the interior, and created an amount of independent English opinion in the Districts which could not have been anticipated in 1872. I, for one, read with pleasure the telegrams which have poured into the *Englishman* during the past month, from every part of Bengal where Englishmen reside. Those telegrams show that our non-official countrymen are strongly opposed to the measure which I advocate. But they also show that Englishmen in the interior have now the means of expressing the public opinion of their class, with such promptitude and with such force, as to constitute the strongest possible guarantee against the abuse of Magisterial powers, whether vested in European or in native hands. Not only is English public opinion in the District stronger, but English public opinion in Calcutta acts much more directly upon the District Magistrates. Since 1872, the length of railways open in India has increased from a little over 5,000 to close on 10,000 miles. The number of private telegrams sent has increased from 600,000 to 1,337,526. The number of Post Offices and letter boxes has, during the same period, multiplied from under 5,000 to more than 11,000; and the number of letters, newspapers, &c., from 89 millions to 158 millions. Districts formerly isolated have now speedy and constant communication with the capital. Nor is it too much to say that English public opinion in the remote Province of Assam can now be brought to bear, as powerfully and as immediately, upon the Government, as the English public opinion of Calcutta could twenty years ago.

The circumstances of the special class of public servants to whom it is proposed to give jurisdiction have also altered. In 1872, the native covenanted civilians, appointed by open competition in England, were untried men, who had yet to prove their fitness for the offices entrusted to them. They have, during the past ten years, abundantly proved it. They have established their reputation as painstaking, impartial offi-

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cers, and in a special manner they have shown their capacity for sound judicial work. Nevertheless, if a distinct administrative necessity had not arisen, I should decline to support a change which must be painful to an important section of the Community. But such a necessity has now arisen. The Council has before it the reports from the various Local Governments in favour of this measure. I shall not, therefore, say more with regard to them, than that they present to my mind an overwhelming preponderance of opinion which it is difficult for the central Government to disregard. But I shall show, by one or two individual instances, the way in which the present anomalous state of things works in the rural Districts. The native civilians have now reached a stage in their service when they must become, in the natural course, District Magistrates and Sessions Judges. We have guaranteed to them equal rights with their English brethren, yet they must be excluded from those offices in the more eligible Districts, where English private enterprise exists, and they must be turned out of these offices in any District into which English private enterprise comes. Let me illustrate this by two examples; one taken from the Bengal, the other from Bombay. On the 17th January last, a native civilian was, in the ordinary course, appointed Joint Magistrate, with powers of a Magistrate of the first class, at the important station of Dacca. On the 23rd January he received a letter from the Secretary to the Bengal Government cancelling the appointment, and transferring him to a less eligible District, on the ground that the opening out of the Dacca and Maimansingh Railway was bringing a number of Europeans into the Dacca District. [THE LIEUT.-GOVERNOR. That was not the only reason. DR. HUNTER. That was the only reason. THE LIEUT.-GOVERNOR. That was not the only reason. DR. HUNTER. That was the only reason given. THE LIEUT.-GOVERNOR. That may have been so; that is a very different thing.] In the Bombay Presidency, a native civilian holds the important office of District and Sessions Judge of Kanara. His head-quarters are at Karwar, the coast terminus of the railway which, some time ago, was proposed to be constructed from the Dharwar cotton country. If this scheme should be revived, and the railway sanctioned, the Sessions Judge of Kanara would, under the exigencies of the existing law, have to be turned out of his District. Let us see what this practically means. The gentleman in question is Mr. Tagore. After a distinguished education, both here and in England, he has given nearly twenty years of unblemished service to the Government, and has established a high reputation

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as a Judge. He is a near relative of our late colleague, the Maharaja Sir Jotendro Mohan Tagore, who, during an unusually prolonged period, assisted this Council in making the laws of India. The well-earned encomiums in which your Excellency expressed our sense of the services thus rendered are still fresh in your memories. Yet we are told that we must not entrust to a member of the same noble house, notwithstanding his training in England, and his twenty years of proved integrity as a Judge, the power of sentencing a European British subject to a short term of imprisonment. This, too, although the European British criminal has the right of immediate appeal from any sentence of imprisonment, however brief, and from any fine, however small. If it were necessary, I could multiply examples. Unfortunately, the time has come when such examples will year by year multiply themselves.

Since this Bill was introduced, I have taken occasion to consult several of the leading native civilians. They complain that under the present law they will be excluded, as Magistrates and Sessions Judges, from the advancing Districts into which British enterprise comes; and that they will be condemned to backward or remote Districts, where they will have less opportunity of distinguishing themselves, or of proving their fitness for the higher offices. They urge that in Bengal, for example, this means that they will be shut out from the healthy and coveted Province of Behar, and condemned for the most part of their official career to the Delta. The pleasant regions of Tirhut and Patna will be denied to them; the swamps of Bakargunj and Noakhali will be permanently at their disposal. They contrast this state of things with the long series of declarations by Her Majesty's Government, presented to Parliament, beginning with the Queen's Proclamation to the Chiefs and people of India in 1868, and ending with the Despatch of the Secretary of State, dated the 10th July 1879. They rebut the argument that it is not essential that the Magistrate of the District should have power over Europeans, if his Joint-Magistrate has these powers, by bringing forward a long list of Districts in which there is no Joint-Magistrate. The Magistrate must either be capable of exercising those powers, or he must go elsewhere. They urge that Government will have to regulate its appointments, not by the merits of an officer, nor by his general fitness for a District, but by his power to deal with a small exceptional class of cases occurring within it. They point out that this is not only an injustice to themselves, but also a source of weakness to the administration.

The admission of the natives to the Covenanted Civil Service.
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vice was one of the results of the Queen's Proclamation when Her Majesty assumed the Government of India. In that Proclamation she commanded that her subjects "of whatever race or creed, be freely and impartially admitted to offices in[her] service, the duties of which they may be qualified, by their education, ability and integrity, duly to discharge." The Covenanted Native Civilians have now reached a point in Her Majesty's service, when the Government must decide whether it will or will not grant them criminal jurisdiction over European British residents, as the Company had in 1836 to decide whether it would grant civil jurisdiction over such residents to its Uncovenanted Native Servants. The Government has in 1882 reached the same conclusion as that at which the Company arrived in 1836. But the present Bill provides the most ample safeguards against the abuse of the powers which it confers—safeguards so ample, stringent, and complete, as to destroy any further analogy between the action of the Legislature in 1836 and in 1882. For the present, I shall only deal with the case of Covenanted Civilians who have entered the service by competition in England. They are the class to whom the Bill is chiefly directed; they are the class in regard to whom the Local Governments appear to have yet been consulted. So far as scrutiny of the Civil Lists enables me to form an opinion, there are not above two or three native officers, with the exception of those in the regular Covenanted Service, on whom any Local Government would confer the powers granted by the Bill for many years to come. At any rate, the Council has no evidence before it with respect to the other classes mentioned in the Bill. And I, for one, am not prepared to support, by speech or vote, the curtailment of privileges, on which my countrymen set a high value, without clear evidence that the sacrifice is demanded on behalf of good administration and the common weal. Such evidence may be forthcoming at the proper stage, when the Bill reaches the Select Committee. But, meanwhile, I speak only of the principal class of Native public servants whom the Bill will affect; namely, those who have won their positions by open competition in England.

I beg the opponents of this measure to consider the very limited powers which the Bill conveys, and the stringent safeguards which it provides against their abuse. The native members of the competitive Covenanted Service are a select body of men, who have won their way into public employment by exceptional exertions, and by exceptional abilities. In youth they so far overcame the inertia of the climate, and the prejudices of their race, as to set forth

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to a country on the other side of the globe, on the chance of securing an honorable career by open competition. Most of them had already earned distinctions at Indian Colleges and Universities. In England they had to partially re-educate themselves on a foreign model. They had to compete in an examination framed to suit an educational system different from that on which they had been trained, and they won their appointments from among a crowd of competitors. Many of the Native Civilians thus selected are more English in thought and feeling than Englishmen themselves. After their arrival in India they have to pass through further tests, and to prove their fitness by years of faithful service before they can receive the powers which the Bill confers. Even then, it is only if the Local Government is satisfied of the fitness of the individual officer that the powers are granted to him. And what, precisely, are those powers? The highest are those granted to Magistrates of Districts and Session Judges, officers of about 18 to 25 years' standing. A District Magistrate can sentence a native of India to two years' imprisonment, with fine; or in default of payment of the fine, and in cases of cumulative sentences, to four years. He can only sentence a European British subject to a term not exceeding three months. A Sessions Judge may sentence a native of India to death or transportation for life. This Bill empowers him to sentence European British criminals to only one year. A native criminal can appeal only to certain Courts, and only against sentences of a certain degree or severity. The European criminal by this Bill is allowed the right of appeal to either the District Court or the High Court at his own option; and he may exercise that right against a sentence of a Magistrate or Sessions Judge, however small,—against a fine of one rupee, or a single day's imprisonment. The European British subject is further protected by his race privilege of the writ of *habeas corpus*. Nothing can be further from the truth than the statement that this Bill disregards the different degrees in which the force of public opinion acts as a check upon miscarriages of justice in Calcutta and in the rural Districts. A Native Magistrate sitting in Calcutta can sentence European British subjects to two years' imprisonment, and to a fine; with a right of appeal only from sentences of a certain gravity. The present Bill confers on the same officer, if he is proved to be a Magistrate of a District, the power of sentencing a European British subject to only three months' imprisonment; with the privilege of appeal from every sentence, however small.

I would ask the opponents of the measure whether they seriously believe that these safeguards are not ample for the

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purposes of justice. If they can suggest further safeguards, I feel sure that this Council will impartially listen to their proposals. I know it is hard for any class of men to part with its special privileges. The hardship is sometimes a matter of fact, and sometimes a matter of feeling. The class affected always believes that the hardship is one of fact. Whether Europeans or Natives, they plead the same argument of the thin end of the wedge, and of the total abolition of their class privileges which the change, however small, foretells. This argument was never better set forth than by the Hindus on the passing of the *Lex Loci* Act. They then expressed their belief "that the security in person, property, and religion, hitherto ensured to them, thus undermined in one instance, would be eventually denied to them altogether." The forty years which have passed since these words were uttered, have abundantly falsified the predictions which they convey. Nor have the apprehensions of the European community, on the passing of the Black Act in 1836, been more fully justified. The civil jurisdiction then granted to Native Judges seemed to our countrymen to destroy the sole securities which they possessed for their capital invested in the rural Districts, and to threaten the extinction of British enterprise in Bengal. Europeans would be deterred thenceforth from settling in India, and it was vainly attempted to combat this statement by quoting Mr. Mill's evidence before the Committee of the House of Commons. The fifty years which have since passed and the immense development of British enterprise under the protection of the rural Courts of Bengal now supply an unanswerable refutation of such fears. Even the abolition of the Grand Jury in the Presidency towns in 1865 sufficed to awaken serious apprehensions. "On the abolition of Grand Juries," said the circular issued by the Landholders' Association, "there would be no protection to gentlemen from being accused of crimes of which they were entirely innocent whenever the local Magistrate was supposed to be inclined to believe in such charges, and of being put upon their trial whenever a credulous or prejudiced Magistrate would be found." A correspondent in the *Englishman* predicted that now that the Grand Jury was doomed, the right of calling a public meeting through the Sheriff "would be the next old institution voted effete." Another begged his countrymen to "beware of the doctrinaire dissectors. Cry out in time," he said, "and that lustily, or we may expect the fate of the eviscerated cat, whose personal objections to the operation are disregarded in the promotion of experimental science." The public Meeting in Calcutta condemned by a formal Resolution the "proposed abolition of Grand Juries in the Presidency

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towns ; and on the contrary was of opinion that the institution should be extended to Courts proposed to be established in the interior of India." One speaker regarded the abolition of the Grand Juries as "the thin end of the wedge" * * * "which threatens to bring down and destroy the whole fabric of our constitution." The *Englishman* newspaper, which has so ably brought to a focus the opposition to the Bill now before the Council, quoted with approval, in 1865, Sir Eardley Wilmot's protest against "any interference with this 'bulwark of the nation.'" My Lord, there have been individual miscarriages of justice since the abolition of the Grand Jury, as there were when it still flourished. But I feel sure that the English citizens of Calcutta, old enough to remember the state of things before 1865, will agree with me that the abolition of the Grand Jury has been a boon to the English community of this city, and a source of strength to the working of the whole Jury system.

I believe that the apprehensions now expressed with regard to the present measure will, ten years hence, be found to have been equally groundless. Meanwhile, we ought not to forget that those apprehensions spring from natural feelings of alarm in the minds of an important section of the community. If we can in any way allay those apprehensions, or conciliate those feelings, I think we are bound to do so. The honour of this Council, or the honour of the Government, is not involved in any hard-and-fast resistance on points of detail. Or rather, the honour of the Government is involved in carrying out a measure which must necessarily be painful to an important class, with the utmost consideration that it can show to their feelings. But with regard to the principle involved, I think the time has come when the Indian Legislature is bound to declare itself. At such a crisis, party spirit must run high. Several months will, however, elapse before this Bill can pass into law. During the interval the Council will have time to candidly listen to every argument, and seriously consider every suggestion. If, in the heat of the discussion, fair argument give place to ungenerous aspersions, our duty seems equally clear. We must meet obloquy with patience and, assured of the justice of the measure, wait for time to dispel the apprehensions of our countrymen at present as time has disproved their apprehensions in the past.

The Hon'ble RAJASHIVA PROSAD said:—My Lord,—This is the grandest concession to India. I would have called it the coping stone of the liberal policy of the Liberal Government of Her Most Gracious Majesty, whose worthy representative, the liberality incarnate, my Lord, you are;

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but no one can say to what a height the building is destined to reach during your Excellency's incumbency. So I content myself by simply saying that the measure will be a magnificent addition to the list already long. The distinction of race in the Indian Criminal Procedure was one of the remaining mementos of the narrow policy of an honourable body of monopolist traders, though it might have suited or become a necessity at the time; but now it will be simply incongruous with advanced liberal ideas and the progress of the age. The concession is most unexpected and little asked for, and so the most valuable. I cannot conceal from your Excellency that the Indian branch of the Aryan race has been the most intolerant towards their conquered, and had no distinction between a conquered and a slave. Up to this time the Sudras, the remnants of the conquered aborigines, who form the mass of population, are looked down on by the military, and the then ruling class of Kshatriyas, and the sacerdotal Brahmins, as worse than slaves. The very name Das, a corruption of Dasyn, means a slave or thief. Prohibition to wear the sacred thread has been for the poor Sudras a lasting mark of humility and subjection. Manu says if any Sudra takes into his head to speak Sanskrit or to teach that language, scalding oil is to be poured into his mouth, nay "on killing a cat, a weasel, a peacock, a frog, a dog, a lizard, and an owl or a crow, a Brahman should expiate himself by the same penance which he has to undergo for killing a Sudra"—Chapter XII, stanza 132. Further, "having slandered a Brahman a Kshatriya becomes liable to a fine of 8,000 kauries (shells) amounting to less than rupee one and a half, but a Sudra merits death"—Chapter VIII, stanza 267. Let us see how the Muhammadans treated their conquered. They did not regard the Hindus even as men; hence to massacre them, to enslave their wives and daughters, to plunder their temples, to demolish their temples, to deface the images, to force beef down their throats by violence are the subjects which fill the so-called histories of the time. Even so good-natured a writer as Amir Khusro was alludes to the Hindus in such contemptuous terms as "raven-faced" and "raven like in nature" (*Zagh-rû va Zagh Manesh*). The administration of the Civil and Criminal Justice was completely in the hands of the kazis, and no Hindu could possibly aspire to be a kazi. No matter whether either or both parties were Muhammadans or Hindus, the judgment was invariably pronounced according to the Muhammadan law or Sahara. The same Amir Khusro relates in his *Târkhî Alai* that Alâ-Uddin Khiliji once sent for a kazi and asked him what was written in the Code of Muhammadan law regarding the

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Hindu. The kazi answered that the "Hindus were" Zimmis (condemned to pay the Jizya tax); if asked silver they ought to pay gold with deep respect and humility; and if the collector of taxes were to fling dirt in their faces, they should gladly open their mouths wide. God's order is to keep them in subjection, and the Prophet enjoins on the faithful to kill, plunder, and imprison, to make them Musalmans or to put to the sword, enslave them and confiscate their property. Abu Hanifa alone permits the levying of the Jizaya, but the remaining successors of the Prophet have uniformly laid down that the Hindus ought to be made Musalmans, otherwise lose their heads. The Emperor smiled, and remarked that he did not know what the Code might prescribe, but that he had issued an edict that only so much grain, milk and other articles of consumption as would suffice for a year should be left to Hindus, and that they should in no case be allowed to lay by any money." Akbar was the only Emperor who raised the Hindus and kept down the race distinction as low as he could, but that was matter of necessity. He had seen how his father was driven out from India. He could not reckon on receiving any succour from Central Asia. His only hope for his Empire was with the Hindus, and the Hindus well supported him. Now the days have come that a Hindu is appointed, by your Excellency, Chief Justice, or Kaziul Razzat, of the Metropolis of the Indian Empire. We Hindus do not consider British as our conquerors. We do not only acknowledge the divine right of our Sovereigns; but find divinity in their person. I will never forget what the Pandits of Benares spoke to Sir William Macnaughten. I was then a boy reading in the Sanskrit College. Lord Auckland came with Sir William. His Jemader being a Muhammadan was stopped at the gate. Sir William asked the Pandits how it was that the English were allowed and the Muhammadans not. The Pandits quoted Bhagavat Gita that "Rulers are divine." Leaving aside the divinity for the present, is it not a fact that we sought the protection of the British? Jagat Seth Mahtabrat, one of the ancestors of the humble speaker, was one of those three who invited Clive to Murshidabad and helped him to establish the British supremacy in Bengal at the sacrifice of his own life. The idea of any restoration of a Kshatriyan Empire is as far from the bosom of a Hindu as the idea of restoration of the Roman Empire in the family of Romulas, driving out all the "barbarian" races across the Danube as from the bosom of an Italian. Taimuri dynasty was gone; the choice lay between the bloody Muhammadans from the North-West, like Nadir Shah, who massacred Delhi, or Ahmed Shah Abdali, who massacred Ma-

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thura, and the freebooter Pindari Mahrattas. India threw herself under the protection of the British like a sheep running from a tiger and a wolf to her shepherd. We look to our Sovereign Kaisar-i-Hind not only as Divine ruler, but as our own mother. We take her as our own, and I leave it to the generous Christian feelings of the British nation whether we are still to be treated as a conquered and subjugated race. The *Indian Daily News* says very sensibly that "we shall rise above class questions, and race questions, and confess, even if it be with some natural reluctance, that the change in the law which is now proposed is practically inevitable. Besides, we have to consider whether determined and narrow adhesion to exclusive privileges is not the most dangerous policy the European community could adopt. For the sake of England in India, and in order to further strengthen and cement the union between the two countries, is it not necessary that Englishmen should give the highest proof in their power of the thoroughness with which they adopt India, and take upon them the defence and advancement of her interests." The *Statesman* takes the same just and impartial view of the question. Though there is no doubt that a very strong feeling, whether right or wrong, but almost universal, exists against the Bill in the European quarters, as a gentleman was just the other day saying wherever he went he was asked "Have you seen that infernal Bill." They take it as certain that all their countrymen who have to appear before a native Magistrate will be sent to Jail, and the reason they assign for it is the "widening," as they are pleased to think, of the breach between the natives and Europeans. Some say that there is neither newspaper nor High Court with astute barristers in the Mufasal, but I do not know if there is any place in India now beyond the pale of the newspaper influence, or where barristers cannot go; the wire has brought the High Court within an easy reach of every body. As for a native's sending a European or his wife to Jail, there is no fear for that; if there is any fear, the fear is for his unjust acquittal. Mr. Duthoit, the Judicial, who is now Commissioner of Oudh, no mean judge of native character, truly says: "I do not mean that they (natives) would be likely, as a rule, to press hardly upon Europeans, I think, on the contrary, that they would, as a rule, unduly favour the Europeans." Woe to the native who has a European before him to judge! His position will be most unenviable, and fool he must be if ever he takes into his head to ask for transfer of the case to some other tribunal or not to acquit the culprit totally. So whatever the Europeans may have to say against the Bill they cannot show any good cause for its

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condemnation ; except the domineering race pride, or, as Mr. W. B. Jones says, the "unreasonable class prejudice," which cannot brood any idea of equality : but is such a pride to be encouraged ? Does it not widen the gulf which we are trying to bridge over ? Will it not keep the wound fresh which we want to heal up ? The Government is bound to exonerate the integrity of Her Imperial Majesty's Proclamation of 1858. It is true that the natives will not gain much by this concession. At the same time it is also true that not the least harm will be done to the Europeans. It may do, I am afraid, some harm to the natives. This new power may stand to a certain extent a bar in the way of their promotion to a district magistracy or a Sessions Judgeship. nay some alarmists see a greater harm looming at a distance. They argue in this way, that if the Government has broken the acknowledged privilege or personal law of their own countrymen, the Britons, like a straw, how can they be expected to maintain very long our own privileges and personal laws which, though dear to us, but often approach absurdity in the eyes of the advanced civilisation. Simply an incongruity will be removed. Our European brethren ought to have a little faith upon their European Governors, and to be sure that these Governors will never appoint any one Justice of the Peace unless they know him to be the fittest man before whom, if occasion arises, a European can stand to be judged. Hear what Sir Alfred Lyall says :—"No European officer is appointed to be a Justice of the Peace or Magistrate of a District, or Sessions Judge, until he has been found to be, by experience and character, fitted to exercise the powers and perform the duties which are attached to these offices."

During the period that ordinarily elapses before any officer can attain to the position of Magistrate of a District or Judge, or is appointed to be Justice of the Peace, ample opportunities are afforded of forming an opinion as to his qualifications for the offices in question ; and he is not appointed to them if he has shown himself to be unfit to perform the duties and exercise the powers belonging to them. The interests of the European British subject and of the administration would be sufficiently provided for, if the general restriction under which no one who is not himself an European British subject has jurisdiction over an European British subject being removed, power be left with the Local Government to appoint justices of the peace those native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The Local Government would then apply the test of personal fitness to each particular case for native as well as for European members of the Covenanted Civil Service."

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The worth of the argument or analogy brought forward by my hon'ble colleague, the learned Dr. Hunter, that if so many privileges of the natives have been destroyed, why not this privilege of the Britons also is to follow suit, I leave to your Excellency to judge. However, I do not know if the Britons also burnt their widows like the Hindus, or killed their infant daughters like them.

Now so far, whatever I have said, I have said as a representative of the native community at large, and have echoed India's voice; but if your Excellency allow me to express my own individual opinion, may I ask whether this feeling, right or wrong, is to be totally derided and set at naught. I would rather join with the Commissioner of Coorg in saying that "the provisions of the present law on Criminal Procedure which limit jurisdiction to try, for criminal offences, European British subjects to persons who are themselves European British subjects, are wise and should for political reasons, be maintained." I would rather agree with the Hon'ble D. F. Carmichael in saying that "after all, there is such a thing as *privilege*; this one is highly valued by those who possess it, and certainly does no harm to the native population; while its surrender would, in my opinion, cause great exasperation." I would rather coincide with Hon'ble W. Huddleston in saying "that the proposed extension of jurisdiction would be impolitic, and is not expedient; I am confident it would raise an outcry that would aggravate race friction far more than the removal of the already existing disability attaching to a small number of officials would allay it." I would rather side with the Right Hon'ble the Governor of Madras on whom, if my memory does not fail me, almost the whole brunt of all the Parliamentary debate fell when he was Under-Secretary for India under His Grace the Duke of Argyll, when he says such weighty words as "it is, perhaps, a pity that a question was raised just now which affects so few people." There is much truth in Sir James Stephen's remark that "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 Muhammadan 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

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to respect all these laws scrupulously, they are to claim nothing for themselves? That whilst the 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 of 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 distinction." I would rather allow the incongruity to remain untouched, at least for the present, as greater incongruities remain. For instance, a rich Babu's European coachman can keep as many arms as he likes unchallenged; but the Babu Sahib, or, if he is so fortunate, as being dubbed with some title, his son and brother, have to go every year to the magistrates' court for the renewal of the license with his menial servants and suffer all the indignities and annoyances inseparable from such a procedure. My countrymen (advanced and anglicised) will call me a traitor to my country. The native newspapers will vilify me; but if the Hon'ble Law Member is not afraid of the British Lion, wagging his tail and roaring, why I am to care for the bellowings of a few Indian sheep. However, for the present I only desire the Select Committee, when formed, to take both sides of the question into their serious consideration. It is possible that the Select Committee may add some more sugar to the pill. The Committee may think fit to strike off Section 2 altogether, or go further and striking off clauses (c) and (d) in Section 1 change "invested with the powers of a magistrate of the first class" for "district magistrates or cantonment magistrates or sessions judges or equal to them in rank as deputy commissioners in Non-Regulation Provinces." I reserve my vote in favour or against the Bill till it comes to that stage. This moment my head, under the dictates of prudence, is in its favor; but my heart—a true heart of a true native, labouring under a sense of deep obligation and sincere respect to the British nation for all the good it has done to my dear country—is against it.

Ignorant people—I mean ignorant of facts, though otherwise well educated may charge me with flattery; but a life's experience cannot be forgotten. How much I value the goodwill of the European British subjects, how much I appreciate their services to the country, and how far I look to them for the

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protection of our life and property and the advancement of our welfare, the mention of one single incident, I think, will amply suffice. It was, if my memory does not fail me, the evening of the 4th June 1857, when the alarm gun had been fired, all the non-combatant Europeans with their families had assembled in the mint at Benares. A few European gunners were blowing up on the parade some native regiments of infantry and cavalry for refusing to lay down arms and mutinying. The time was critical. I was with the Governor-General's Agent, Mr. Henry Carr Tucker, at the mint. The runaway mutineers, many wounded and many with arms, were passing by the gate of the mint towards the Burna Bridge. Not more than a dozen or two of the European soldiers were protecting the gate, pointing their guns towards the road. The hope of all of us was centred in them. Benares has a population of some two hundred thousand souls, but they all were utterly useless at the moment. The shops and houses were all closed, and the streets deserted. We were not so much afraid of the mutineers for our lives as of the city ruffians. The European soldiers were daily passing up the country by bullock-train in batches to join General Havelock's army. These few soldiers were detained from the preceding day's batch. That day's batch had not arrived. With what anxiety we were expecting it I have no words to describe—every moment was precious. We would have offered each soldier's weight in silver had they been procurable. Mr. Tucker thought that they might have been waylaid by the mutineers and wished me to ride down to Rajghat to look after them. How happy I felt when I saw there the bullock carts full of European soldiers just arriving, I have again no words to describe. This handful of Europeans saved Benares. Such incidents can be multiplied by scores and hundreds, but I do not feel myself justified in further encroaching on your Excellency's valuable time.

SIR STEWART BAYLEY said:—The motion before the Council is not one which, under ordinary circumstances, would require any expression of opinion from me; but I gather from the course the discussion has taken, that I shall not be deemed out of order if I express my own views on the subject. And first I think it is due to our colleague Mr. Ilbert, that it should not be supposed that he is the prime mover and originator of the Bill. Those who have read the papers of the case must be aware that the Bill had its origin in a suggestion made in March last by the Government of Bengal when Sir A. Eden was at the head of the Local Government. That suggestion was circulated in the ordinary way for the opinion of other Local Governments, and on finding that there was a general agreement among them as to the expediency of legislation, and that in this opi-

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nion the Secretary of State concurred, the duty of framing and introducing the Bill devolved, as a matter of official routine, on my honorable friend. I make these remarks, because much of the odium with which he has been assailed seems to be based on the supposition that the Bill is in its main principle the outcome of his own reforming zeal, whereas whatever be the merits or demerits of that principle, the responsibility should in justice be far more widely distributed.

After the clear statement of the legal aspects of the case which we have heard from the Member in charge of the Bill, I need not go over the same ground, but I may say that the aspect in which I have all along regarded the Bill is that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in District Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions in regard to Assistant Commissioners and Magistrates of the 1st class I understand to be an adjunct to the main principle of the Bill, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience; and from this point of view the measure seems to me to be just and reasonable. Given the education which has enabled a Native to succeed in entering the Civil Service, is not the fact of his having served with sufficient credit to be appointed to a District Magistracy or Sessions Judgeship—a grade, be it remembered, that he cannot even temporarily reach till after an apprenticeship of some eleven or twelve years and permanently not in less than eighteen years—is not this as good a guarantee as can reasonably be desired of that man's fitness, honesty, and practical ability, and in that phrase I include not merely natural ability, but the assimilation by practice and study of the full legal and judicial ideas which guide our courts. I think we have here all the guarantee that can reasonably be excepted that the principles of our law will be properly applied, and this is all we have a right to demand. It seems to me that the exercise of these powers is the necessary corollary of the admission of natives to the Civil Service. Practically I hold that when Government committed itself to the one step it committed itself to the other; the question was only one of time, and the present Bill gives expression to that principle with as little alteration of existing arrangements, and with as careful a regard to the safety of the important interests concerned, as any Bill framed with this object could have attained.

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Before it can pass, however, the Bill will have to be criticised in ordinary course by the Local Governments (to whom only the preliminary principle of the Bill was referred in the first instance) and its working can be carefully examined and discussed, and the opinions of the Local Governments and their officers, as well as of others, will be fully weighed and considered before any action is taken. Now there are two aspects from which the Bill is assailed. One is that Native gentlemen, no matter what their qualification, must be taught to remember that they are of a subject race, and as such unfit to try any members of the dominant race. On this argument I am unwilling to dwell. It has been developed into what our American cousins call "spread eaglesism,"—I have absolutely no sympathy with it, and the frequent recourse to such an argument is not creditable to our national character. But there is another aspect to the case of the opposition which I think deserves most attentive consideration, and this is the real danger in which the isolated European, leaving in the mofussil, runs from having false cases trumped up against him. It is right that I should state publicly that this danger is a very real and very serious one, for probably no member of this Council has had the same experience as I have of the lives led by planters in the mofussil. My own experience has given me a strong feeling on this matter, and any one who knows the extreme bitterness with which disputes about land are fought out in the mofussil, and unscrupulous methods to which recourse is had in conducting these disputes before the Court,—methods to which a planter cannot have recourse, will understand how precarious his position may become and how essential to him it is that the law should be well and wisely administered. So far then as the argument against the Bill is based on a fear that these dangers are perceptibly increased, and that under the new Bill the law will be less well and less wisely administered than at present, I consider the objections deserve a most careful examination. As I have already said, my own opinion is that, in respect to Native Civilians who have reached the position of District Judge or District Magistrate, we have the best possible guarantee of their qualifications, and the other provisions of the Bill do not take effect *proprio vigore*, but merely give Local Governments the power of selections in special cases. But I imagine that what has really excited the feelings of the European population in this matter is not so much the actual extension of power contemplated in this Bill, but the apprehension that it is only a stepping stone to a larger measure which would really do what many speakers and writers seem to think this Bill will do, *viz.*, place all Europeans

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quoad jurisdiction exactly in the same position as Natives of the country. The actual scope of this Bill has been clearly explained by Mr. Ilbert, and so far from its being a stepping stone to a larger measure, I can certainly say for myself, and I believe for the Government of India at large, not only that there is no such intention, but that the proposal itself would be regarded as dangerous and uncalled for. No! so far as we are concerned, what Mr. Ilbert said on the score of the finality of this Bill is, I know, strictly correct; and I hope that there may be no further misapprehension on this point.

And now I have a few words to say in regard to the agitation which has sprung up in opposition to this measure. I confess that I failed to foresee either the extent or the depth of feeling which the measure has aroused among the European population, and it is only fair to add that I think the Viceroy had a clear right to expect from the Local Governments, or, in regard to Bengal, from myself a more decided warning than he received of the spirit which the proposal would arouse. I cannot, looking at the evil effects which have ensued and must ensue from the agitation going on, but deeply regret that I failed to gauge accurately the feelings of the great body of my countrymen and of even my many personal friends among the planting community. I confess I had hoped that twenty-five years had really done something to obliterate the feeling of race antagonism, of bitterness and hatred which was familiar to us a quarter of a century ago. It seems that I was in error, and I deplore, as we all must deplore, the palable evidence that I was mistaken. It is one thing to oppose this measure on the ground that it threatens rights dear to Europeans, and that it jeopardises the liberty and property of the European community in the mofussil. I believe the fear to be ill-founded but at least the objections on this score deserve, to be anxiously considered and to be treated with all respect. But when the ground is changed and rhetorical appeals are made to race hatred, when bitterness and vituperation directed against the whole body of Native officials take the place of calm reasoning, then I say that those who employ these weapons incur a very serious responsibility. It is by the use of these weapons that the old sore is re-opened and embittered, and that the healing influences of the past quarter of a century are nullified and destroyed in an hour. I have expressed my own regret that I did not foresee that this would take place, and I look forward with still deeper regret to the continuance of a state of things which by action and re-action must continue to keep the sore open. I wish it were in any way possible for the Government directly and at once to close the ques-

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tion one way or the other ; but it is not easy to see how this can be done without incurring still more serious evils, and I can only hope that, so long as the question must remain open, it will be discussed candidly and fairly without threats and without vituperation, with as little appeal as possible to the passions of race hatred and race contempt, and with the moderation which persons who really have reason on their side generally find to be the most successful weapon in their armoury. To such arguments the Government will give full and fair consideration.

Lieutenant-General the Hon'ble T. F. WILSON said :—My Lord,—With regard to the measure which is now before this Council, I occupy a position totally different from that of every other member of your Excellency's Government, inasmuch as I have alone, from the commencement of its consideration, been compelled by my convictions, to take the very unusual course of opposing those with whom I have the honor to be associated. I will be within the recollection of your Excellency that, I availed myself of the first opportunity I could of recording my dissent from the views of the other members of the Government. And on a later occasion, when the matter came under the discussion of Government, I entered at some length into an explanation of the views which I entertained, and, with your Excellency's permission, my dissent from the recommendations made to the Secretary of State was duly recorded.

It is not necessary for my immediate purpose that I should enter upon this occasion into any detailed explanation as to why I hold the opinion I do ; it will suffice for the object I have in view, that I should honestly and frankly declare that the opinions which I held more than six months ago, I maintain as strongly to-day. I am opposed to the measure that has been brought forward by the Government. But whilst sympathising with those who are anxious that this measure should not become law, and thus bring about the changes which the Bill will produce—whilst sympathising with them, still I must, in the strongest manner I can, condemn the violent language which has been used towards the Government with which I am associated. I desire further to condemn in the strongest terms I can command, the malicious and scandalous personal attacks which have been made upon my hon'ble colleagues, and more especially upon your Excellency the Viceroy, in your great and high position as the representative of the Queen in India. Sympathising as I do with the opponents of the measure and anxious as I am that the Bill should not become law, I must say, that I hold in contempt many of the measures which have been resorted to in order to increase outside agitation. My Lord,—There is no member of your

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Excellency's Government, there is not a person who is sitting round this table who is more anxious and desirous than I am to receive outside criticism. For I think that in these days of enlightenment and with the spread of education, the more the Government court publicity with regard to their intentions to alter the laws of the country, the better for the Government and better for those it governs; and when that criticism comes to us from a largely increasing population of Englishmen, residing in the Presidency towns, and others far away in remote districts of the country in pursuit of their several avocations, distinct, separate and independent of the Government, — I say when such criticism and advice is presented to us through the medium of a temperate and discriminating Press, it is indeed valuable, as making known to those who are entrusted with the Government of the country, the wishes, the hopes, the fears, and all the general requirements of those who are committed to our charge; and it does something even more than this, for it in some small degree relieves those who are entrusted with high office of some of the heavy responsibilities which are inseparable from such office.

The Government has been urged to-day, by several Hon'ble Members who have spoken, to withdraw this Bill. No, I have considerable experience of the Government of India, for it has been my privilege to serve under eleven Viceroys and Governors-General, and I have seen other cases during that long period, when the Government have stood very much in the same position towards the British public of India as they stand to-day; but never have I seen such violence and unnecessary agitation as has been imported into the discussions on this measure; and, I desire to say that, and anxious as I am in what I believe to be the interests of this vast country that the proposed measure should not become law, still I am bound to add that, in my opinion no Government ought to yield to the violence and hysterical excitement which now rages around us. In the presence of this it seems to me that there is but one course which Government can surely adopt, and that is to ascertain further the views and opinions of many more of the officials who are spread over the country. The time which this will occupy, will permit of passion cooling down, and we shall then be able to ascertain to a greater extent than we have already done, the opinions of the various classes on the question now under consideration. These measures will enable those who like to change their opinions to do so, if further information should tend to that end.

My Lord, — There is another feature in connexion with this great controversy which has given me, individually, great pain,

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because if I am anything at all, I am a soldier, in every feeling and idea, and those feelings have been wounded by the miserable and pernicious advice which I have seen tendered by some irresponsible persons to the Volunteers in India. It is known to your Lordship, and it is known to my honorable colleagues, that as the head of the Military Department I take a keen interest in the Volunteers in India. But apart from the official position I hold, it would be strange, indeed, if I were not a friend of the Volunteers in this country. During by far the most eventful period of my life, I was closely associated with a body of Volunteers who took prominent part in one of the most lengthened and deadly struggles which has taken place during the past century, and they materially helped to write one of the most brilliant pages in our Indian military history. For these reasons I am indeed pained to read of the unpatriotic course which has been recommended to the Volunteers. Can any Volunteer in his senses suppose that his resignation or that of any number of his comrades will have any influence on this Council? No. This Council will do as it has ever done. It will act fearlessly, it will ascertain all the facts of the case, it will seek for the information and it will decide as it thinks best for the interests of those who are committed to its care. But, it has been said that the recommendation has been made with a view not so much to embarrass or intimidate this Government as to show to the House of Parliament in England the necessity of reversing hereafter any decision in favour of the measure, which may be arrived at by the Indian Government. Now, if there is one thing which would rivet fast the whole thing, it would be procedure such as this. I cannot conceive any thing more wild. But, my Lord, I hope that time will bring reflection, and that calmer, wiser, and more patriotic counsels will prevail. I hope that the Volunteers of India mindful of those responsibilities which they have voluntarily taken upon themselves, will remain as heretofore faithful citizen soldiers of the Queen-Empress of India.

In conclusion I will only say that as regards the measure which is now under consideration, I maintain, as I have always maintained distinct opposition to it, and believing it to be impolitic I hope it will not become law. To this extent I sympathize—I repeat, I sympathize—with those who hold similar views. Beyond this I cannot go, for I desire to separate myself from the unnecessary violence and agitation that has taken place outside this Council Chamber.

The Hon'ble Mr. GIBBS said:—My Lord,—It must be remembered that we are not now discussing, or defending the principle of the Bill. That will form the subject of a future

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debate, but as Member in charge of the Home Department and therefore intimately connected with the general administration of justice in the Empire, I think it my duty to offer some explanation regarding the introduction of this measure, especially as it has, simple though it be, raised a perfect tempest among the European community.

In so doing I fear I may repeat some of the arguments used by those who have preceded me, but this I cannot help nor do I think in such an important matter it is to be regretted.

I also think some explanation is required to show why the Government has remained silent up till now. The Rules of this Council have been, as is well known to the Members, recently amended with the object of giving greater publicity to measures. When leave for this Bill to be introduced was asked for, as the new Rules were not in force, it could not be published, and in consequence the only way the Government could inform the public of its purport was by sending it by administrative order to the public newspapers. It has not yet been published in the *Gazette* as my Hon'ble and learned colleague's motion to-day shows; and until this is done, no opinions of Local Governments and Administrations can be called for on it. Now, in accordance with the usual custom, such will be called for, and, when submitted be laid before the Select Committee on the Bill. It is only, therefore, to-day that we have had the opportunity of saying anything about the matter. The opinions already published were invited, not on the Bill but on a proposal submitted by the Government of Bengal, and which, as usual, was forwarded to the other Local Governments and Administrations for opinion, on receipt of which, as they were nearly unanimous in favour of the Bengal proposal, concurring as they did in the opinion so clearly given by Sir Ashley Eden, in submitting his proposal to the Government of India (Bengal letter 1411T. of 30th March 1882, para. 4) the Bill was drafted and leave to introduce it applied for.

We have been accused of not consulting the present Lieutenant-Governor of Bengal. The fact is the measure came from Sir Ashley Eden, was couched in the usual terms, and was taken as the opinion of the Government of Bengal, and, as such was, according to custom, sent to the other Local Governments and administrations for an expression of their views.

The measure in itself is required for the furtherance of justice and the convenience of all parties. That sooner or later such a change would have to be made has long been foreseen, and I venture to think that the time has now come when cer-

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tainly as far as Sessions Judges and Magistrates of the District are concerned, the alteration is called for to meet the actual requirements of one part of the Empire, as well as the contemplated future requirements of other parts. I will explain how this is so. At Carwar, in the Bombay Presidency, there is now a Sessions Judge, Mr. Tagore, who was the first successful native candidate for the Covenanted Civil Service, of which he has now for eighteen years been a member.

For some eight or more years he has exercised, with credit to himself, the duties of District Judge and Sessions Judge.

Then, in the Bengal Presidency, there are four gentlemen of the Covenanted Civil Service rapidly approaching there promotion to be District Magistrates, or Sessions Judges, one of whom Mr. Dutt, was gazetted in Wednesday's *Gazette* as promoted to the former grade.

I have not obtained information as to the other divisions of the Empire, but I have, I consider, shown from the above that the time has come when a change should be made to render present and impending incumbents fitted for the full duties of their appointments, and the requirement is one of increasing importance, as year by year native members of the Covenanted Civil Service will arrive at, or come nearer and nearer to, the appointments of Sessions Judge and District Magistrate. As regards the natives themselves, it is a measure of simple justice, in so far that the policy which was laid down by the wisdom of Parliament a quarter of a century ago admitted Natives to the Covenanted Civil Service, and by so doing not only intended, but clearly made it manifest, that they should have therein the same powers as their European *confrères* which they will not have unless the law is amended. Surely, then, we cannot now, in the year 1883, be said to be pushing on a new measure "with indecent haste simply to please the Natives of the country." The entire general question is not now before us, but it has been one of long standing from the time of Lord Macaulay to the present. In 1872 the latest step was taken. It is called 'a compromise,' not, so far as I can learn, a compromise between Natives and Europeans, but between the Members of the then Government or, perhaps, of the Select Committee on the Bill, but it showed that some change in the direction was then felt to be required; and I remember with reference to this, when a Judge of Her Majesty's High Court at Bombay in 1870, I minuted in favor of such a change as is now proposed, basing my opinion mainly on the inconvenience of the law as it then stood. At that time there was no Native Civilian actually in a

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position to require such powers, whereas now the case is the reverse two officers actually require them while others will do so very shortly and surely; any unbiassed person would admit that the time has arisen for going beyond the "compromise" of 1872.

Let me explain more fully what I mean by the "inconvenience" argument. Take Carwar of example, where Mr. Tagore is Sessions Judge, in the neighbourhood of which large railway works are being commenced. If a European commits a crime which requires more punishment than the District Magistrate can award, and which is three months and fine of Rs. 1,000, he must be committed to the Sessions Court, whose powers extend to one year's imprisonment and fine; but the Sessions Judge there could not try him, and an application would have to be made to the High Court to order his commitment elsewhere. He could thus be sent to Belgaum or Dharwar for example, each about 80 to 100 miles distant; this would be a troublesome journey at any time, but for some months of the year one generally dangerous to the health of all parties, Europeans especially.

Surely this would be a matter of great inconvenience, not to say danger, expense, and delay to all concerned.

In the case of the District Magistracy, present arrangements also must cause great inconvenience. They are to some extent subversive of discipline by putting a junior officer by reason of his birth only, for one particular purpose, over the head of his superior in all other matters. No gentleman can arrive at the high position of Magistrate of the District under 10 to 12 years' service; and considering that he would not even then be appointed to that post unless the Government thought him fitted for it (I have known European members of the Civil Service whom Government declined to place in such a position),—surely I say, under these circumstances, the measure we propose is so far merely the natural and logical result of the policy which has been laid down for more than 25 years since Natives of India were first admitted into the Covenanted Civil Service of the State.

From the extraordinary excitement which has been raised, a stranger would be led to suppose that the majority of the Europeans in India were constantly before the criminal courts, in serious and intricate cases, whereas, so far as my own experience goes, there are very few cases in which Europeans come before them, and those of a simple nature, petty thefts or assaults.

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All cases in which one year's imprisonment do not suffice must now go to the High Court of the Province, and this Bill makes no alteration in this law. I fail, therefore, to find any reason why objection should be made, why a "European British subject" should not be tried by an officer who can now try any other European, be he French, German, Italian or otherwise, not to mention those Englishmen who are not what is technically called "European British subjects," or an American, who might be placed before him.

I do not now stop to consider separately the Native members of the Civil Service, appointed under 33 Victoria, for while I have some doubts whether they constitute a separate body, they are, when once admitted into the Service, at the end of their term of probation, for all administrative purposes members of the Covenanted Civil Service of India equally with those who are appointed from home. I will therefore now proceed to consider the three classes of 1st class Magistrates on whom it is proposed that Government should confer the powers of a Justice of the Peace when necessary. These are—

- (a) Members of the Covenanted Civil Service;
- (b) Assistant Commissioners in Non-Regulation Provinces; or
- (c) Cantonment Magistrates.

The proposed measure being intended to contain the entire law regarding the trial of Europeans in the Mofussil, as regards the powers to be given to the local officers, the Bill makes no difference between Europeans or Natives, just as it makes no distinction when it confers, by the previous section, Justice-of-the-Peace powers "*ex-officio*" on all Sessions Judges and District Magistrates. It, therefore, only differs from the present law by permitting Government to confer the Justice-of-the-Peace powers on Native member of the classes I have named. As this power is only permissive, we are again thrown back on the questions of convenience and fitness to exercise the powers, and these must be left to the Local Governments to decide.

Now, I will give an instance in point: Take Calicut or any other large sea-port on the Coasts of India, not being a Presidency town. Unless Government have the power of appointing a civilian of less standing than a Magistrate of the District to hear such cases, a Captain who had a complaint to make against any of his crew might, as at present happens sometimes at Calicut, have to go some 60 miles for justice, leaving his ship lying in the roadstead in charge of a junior officer and a weak-

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ened crew, although there might be a Native civilian on the spot as able and as capable of dealing with European crews and Captains, as is Mr. Dossabhoy Framjee in Bombay. Surely this is a case of inconvenience demanding a remedy.

As regards Assistant Commissioners in Non-Regulation Provinces, the special provision is merely intended to be used to prevent inconvenience to the parties, and will probably be seldom resorted to; while as regards Cantonment Magistrates they are, as a rule, European military officers, and are merely included here to complete the law as to Justices of the Peace in the mofussil. Having thus, I trust, shown that there are causes of an administrative character which call for the change in the law, I may, my Lord, express my inability, perhaps from being of a somewhat unsentimental disposition and preferring as a rule to be guided by common sense, to understand why all this commotion should have arisen about this measure—a measure which, even if the Bill became law to-morrow, and if the Local Governments were at once to confer on every native gentleman of the classes mentioned in it the power of a Justice of the Peace, a course not at all probable, would add but a very small number to the list of those who could try Europeans for petty offences in the mofussil. From a return I called for, I find the entire number in the whole of India would be about 20, while in Bengal alone there would be but 9, and all these members of the Civil Service.

Much less can I understand why your Lordship should be looked upon as the leader of “an anomalous, unconstitutional, and illegal confiscation of the chartered rights and privileges of Englishmen,” or why my honourable and learned colleague, on whom the wrath of the European public seems to have fallen with redoubled violence, so much so that it was even suggested that he was not a worthy representative of the *alumni* of the two great English Universities, should be the victim of so much abuse, as if he alone, under your Lordship’s guidance, were the sole author of the proposal, and his colleagues, including myself, were no parties to the discussion which led to it.

Neither can I understand why the European gentry of the City of Calcutta, who have for years been subject to the Court of a Native Magistrate who can pass on them heavier sentences than, should this Bill become law, could be passed by any Sessions Judge, much less a Magistrate in the mofussil, should now rise to prevent their neighbours on the opposite side of the Circular Road, on other parts of the mofussil from being placed, not on a par with them, but from being saved from some of the inconveniences and trouble and expense I have above alluded to.

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I am not sure that the great bulk of the European and Eurasian population of Bengal, who are most interested in this matter, know the meaning of the term "European British subject." It is a mere legal creation of the Indian Criminal Procedure Code, colour has nothing to do with it, a perfectly white person may not come within its definition, while a decidedly dark one may. It simply means that the person was either himself born in England, or that his father or grandfather, from whom he may be legitimately descended, was so born, but it goes no further. If the family has been settled for four generations in India, although father, grandfather, and great-grandfather may have married European ladies, the representative of the fourth generation ceases to be a "European British subject" within the meaning of the Procedure Code, and is amenable to all criminal courts presided over by Natives or Europeans as the case may be, exactly as any one of his Native fellow subjects, or any European of another nationality.

And this, my Lord, brings me to the consideration of the articles in the press and the letters and speeches with which the daily newspapers have teemed during the last month or so. No one respects more than I do the right of any person or class of persons to bring forward their grievances and demand redress, and therefore I have read carefully this varied literature to see what reasons it contained to lead me to the conclusion that the proposed measure was uncalled for or could only be injurious; but, my Lord, though I found in those letters and speeches and articles warm eloquence, much invective, more assertions, and some insinuations, I could find no reason to show that the view I took from the first as to the advisability of this step was wrong. I venture to think that, while all must admit the meeting of the 28th to have been an extraordinary expression of strong feeling, it was, like the articles and letters in the press, confined to feeling only, and when a cause appears supported mainly by invective instead of calm and dignified reasoning, its importance diminishes and its significance fades.

But we are bound, my Lord, to respect the feelings of all the races under a Government, though we are equally bound to analyse those feelings and to judge calmly and dispassionately of them, and to bear in mind that the other races may also have feelings to be equally consulted and respected, and this we shall do most carefully when the reports and objections which will doubtless be sent in during the next six months come to be considered by the Governor-General in Council.

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My learned colleague has explained the legal effects of the proposed measure, and I have endeavoured to show that, while it is the logical outcome of the policy of the last quarter of a century, there are also causes of an administrative nature requiring its introduction, and there I would leave it, merely adding that, although the Magna Charta has been freely alluded to, and the right which is supposed to belong to every British subject of being tried by his peers made the most of, I know not how the former can affect the matter or where the latter right will be found granted to Europeans in India. In Calcutta it has long ceased, if it ever existed, and those very gentlemen who spoke so energetically about it have never possessed it, so that I think the issue must be, as it ought to be, confined to the simple one of whether the measure is required for the due administration of justice or not? And on this I have already shewn my reasons for holding that it is an alteration of the law which the circumstances of the time have rendered justifiable.

H. E. the COMMANDER-IN-CHIEF said:—My Lord,—I ask permission to say a few words on this occasion, because I have been challenged to give my free and unrestrained opinion on the policy of the Government, and, in regard to this Bill, because unworthy attempts have been made to intimidate me by name from doing my duty in regard to the matter before us.

At the outset I beg to say that, in dealing with the question of the proposed amendment of the Civil Procedure Code, I confined myself entirely to the practical bearings of the case. The sorrows of native officials, the symmetry of the law and philosophic theories have no special attraction for me, for I do not believe that the world can be ruled by logic alone. What I had to consider was this. Did the Government service require any change, and if so, to what extent was change needed. I will say frankly that I should have been very glad if matters could have been left as they are.

I have been long enough in India to have a very vivid recollection of the storm created by the so-called Black Acts, and, having this before my mind, I proceeded to examine the question.

Well, having been satisfied by the representations of the Home Department that it was necessary to remove some of the disabilities of the native members of the Civil Service, who must sooner or later be appointed to the charge of districts or to be Session Judges, I made up my mind to support the proposals of the Government so far as they were applicable to these two offices and to these only.

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My reasons for going so far are these :—

Though the principle involved is, no doubt, a large one and of considerable importance, yet it must be patent to any one who cares to look into the matter that its practical application must for a considerable time be small. I looked upon the change as a very tentative measure, which in its operation could be carefully watched, and which would, in a legitimate way, give us an opportunity of testing the merits and qualifications of this class of Civil Servants.

I argued that if unfortunately it should appear that officers of this class could not be trusted with the extended power, the Government of the day and the Local Governments would be obliged to reconsider the whole position, and perhaps retrace their steps. It is obvious that a native Magistrate or Judge who exercised his functions in a tyrannical or unjust manner would not hold his office very long. Again, the proposed change seemed to me to be in the nature of what is called a permissive Bill. The supreme Government gives power to certain classes of its officers, but it cannot appoint these officers. It is only Local Governments that have the power of appointment, and we may rely on their not appointing to such offices any but men of the highest character and qualification, for the stronger sympathies of the Governors will naturally lie on the side of their own countrymen.

In point of fact, I looked on the amendment of the law as a very safe experiment, and an experiment that might well be tried when its provisions would only apply to one or two individuals. I knew there would be opposition to any change, but I believed that when my countrymen understood the case in all its bearings, they would see that it was a safe way of introducing a change, which the bitterest of its opponents admit to be a question of time.

That my expectations and forecast have been utterly wrong, I freely admit, but I am not prepared to admit that the objections which have been put forward by those who oppose our proceedings are founded either on reason or common sense. I have hitherto attempted to restrict my observation to my own personal connexion with the measure under discussion, but there is one other point on which I have something to say.

Very wicked and criminal attempts have, as you know, been made in some of the newspapers to excite animosity against the Government in the army. My Lord, I cannot trust myself to speak on proceedings of this nature. I am aware

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that the army may, and perhaps does, take a keen interest in a question that is engrossing the thoughts of the public; but I feel confident that the army knows its duty, and that it is thoroughly loyal to its Sovereign and to its salt.

Soldiers have their feelings like other people, feelings that we all respect; but they also know that if they have a grievance to redress there is a legitimate way of putting it forward through their officers and those placed in authority over them. But what are we to say of persons who make use of such tactics in support of their arguments. They must, indeed, be in a bad way when they resort to such course. It is possible that the reference to cantonment magistrates in the Bill may have misled people into the belief that the Government proposes to appoint Native Civilians to such offices. This would be an entire misapprehension.

The following extract from a note which I received two days ago from the Secretary in the Legislative Department, explains more clearly than I can why reference has been made to this class of officials in the Bill.

2ndly.—With regard to cantonment magistrates, they were put in because they would not ordinarily be covenanted civilians, native Civilians or assistant commissioners, and it was thought necessary that power should be given to appoint a cantonment magistrate, who would be almost certain to have to deal with European British subjects, a justice of the peace. Military officers who are cantonment magistrates can under the present law (Act X. of 1842, Sec. 22) be appointed justices of the peace if they are, as I suppose they always are, European British subjects.

It will then be seen that the Government does not intend to make any real change in the system under which cantonment magistrates are usually military officers.

If the reference to cantonment magistrates had not been made in the amendment, the effect would have been that any person, even a person who was not an European British subject might have been made a cantonment magistrate, and it was to avoid this difficulty that the point was raised in this form.

Instead of the present law, it specifies the description of persons who can be appointed. Happily these efforts have been in vain, and beyond a knowledge that our soldiers take an interest—perhaps a keen interest—in our proceedings, I have not heard that any sort of discontent or dissatisfaction exists in any part of the army.

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His Honor the LIEUTENANT-GOVERNOR said :—My Lord,—I must apologise to the Council for being obliged to trouble them with a few remarks at this late hour, but the desire which I shared with the other members of Council to hear the address of your Excellency compels me to be very brief. But I can scarcely keep silent, even if I wished to do so, after the several appeals which have been made in the course of the debate to the Government of Bengal, and after recent events which have testified in no uncertain manner the strong expression of public opinion in the Province. At the same time I confess I feel I am in a position not altogether satisfactory regarding this proposed legislation, and if I had not received so late as yesterday evening from your Excellency an assurance that the motion now before the Council was of a purely formal character which pledged no one to the principle of the Bill, but what is of more importance to me that it is the intention of the Government of India to refer the Bill as drafted for the consideration of local Governments, I would not have hesitated to take this opportunity to state at length with such ability as I possess what the objections are which I entertain to this Bill. The conviction that this measure is unnecessary in the present condition and constitution of the Native Judicial Covenanted Service in Bengal, and that it is unpatriotic, having regard to the many claims which demand the most cordial relations between the Government and the European community in India, places me in an altogether not satisfactory position. I allude to the fact to which reference has been made that I have had no opportunity personally of consulting the officers of Government or recording my own views. At the same time I am aware that the Government of India have received from Sir Ashley Eden a communication which afforded some ground for withdrawing restrictions which now exist against native Judges and Magistrates in the matter of the trial of European British subjects. Any defects or omissions in that respect will now be removed or remedied, and as I shall have the opportunity of referring to the experienced officers of Government for their opinion, I think it the wiser and more appropriate course in which I think I am justified by the temper and excitement around us, if I reserve my own judgment till I have received those opinions. Whatever value may attach to my own view of the question, and those views I will say have not been formed or expressed simply recently, but long ago, they may be modified or they may be removed, or they may be strengthened by the result of the inquiry. But whatever the result may be, they shall be communicated to your Excellency's Government with the utmost unreserve. Ample and exhaustive as was the speech of

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my hon'ble and learned friend, Mr. Evans, with a great deal of which I sympathise, there are a great many facts which will support his contention that there is no administrative difficulty in connexion with the matter, and I shall be inclined to challenge the competency of the native to try European British subjects. But this is not the occasion on which I shall press those views. It is right, however, that before I conclude my few remarks, I should say a few words as regards the attitude of resentment which has characterised the public meeting, and public utterances in connexion with this Bill. No man could deprecate more strongly and earnestly than myself the wild, extravagant and very dangerous sentiments to which the excitement round about us has given occasion. And I am sure no Englishman, Scotchman or even Irishman in his lucid moments will think that the cause he advocates will be advanced or promoted by the threats levelled at the Government by certain writers and comments in the Press. If the Bill is not to be withdrawn, the suggestion that has come from a good many quarters, namely the suspension of the measure for many months, I sincerely trust will induce calmer judgment. No Government can deal with legislation, or with the withdrawal of legislation, under pressure of public phrenzy, still I shall be wanting in my duty if I failed to press on the Government that I hope that, in their absence from personal contact with the public feeling, they will not allow themselves to think that the calm which I hope will supervene is an indication of apathy or indifference. If it be the opinion of the Government of India that this is a case of temporary excitement which will soon die out, still I do feel that in the whole of my experience in India this is unmistakeably the strongest and most united and unanimous expression of opinion of public discontent, that I have ever known. I believe that the last stage will be worse than the first, and if there is any thought that this is a transient ebullition of feeling; or that it is evanescent, I believe that view will in the end be proved to be wrong. I could, therefore, wish that the Bill may be withdrawn, and I do so not only for myself, but as expressing the opinion of a great many here who hold that the principle of the Bill is wrong. I believe that such cases happen to all Governments, and that the oldest and most English course is the wisest and safest. I believe it is in the experience of all of us that such a course has been adopted in many cases, and it has not seldom been the case also in India; and if I may venture to allude to the fact, I think your Lordship's reputation in this country as a Viceroy, who has endeavoured earnestly and honestly to promote the political

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and educational development of the people, will not be affected if you see your way to withdraw the Bill.

His Excellency the PRESIDENT said :—I am very sorry that I should feel it my duty to detain the members of this Council yet a while after the lengthened and very able discussion to which we have listened for so many hours; but I feel bound to make some statement before this discussion closes of the grounds upon which the Government have proceeded in introducing this Bill and to explain the reasons which led them to think that it was a right and a reasonable measure. The observations which I wish to make now will *be as far as possible of a strictly practical character. I do not intend or desire to enter into needless controversy, for I wish to reserve to myself the freedom carefully to weigh and consider the arguments which have been adduced in the course of this debate on both sides of the question at issue. It has been to me a source of regret that I have not had an opportunity before to-day of explaining the course which the Government has pursued; but that I have not had an earlier opportunity of doing so has not been my fault. I was the intention of the Government to have taken a discussion upon this Bill upon the 23rd of February. We never had the least intention to hurry this measure through the Council, or proceed with it further than the stage which I described when it was brought in as the second reading stage during the present Calcutta season; but we did propose, and it was necessary that we should propose as the rules stood when this Bill was brought in, that it should have been referred to a Select Committee before we left here, with a view to its being afterwards circulated and published as the rules required. But when my hon'ble friends, Mr. Evans and Mr. Miller, became acquainted with the intention of the Government to take a further stage in respect of this Bill on the 23rd of February, they represented that they were somewhat taken by surprise by that proposal. Not that I understood them to make any complaint of want of good faith on the part of the Government; but that they did not expect any such discussion to come on on that date. In consequence of those representations I had an interview with my hon'ble and learned friend Mr. Evans on the 19th of February, and I then said to him that I was anxious that this discussion should take place, because I felt that it was only fair to the Government that they should have an early opportunity of explaining at greater length than had been explained by my hon'ble and learned friend Mr. Ilbert, when he brought in this Bill, the objects of this measure, and the reasons which had induced them to submit it to this Council. I said to my hon'ble

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and learned friend Mr. Evans—you may perhaps object to a discussion, in the nature of a second reading, but suppose it should be possible now for us to take a formal discussion upon a reference of this Bill to Local Governments that would afford a sufficient opportunity for the statement that I propose to make and would not involve a discussion upon the principle of the Bill. My hon'ble and learned friend took time to consider whether he could agree to that proposal, or whether he must adhere to the objection previously urged on his own behalf and on that of Mr. Miller to the discussion on the date proposed, and on the next day he informed me that he could not waive that objection. I then had to choose between putting my Hon'ble and learned friend and Mr. Miller at some disadvantage, and putting myself and the Government at some disadvantage. I chose the latter alternative. It has been one of the many accusations made against the Government, that they delayed a further explanation on this subject; those who have used that argument, will now have an opportunity of judging of the justice of their charge. I may as well also say as my hon'ble and learned friend is here and will bear me out, that when I saw him on the 19th of February, I explained to him that the Government had no intention of passing the Bill during the present sessions; to that my hon'ble and learned friend assents. I was therefore somewhat surprised when I saw next day a statement in Reuter's telegram that something had been said in the House of Commons which appeared to imply that this measure was going to be pressed forward now, and I immediately explained to the Secretary of State that that statement was not correct; it was founded on an entire misapprehension of the intentions of the Government. It would have been totally inconsistent with the declared policy of the present Government of India, if they had thought of unduly pressing forward this measure and of not affording the fullest opportunity to the public and those interested in the matter to consider it. My Hon'ble friend Mr. Miller touched upon that point, and he seemed, I thought, somewhat to complain that the public had not been consulted in this case in the manner in which we professed to consult them in respect to our legislative measures. Now that charge—if meant as a charge—is founded on a mistake. The Government never professed that they would submit their Bills to the public before being brought in. No Government ever did or could do such a thing. All that we said was that when our measures were brought in and published the public should have the fullest opportunity of considering them; and that we ourselves desired

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to consider any representations which might be made to us upon any proposals for legislation, which we might so submit. To that course we have strictly adhered in this case, and have acted in perfect and absolute accordance with all our professions in respect to giving the public full time to consider any legislative proposal on this subject.

I thought it necessary to make these observations, in order to clear away some misapprehensions and misrepresentations which have surrounded this matter for some time.

And now I will proceed to state very briefly the history of this transaction. Something was said upon the occasion of the introduction of this Bill by Sir Jotindro Mohun Tagore about an undertaking which had been given him last year, to understand that this subject would be considered by the Government of India. What took place on that occasion was this. When the Criminal Procedure Code was before the Council last year, one of my hon'ble colleagues, I cannot exactly remember which, who was a member of the Select Committee on that Bill, came to me and said that Maharajah Jotindro Mohun Tagore had told the Select Committee that he intended to raise the question of the powers of native Magistrates to exercise jurisdiction over European British subjects. That was at a time when the Bill^e had nearly reached its last stage, and my hon'ble colleague said with perfect justice that it would be entirely impossible to take up a question of such magnitude upon that stage of the Bill; and he said to me—I think if you were to speak to the Maharajah and tell him that, if he did not bring this matter forward now, the question would be considered by the Government, and he probably would not press his notice of amendment. I replied I will consult my colleagues, and I did consult the members of the Executive Government at that time, and it was with their full consent that I told the Maharajah Jotindra Mohun Tagore that the subject in which he was interested should receive the full consideration of the Government. Of course, by so saying, I gave no pledge whatever to the Maharajah as to what would be the decision at which the Government would ultimately arrive. All that I did say was—and that promise I and my colleagues intended to keep—that we would consider this question after the Criminal Procedure Code had passed. But before we had taken any steps whatever to fulfil that pledge, we received from Sir Ashley Eden a letter which is contained in these papers, and that letter winds up as the summary of the opinion of Sir Ashley Eden with these words:—

“For these reasons Sir Ashley Eden is of opinion that the time has now arrived when all native members of the Gov-
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enanted 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 Civilials 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 jurisdictions."

That opinion was expressed to us by the Lieutenant-Governor of Bengal; it was a clear and distinct opinion. There is not one word in Mr. Cockerell's letter from which I have quoted which indicated any probability that a proposal of that kind would be received, I will not say with resentment, but even with disapproval by any portion of the community. Now, it is not necessary that I should recall to the recollection of this Council who was the person who made that recommendation. You all know that Sir Ashley Eden had been for five years Lieutenant-Governor of Bengal; you all know that he was a man of large experience, and that he was intimately acquainted with the feelings of the European population, and certainly there was ample proof that he had their respect and confidence in the remarkable ovations which he received just before he left the country. Sir Ashley Eden did not accompany that letter by any other communications upon the subject, and therefore I had no doubt whatever that that was his deliberate opinion, and his deliberate advice to the Government of India. My hon'ble and learned friend Mr. Evans says that Sir Ashley Eden only wanted to put his opinion on record; and he did not at all mean that anything should be done about it now. He only desired to say what he should like to see done at some future opportunity. But in the first place he says distinctly, in the summing-up of his letter—"the time has now arrived for the change," and in the next place it must be borne in mind, that if Sir Ashley Eden did not mean that the question should not be taken up at an early date upon his proposal, he had a perfect opportunity of saying so, because by a singular coincidence marking the high respect entertained for that distinguished man by Her Majesty's Government, he went straight from the Government of Bengal to the Council of the Secretary of State at Home; he was a member of that Council when our proposals were submitted to and sanctioned by the Secretary of State, and therefore, if we had misinterpreted his view as my hon'ble and learned friend appears to think—or if we had acted hastily in his opinion—he would undoubtedly have said so, and I cannot for a moment think that my noble friend, Lord Hartington, would not have communicated the fact to me; he

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did not do so. I should like to say one other word about Sir Ashley Eden. In the earliest stages of this controversy, before a large number of persons took to using strong language, they used language of a milder kind, and they talked about this Bill as an ideal and sentimental measure. Now I must say that if ever I came across a man in my life who was not remarkable for the sentimental side to his character, that man was Sir Ashley Eden. I do not think that I ever knew a man less likely to be led away by vague sentiment or mere theory than Sir Ashley Eden. Then what did Government do? If they had been so very keen to cry out this proposal, if they had been so very ready to proceed rashly in this matter, they would have had a very fair ground for acting upon it, in the mere fact that a man so experienced as Sir Ashley Eden had recommended them to take that action. But they did nothing of the kind; they consulted the Local Governments on the subject, and the opinions of those Local Governments are before this Council. I have heard it said that those Local Governments felt themselves bound to give opinions which they thought would be agreeable to the Government of India. Well, really it is needless on behalf of the Local Governments that we consulted—of men so eminent as those who filled the office of heads of those Governments, for me to reply to a charge of that description. The question was very carefully considered by those Governments, and their opinions are, with the single exception of the Local Government of Coorg, in favour of amending the present law. It is quite true that the Government of Madras were divided among themselves, and that the opinion given in favor of the Bill was only decided by the casting vote of the Governor of that Presidency. It is also true, that another gentleman, Mr. Howell, has given an opinion which, if not not absolutely clear, must on the whole be regarded as unfavourable to this proposal, but he reported as Commissioner of the Berars to the Resident at Hyderabad, who advocated the principle of this Bill, and therefore I am strictly correct in saying that all Local Governments, with the exception of Coorg, were in favour of an alteration of the law. My hon'ble and learned friend, Mr. Evans, said that the only Local Government that has to deal with this question at all is the Government of Bengal. But it was the Government of Bengal which started the question. I do not observe, however, that the European community in other parts of India appeared inclined to admit that they have nothing to do with this question, and I venture to think that all Local Governments have an interest in this matter, and are entitled to speak upon it. Can it be supposed that any of those distinguished men—many of them per-

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sonal friends of my own—who are at the head of Local Governments—if they had anticipated—I will not say danger, but serious inconvenience, would not have advised me privately that this was a measure that ought not to be pressed forward. There are doubtless in these papers slight differences of opinion between different Local Governments, as to the extent to which that measure should go, just as there have been differences among members of the Executive Council on the same subject. My hon'ble and gallant friend, the Commander-in-Chief, says that though he supports the measure, he would confine it to District Magistrates and Subordinate Judges. Sir Charles Aitchison, on the other hand, went further than any other head of a Local Government; and the measure, as produced and brought forward by the Government of India, is one which has struck a mean between these different proposals and which, on the one hand, do not go so far as Sir Charles Aitchison recommended, and on the other, goes somewhat further than the recommendations of some other Local Governments. Indeed, as a matter of fact, the measure was drawn up mainly in accordance with the recommendations of Sir Alfred Lyall. Now, what was the next step taken with regard to this question? The next step taken was that the Government of India sent a despatch to the Secretary of State, Lord Hartington, last September, containing their proposals and forwarding the papers now before the Council. Lord Hartington must have received that letter late in September. It was upon the 7th of December that in an answer to that letter he stated that he had very carefully considered our proposals in Council, and that he gave them his. My Hon'ble and learned friend Mr. Evans alluded to the fact that this circular to Local Governments has not sent the question back again to the Government of Bengal for their consideration. The course taken on the occasion was in accordance with the practice generally pursued, and it is a perfectly reasonable and intelligible practice followed by all the departments of the Government of India that when one Local Government originates a proposal on which the Government desires to consult other Local Governments, the original proposal is sent round to those Governments, but not sent back to the government from which it, in the first instance, emanated. The Bill was prepared and drafted in strict accordance with the proposals sanctioned by the Secretary of State. Leave was given to introduce it on the 22nd of February. It was brought on the 7th of February, and the papers, containing the opinions of Local Governments, were circulated to members of Council, and given to the public at the earliest possible opportunity. I believe I am right in saying that they were circulated to members of Council on the 12th February.

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That is the history of this transaction up to the introduction of the Bill; and I return now to consider what was the state of things in respect to the position of natives of India in the Civil Service of the Crown, with which we have to deal. We are dealing now solely with the case of the Covenanted Civil Servants. I leave aside the question of the non-regulation provinces, which is not material to the present argument. I say nothing of Cantonment Magistrates, because my hon'ble and gallant friend, the Commander-in-Chief, explained that Cantonment Magistrates are almost invariably military officers, and that no native gentlemen are likely to be appointed to positions of that kind. The question, therefore, we have to consider here relates to the native members of the Covenanted Civil Service, because it must be borne in mind that, although in departmental practice, it has been the custom to describe the members of the Covenanted Civil Service admitted under Lord Lytton's rules, as members serving under the statutory rules, they are under those rules themselves—rules approved by the Secretary of State, Lord Cranbrook, and laid before Parliament admitted to employment in Her Majesty's Covenanted Civil Service. These are the words of the rule as sanctioned by the Secretary of State and laid before Parliament, therefore the persons with whom we propose to deal are the members of the Covenanted Civil Service. Our proposal, I would just point out, is a very much narrower one than that to which my hon'ble friend alluded, which was made in the year 18 7; in that year there were no native members of the Covenanted Civil Service. The proposal of 1857 would have subjected European British subjects to the jurisdiction of all the Mofussil Courts of every grade. That was the Bill brought forward in 1857 by Lord Canning's Government, and upon which the discussion took place to which my hon'ble friend has alluded. Well, what is the state of things with which we have to deal now? I have said that in 1857 there were no native members of the Civil Service at all. They have come in since;—first, by competition. They having come and competed on equal terms with Englishmen, Irishmen and Scotchmen, and won their way in that competition into the Civil Service, and recently they have been admitted under the new system inaugurated in the time of Lord Lytton. The time has now arrived when some of these gentlemen have risen to high judicial positions, Mr. Tagore is one, and I have been informed that Mr. Dutt has also been raised to a similar office. Therefore they are now beginning to reach these positions, and the number of those who fill such appointments must gradually and steadily increase. Mr. Miller asks in what have the times changed since 1872. They have changed in this

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respect that some of these native gentlemen have acquired these important positions, and others will go on rising to them in increasing numbers in coming years. But the great change which has taken place in regard to this question from an administrative point of view has been that which was made by Lord Lytton's Government in 1872. That change was made by the express order of the Government at Home; indeed after the reiterated orders of successive Secretaries of State. I am not about to express any opinion as to the mode in which these gentlemen are now admitted into the Covenanted Civil Service under the rules of 1879. It may be that these rules can be improved. Nothing is more probable than that experience may show that they are capable of amendment. But what we have to consider is what is the position in which these rules place the gentlemen admitted under them, and what will be the effect of them as time goes on? These gentlemen will rise in the Covenanted Service year by year, and they will be entitled to hold higher and higher offices as they advance until, as time goes on, they will attain to the highest judicial offices below the High Court. Now it has been contended that the Local Governments, when they spoke of Covenanted Civil Servants, only meant those who had got in by competition. I do not suppose that that is the case with any of the opinions which have been expressed, because the word Covenanted Civil Service is intended to cover all the members of the Civil Service. The Hon'ble Mr. Evans has quoted Mr. Elliott, the Commissioner of Assam, and he said that Mr. Elliott only proposed that these powers should be conferred upon persons who had got into the Covenanted Service by competition; but Mr. Elliott drew a distinction between the two classes no doubt he said that he would extend powers to the second class when they become District Magistrates or Sessions Judges. Now it seems clear to me that as these gentlemen in the Civil Service rise to the higher appointments especially to the appointments of District Magistrates and Sessions Judges, increasing administrative inconvenience must ensue, unless these additional powers are conferred on these magistrates. If they are to hold these offices I do not see how it is possible that any inconvenience of a serious kind should not arise as time goes on, indeed I shall have to show that it has arisen already. The Hon'ble Mr. Evans has said that what we ought to do is to give the best justice we can to every one in the country without giving rise to administrative inconvenience. I entirely concur in that opinion, and I say administrative inconvenience has already begun to be felt, and it will increase. That being the state of things with which we had to

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deal, some of these gentlemen being already in high administrative positions, and a still larger number coming on from below, we felt it our duty to see in what way we could best remove this administrative inconvenience, and I must also say the injustice to suitors which would be caused by dragging them long distances over the country.

I turn to consider what is the scope of the Bill. I have shown you that the extent of our Bill is very much less than that of the Bill of 1857. It is very much less than that of the Bill brought in by Lord Dalhousie's "Government" in 1849. We have confined it to the strict necessities of the case, and the result of it would be that, if it were passed to-day, it would confer jurisdiction over European British subjects upon only two persons in India, and the number who would rise to that position during the next few years would not exceed four or five in number. That statement supplies what seems to me a very plausible argument against the proposal of the Government. It is said, why do this now when it will only effect Mr. Tagore and Mr. Dutt? Why do this now, when, if there is administrative inconvenience, it is only in one or two places; and I admit that I am bound to meet that objection, and to explain why the Government think that this is a convenient opportunity for making the change.

But before I do so, I must point out that of course that argument cuts both ways. If the scope of the Bill is so very small, then it seems not altogether reasonable that it should have been encountered by such violent opposition. The reasons why it appears to me to be desirable to make this change now, rather than to postpone it until the appointment of a much larger number of these gentlemen to high judicial positions, are these; and in stating them, I desire to deal with this question strictly from a practical point of view. I am not going upon this occasion to enter into any examination whatever of any claims which these native gentlemen may have to exercise this jurisdiction. I wish to treat this matter solely from a practical point of view, but, at the same time, I cannot but ask members of this Council to consider whether—I do not speak now of justice or generosity—it is politic if there be not an overwhelming necessity for us to impose on these gentlemen restrictions which sensitive men would naturally feel. These men, it must be admitted, are the pick and cream of our Native Civil Service; those who are now in this position or are about to enter into it have won their way through a keen competition at home and secure their position through their own ability. Under Lord Lytton's system by which, for the future at least, one-sixth of the whole covenanted

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service will, in course of time, consist of natives. We shall have to rely more and more year by year on the devotion and loyalty of these gentlemen. I think the question of policy is not undeserving of the consideration of this Council; but I pass from it to the practical question. My hon'ble friend, Mr. Gibbs, has shown you to-night that the idea that administrative inconvenience may arise is not an imagination or a theory he has pointed out to you what are the circumstances in regard to Mr. Tagore, the Sessions Judge of Karwar; and he has explained that if certain railway works which, I believe, are to commence there, are opened, they will bring European British subjects in considerable numbers into that district. If they are not tried by the Sessions Judge they will either have to be sent by sea to Bombay or have to march 80 or 100 miles through a district which at many times of the year is very injurious to health. It is a real administrative inconvenience, and it implies not only an inconvenience to the administration of justice, but also a considerable hardship to the suitors and witnesses concerned. And it is surely clear that though there is not at the present moment an irresistible necessity for introducing this measure as Lord Lytton's system develops, an irresistible necessity will arise. When you have one-sixth of the Civil Service composed of natives, it will be impossible to maintain the present restriction. Therefore what we had to consider was—is it better to wait until this necessity becomes overwhelming and irresistible, or is it better to introduce the system now? I confess it appears to me that it is far wiser and far more in the true and substantial interests of those over whom this jurisdiction is exercised that it should be introduced now when the persons who would obtain the powers are very limited in number; when the circumstances under which they enter the Civil Service insures their ability and character, and when all their proceedings can be carefully watched. Being few in number, it will be easier now than afterwards for the attention of the Local Governments and the public to be directed to their proceedings, and being the men they are it seems to me that they would be likely to set good example and give a good tone to those who come after them. I hold it therefore to be wiser to introduce the measure now gradually, cautiously, and moderately, than to wait till the change is forced upon us by necessity and when the powers which are now to be given only to a few men, would have to be given suddenly to a very much larger number of native Civil Servants. This is the ground upon which I thought that the time had come when this change could best be made. The truth is that the opposition to this Bill is in reality not so much an opposition to this particular measure, as an opposition to the

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deliberate policy of Parliament about the admission of natives to the Covenanted Civil Service. That policy, as I have said, has been a deliberate policy; it commenced many years ago, and has been enforced steadily from time to time. It is not a policy of my invention, or of the invention of the present Government at Home or here; it is the declared policy of Parliament. What does Lord Cranbrook say upon that subject writing to Lord Lytton's Government on the 7th of November 1878? He says:—"The broad policy was laid down by Parliament so long ago as 1833, that no native shall, by reason of his religion, place of birth, or colour, be disabled from holding any office, and Her Majesty's Gracious Proclamation in 1858, announced her will that, as far as may be, our subjects of whatever race or creed, be impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge," and he goes on to say: "Since that period several of my predecessors in office, and especially Lord Halifax, Sir Stafford Northcote, the Duke of Argyll, and Lord Salisbury have pressed upon the attention of the Government of India, that the policy of Parliament, enforced as it was by the Royal Proclamation, was not to remain a dead letter, and two Acts of Parliament were passed to give further effect to it. But, as your Excellency justly observes, all endeavours hitherto to deal with this question on a satisfactory basis have proved unsuccessful. It is gratifying to observe that your Lordship's elaborate treatment of the subject will enable a practical course to be taken that will prove, it may be hoped, both beneficial to the State and satisfactory to the natural aspirations of the educated natives of India." That is not my opinion, but Lord Cranbrook's; and I cannot doubt that if that policy is now applied under the rules laid down by Lord Lytton's Government in 1879, and is carried out as he proposed, an alteration of the law in the direction in which this Bill goes is inevitable at no distant time. The Government of India have not the power, if they had the inclination, which certainly I have not, to withdraw that policy; and Lord Cranbrook very distinctly tells us, that in his judgment Parliament will not withdraw it. Lord Lytton's original proposal was that when he established a separate native service, permission to natives to compete for the Civil Service in England should be withdrawn. What Lord Cranbrook says on that subject is this: "But your proposal of a close native service with a limited class of high appointments attached to it, and your suggestions that the Covenanted Civil Service should no longer be open to natives, involve an application to Parliament which would have no prospect of success,

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and which I certainly would not undertake. Your Lordship has yourself observed that no scheme could have a chance of sanction which included legislation for the purpose of repealing the clause in the Act of 1833 above quoted ; and the obstacles which would be presented against any attempt to exclude natives from public competition for the Civil Service, would be little less formidable." Therefore, it appears to me to be evident that the intention of Parliament was to admit natives more and more largely into the Covenanted Service, that that policy has been adopted after a considerable delay and frequent injunctions from the Secretary of State by the Government of Lord Lytton, and that the result has been, as I have stated that we have now to deal with a state of things in which, before many years have elapsed it will be, as I have said, simply impossible on account of administrative inconvenience to withhold powers of this description from the higher ranks of the Covenanted Native Service. The Hon'ble Mr. Evans has said, that he could not admit the force of the argument ; that because Presidency Magistrates had power to try Europeans, therefore similar powers should be given to native Magistrates in the Mofussil. I admit a considerable portion of the argument of my hon'ble friend, but he must allow me to say that the fact that natives of India have been trying Europeans for a considerable number of years in Calcutta and Bombay is a clear argument against the theory that Englishmen have a constitutional right to be tried by Europeans only. No one is more convinced than I am of the advantage of having a case argued before a Magistrate by trained lawyers ; and I would not for a moment think of underrating its importance. But at the same time I was rather struck with what I saw in a Bombay newspaper this morning ; it certainly did seem rather curious if after all that has been said on this subject, to find that certain European gentlemen, composing what is called the Salvation Army, are being tried at this moment by Mr. Dossabhoj Framjee. Their religious feelings are very intimately involved in the case which is being tried at this moment by a Native Magistrate. Now, I did not intend to have said anything about the past history of this transaction because, as I have mentioned before, my main object to explain has been the reasons which have induced the Government to bring in this Bill. But Mr. Evans has spoken with personal knowledge of what was called the compromise of 1872. On that point what I would say is this. There may have been a compromise between the members of the European community and the members of the Select Committee. Of that I know no-

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thing, although I have not the least doubt that the Hon'ble Mr. Evans has stated exactly what occurred, but it is perfectly obvious that that compromise cannot have been compromise with the Government, because, if it had been, then Lord Napier, Lord Napier of Magdala, Sir Richard Temple, Sir George Campbell, and Mr. Barrow Ellis, could never for a moment have given it their support to an amendment inconsistent with it. My hon'ble friend, Mr. Ilbert, in the speech with which he commenced this discussion, pointed out that all the safeguards now possessed by Europeans, and all the special privileges now enjoyed by them were left standing by this Bill, except the single one of being exempted from the jurisdiction of Magistrates who are not European British subjects. This Bill leaves all these safeguards standing; and the Government has not the least intention of submitting any proposals now or hereafter, certainly not as long as I am here, with the view of interfering with these privileges. But there is another matter which I look upon as in some respects a more important safeguard, and that is the power of supervision exercised by the High Court over all the courts below. What would probably be the result if a native Magistrate trying an European acted towards him in an unjust manner, and it came before the High Court, or if they even heard of it, they would be able to call for the proceedings, and the result would be to deprive that gentleman of any position which he might have abused in such a manner. That is the whole history of this measure, and the grounds upon which it was introduced, and the extent to which it goes. I know very well that a great deal has been said, as is always said, when changes are introduced about its being the thin end of the wedge: I can only say that, so far as this question is concerned, it is not the thin end of the wedge, and that this measure represents the final views of the present Government in respect to changes regarding this portion of the Criminal Procedure Code. Passing from the history of the course we have taken and the motives which have actuated us, I may now state that we are perfectly ready to listen to reasonable remonstrances, to statements of fact, and to legitimate arguments. But neither this nor any other government that will ever exist in India will, I hope, listen to violence, to exaggeration, to misrepresentation, and least of all, to menace. It is perfectly natural that those whose interests are affected by this bill, that those who would lose under it a privilege to which they evidently attach a great value, should bring their views on the subject before the Government and should press them earnestly upon their attention. I should be the last man to complain of that being done, and I

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should be the last man not to give to such representations the fullest and most careful consideration, and those who are animated by the dread which has been expressed in many quarters of the results of this measure, may rely upon it that a fair representation of their views, supported by good arguments, will be listened to with the greatest attention. It is of course true that in this as in every other question with which the Government of India has to deal, it is obliged to take a wider view than that confined exclusively to the interest of any single class of the community; but it is also true that any special class of the community which is specially affected by any particular measure has a right to bring its views before the Government, and to expect that those views will be fully and carefully examined. I will not allude on this occasion to the character of a great deal of the opposition which has sprung up to this Bill, or to the means by which that opposition has been to a great extent conducted. I will say nothing of the charges which have been made against myself or of the systematic misrepresentation of my feelings and objects in regard to this and other measures. I pass that by; but I can truly say that it is a source of deep regret to me and all my colleagues to observe the difference which has in this matter sprung up between the Government and, I readily admit a very large portion of the European community, especially on this side of India. I do not know whether anything that I can say will tend to mitigate the bitterness of the controversy or to induce calmness, but if the vehemence of feeling is due in any degree to a misapprehension as to the scope of the Bill or the course which the Government intended to pursue in regard to it, or to fear that we have ulterior designs which we never have had then it is possible that this discussion may have done good. It is only right that it should be remembered that the Government never had the smallest idea of hurrying this Bill through the Council. They proposed to deal with it deliberately, and to afford the amplest opportunity for the representation of opinion in regard to it. It will be observed that it was before any such representations had reached the Government, and therefore before it had been in their power to consider them, that the proceedings which have been adverted to were adopted. This Bill will now, in accordance with the usual practice, be sent to the various Local Governments, and they will have an opportunity of recording their views upon it. These views will be sent up in due course after, I trust, careful examination by these Local Governments into all the circumstances of the case for the consideration of the Government of India, and we shall then give to the observations of the Local Government and of the public which may

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have reached us in the meantime, the fullest weight and the most deliberate consideration. I frankly say that with those who desire, if any such there be, to retain the distinction which this Bill proposes to remove, simply because it is a race distinction, I have no sympathy whatever. To arguments which are inconsistent with the declared policy of the Crown and of Parliament, it would be inconsistent with my duty to listen; but to fair reasons urged in a manner to which the Government can give heed, the ears of myself and my colleagues will always be open on this and every other question. I observe that the opponents of this Bill speak of appealing to the House of Commons. I am the last man in the world to object to such a course being taken. To the decision of the House of Commons both parties to this controversy must bow. I do not think I have anything more to add now by way of explanation of the views of the Government. I have kept myself clear of controversy, because I wish to hold myself perfectly open to consider the arguments adduced on both sides in this debate. If I had thrown myself into this controversy, it might fairly be objected that I had not reserved to myself real freedom to consider these arguments. I have shown that this measure was recommended to the Government by Sir Ashley Eden, the Lieutenant-Governor of Bengal, that its principle has been approved by all the other Local Governments in India with the exception of that of Coorg, and that it has been very carefully considered by the late Secretary of State for India, Lord Hartington, in Council and sanctioned by him. I have recalled to the recollection of the Council the circumstances in which we stand at this moment and those in which we shall stand in no distant future, with respect to the position of the native members of the Covenanted Civil Service. I have pointed how very limited the immediate effect of the Bill will be, and have stated the reasons which induce me to think that it is wiser to make the proposed change now, when it can be brought into operation gradually and cautiously, than to wait until administrative necessities and justice to suitors compel the Government to introduce it suddenly and extensively. Lastly, I have expressed the perfect readiness of the Government to consider and to weigh any remonstrances which may be made against this Bill, provided they are supported by arguments which are consistent with the declared policy of the Crown and of Parliament. The Government do not propose to take any further steps in this matter now, and ample time will thus be afforded for the deliberate examination by Local Governments, by the Government of India and by the Government at Home of any representations which may be made to them in connexion with this measure.

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APPENDIX.

Englishman, March 19.

INDIA FOR THE INDIANS.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The suicidal policy of the Government of India is evidently founded upon the cry of "India for the Indians." That cry is both absurd and misleading, for there is no country properly called India and no nation styled Indians. The peninsula, which we call India, is a conglomeration of petty States, formerly more or less subject to the Emperor of Delhi, and the people who inhabit those States belong to many different tribes and races, which have no cohesion with one another and none of which have ever called themselves Indians. Therefore the cry is absurd. It is also misleading, for it leads the people of England to believe that the inhabitants of this peninsula constitute a nation like the French, the Spaniards, &c., and are a homogeneous whole called Indians; the fact being that the various tribes and races differ from one another in manners, customs, ideas and languages as much as the English, French, Spaniards and Germans differ from one another. To a Bengal, Telugu is as foreign a language as French is to an Englishman. The same is the case with Tamil, Hindi, Marathi, Sindi, &c. It is as absurd, then, to jumble together the numerous tribes and races inhabiting this large peninsula into one nation under the name of Indians, as it would be to call the inhabitants of all the countries of Europe one nation under the name of Europeans. If it were only ridiculous, it would not matter, but it is mischievous, inasmuch as it misleads the people of England and induces them to believe that when favour is shown by the Government to a Bengali, it is shown to one of that great nation numbering 250 millions called Indians, the fact being that it is shown only to one of a race which is looked down upon by most of the other races in the peninsula. But that is not all. There is no homogeneity even among those who speak the same language, for caste divides them into as many separate bodies as there are castes, and the numerous sub-divisions of caste make their number legion. There is not and there cannot be any social intercourse, in the true acceptation of the term, between men of different castes, so that, even if all the inhabitants of this

peninsula spoke one language, they would still be divided into as many bodies, incapable of amalgamation into one nation, as there are castes. Even the Brahmans are separated into castes. The Kulin Brahman, for instance, thinks his caste the highest of all Brahmans. Then there are vast numbers of Sudras, who, properly speaking, have no caste at all, though, as your Uria bearer will tell you, they think themselves very high caste men indeed. The Sudras, too, are again subdivided into castes. The outcastes, too, such as the Chandals, Dheres, Dhangars, &c., also divide themselves into castes. The Mahomedans and the Parsis are also distinct from the others and from one another. The Mahomedans, too, are divided into sects which cannot fuse, such as the Shias, the Sunis, &c. In England a man of the people may, by good conduct and good fortune, rise in the social scale and be admitted into the highest ranks of society. In this peninsula a Chandalar or a Dher, however meritorious his conduct may be, and however wealthy he may become, can never associate upon an equality with Natives who claim to have any caste at all, for even his cleanest clothes contaminate the dirtiest clothes of a Brahman. If, then, honour be conferred upon a Native of this peninsula, it is not conferred upon one of a great nation called Indians, but upon one of a particular caste, inhabiting a particular locality, with whom neither the members of the other castes in that locality, nor the members of the same caste in other localities, where languages differing from his are spoken, sympathise. It is this heterogeneous mass of disjointed members, incapable of union into one homogeneous whole, that our Rulers fallaciously dignify with the name of a nation, under the title of Indians, for the purpose of raising a cry intended to justify their depriving a Briton of his rights!

Let us now inquire who are the Indians, for whom India is claimed in the cry, and what right those Indians have to India. Are they the aborigines? They lost their right to India when they were conquered by the Aryans, and they never regained it. Are they the Aryans? They lost their right to India when they were conquered by the Mahomedans and they never regained it. Are they the Parsis? They never had any right to India. They are refugees from Persia, who settled in Guzerat, and were always treated as aliens and outcastes incapable of amalgamating with the Hindus at all, or with the Mahomedans except by conversion. Are they the Mahomedans? They lost their right to India when they were conquered by the British, and though they did all they could, in 1857, to regain it, with the assistance of the Hindus, they failed. Therefore the only people who have any right to India are the British. The cry, therefore, of "India for the Indians" is not only absurd and misleading, but unjust. It is a claptrap, mawkishly sentimental cry, enunciating a gross fallacy, got up for the purpose of robbing the British of a land which their fathers purchased with their blood, and held by their bravery, and to which the so-called Indians have no right whatever. Privileges the so-called Indians have, which we do not begrudge them, privileges which the generosity of the British has granted them, and for which they

ought to be grateful, instead of clamouring for more and abusing the British if they do not get what they clamour for. But I am doing the people at large injustice in saying they clamour for more. It is only a few half educated Natives who do not know enough to perceive how little they do know, who do so. If the Native Editor who abused Mr. Branson, abuses me for saying this, he may take the following as my reply:—

Tu yon galiyan ghair ko shauk se de,

Hamēn kuchh kahega to hota rahega;

which may be paraphrased thus: "Abusive words, like curses, go home to roost."

The misfortune is that our Rulers do not perceive that this clamour is only that of a few selfish individuals, who neither sympathise with nor represent the mass of the people, and that their clamour has not the support of the people at large, who in 99 cases out of every 100, would prefer being judged in criminal as well as in civil matters by a European, unless the litigant knows he has a bad case, and hopes to succeed by the exertion of undue influence. I do not speak without experience. I have lived many years in this land, and I have travelled (not as a high official) in Bengal, in Orissa, in the North-West Provinces, in the Himalayas, in Madras, in Bombay, in Sind, and in Native States, and what I state is the result of long experience. In the course of my travels I have mixed with Natives of all classes, and have heard their sentiments, and I have heard much more disloyalty spoken by educated than by uneducated Natives. This induced me to think that there was some truth in Montesquien's idea, that education, in a despotic Government, is not only needless, but injurious, though I thought it ungenerous when I first read it. He states his reasons thus:—"If he" (the educated subject in a despotic state) "loves his country, he will strive to relax the springs of Government; if he miscarries, he will be undone; if he succeeds, he must expose himself, the prince and his country to ruin." If I had travelled as a high official, less keen-sighted than Mr. Munro, I should probably know as little of the people as is known by the high officials, who, during their annual retirement up into the clouds at Simla, excite one another to enthusiasm about the abolition of anomalies, and in the giddiness induced, perhaps, by the lofty height of their position, aided possibly by the obfuscation caused by the clouds, create greater anomalies than those which they seek to remove, thereby proving that Condorcet was right when he said "*L'enthousiaste ignorant est la plus terrible des bêtes féroces.*" How much better it would be if they would spend their leisure hours in studying some great author upon the spirit of laws, Montesquien for instance. He would tell them:—"It is the business of the Legislature to follow the spirit of the nation, when it is not contrary to the principles of Government;" and, "There reigns in Asia a servile spirit, which they have never been able to shake off;" and, "Liberty itself has appeared intolerable to those nations who have not been accustomed to enjoy it;" and, "It is as dangerous, nay more so, to subvert the general spirit, as it is to change a particular institution;" and, "No alteration should be made in a

law without sufficient reason ;" and, " When a legislator condescends to give the reason of his law, it ought to be worthy of its majesty ;" and, " Does not greatness of genius consist rather in distinguishing between those cases in which uniformity is requisite, and those in which there is a necessity for differences ?" and in the conquered provinces, " It was a privilege of the utmost consequence to a Roman citizen to have none but the (Roman) people for his judges ;" and " In accusations of a deep and criminal nature it is proper that the person accused should have the privilege of choosing, in some measure, his judges, and the judge ought likewise to be of the same rank as the accused," (or, in other words, his peers ;) " to the end that he may not imagine he has fallen into the hands of persons inclined to treat him with rigour," as by imprisoning him, or, as was actually done by Native Magistrates in Calcutta by fining him Rs. 1,000, when a fine of Rs. 50 would be an adequate punishment ; and, " There are two sorts of tyranny ; one real, which arises from oppression ; the other is seated in opinion, and is sure to be felt whenever those who govern establish things shocking to the present ideas of a nation." The Legislative Council know pretty well by this time how shocking to our present ideas is the establishment of the jurisdiction, in Criminal matters, of a Native Magistrate or Judge over us, our mothers, sisters, wives, and daughters. Our modern legislators, when thinking of straining to make our laws, in their opinion, perfect, should remember that even their great prototype did not do that ; for, when Solon was asked if the laws he had given the Athenians were the best, he replied, " I have given them the best they were able to bear." We certainly cannot bear the Criminal Amendment.

Let us now consider what has been the result of this absurd, misleading, and mischievous cry of " India for the Indians," and the consequent truckling of our Rulers to a few half-educated clamorous Natives. We (I write on behalf of myself and others) refrain from giving an Englishman's version of that result, lest it should be called one-sided. We therefore give the version spouted forth by educated natives. On the 7th February last an educated Bombay Native, addressing the East India Association in London, said :—" The delusion that the people of India were devoted to the British rule should be dispelled." This knowing orator probably belongs to that Society at Poona, which modestly arrogates to itself an attribute of the Deity ; it styles itself the *Sarvajanik Sabha*, which means the *Omniscient Society*, and of course, as its name implies, it consists of a body of men who know everything—except how little they do know. Another educated native, the Bengali editor who distinguished himself by abusing Mr. Branson, says : " It is over now—the last pretence of peace—the possibility of a hope of *entente cordiale* between native and European." Poor man ! we can imagine his mournful moan represented by the dash after " over now." Therefore, according to educated Natives on both sides of the peninsula, the result has been,—1st, the creation of an idea that the natives are devoted to British rule, which is a delusion ; and 2nd, the ratification of a peace between Natives and Europeans, which, on the part of the Natives, has been only a pretence. Such being the case, it is high time for our rulers to turn

aside from the policy, which educated natives tell us is causing us to lose India, and to revert to the policy which won it, and held it against all comers:

Let us now contemplate the difficulties into which a persistence in the present policy will lead us. We will suppose that, with the exception of a few offices held by British Covenanted Civilians, all offices in the Mofussil are held by Natives. We will also suppose, in opposition to the omniscient Bombay orator, that every Native official is perfectly loyal. At this juncture a number of seditious people, whom we will style *budmashes*, go about stirring up the people to rebellion. The efforts of these *budmashes* come, as come they must, to the knowledge of the Native officials. Will they, all loyal although they be, report the matter to Government, so as to enable them to nip the rebellion in the bud? No, they will not dare to do so, for they know only too well that, if they do, they, their families, and all belonging to them will be destroyed by the *budmashes*, whatever may be the result of the rebellion. The consequence is, that the rebellion will be allowed to come to a head, and burst suddenly upon the Government, without a single note of warning to enable it to prepare for the contest, so that, before assistance can reach them, all the scattered British Covenanted Civilians, their wives and families, will be swept off the face of the earth, as so many were in 1857. The rebellion will of course be eventually crushed, but the difficulty of crushing it will be greatly enhanced by its having been allowed suddenly to burst upon an unprepared Government.

We will now suppose that every office in the Covenanted and Uncovenanted Services in the Mofussil is filled by European British subjects, which includes Eurasians, and that time-expired British soldiers are appointed to the subordinate grades of the Police, with the hope of promotion to the higher grades, as a reward for efficiency. When the *budmashes* begin to stir up the people to rebellion, will the British officials report the matter to Government? Most undoubtedly they will, for, even granting the absurd proposition that they are not loyal, they dare not withhold the information, for they well know that, if they allow the rebellion to succeed, they and their families will all be destroyed. The Government then will always have timely warning of any rebellious movement. Moreover, they will have a second army of brave and well-trained European British subjects, whose very lives will depend upon their vigilance and their loyalty. Furthermore, false charges will not be concocted by the Mofussil Police, and the people will not be driven to disloyalty by means of the torture and oppression of which so many complaints have been made against the Native Police. We shall not then hear of a Brahman being acquitted on account of the full moon, upon the same evidence as that upon which low caste men, his co-defendants, are convicted. We shall not then hear of such a case as occurred in Bengal many years ago, in which a false charge of burning down a native village was brought against an indigo planter, who was alleged to have been seen urging on his men to the work, the fact being that, at the very time he was alleged to have been so seen, he was dining with the District

Judge twenty miles off. What would have happened if, the District Judge had been a Native of high caste with whom he could not have dined? I shudder to contemplate, for the case got up against him by the villagers with the assistance of the Native Police was very strong.

Whilst a seditious Native is telling a public meeting in London, Lord Stanley of Alderley being in the chair, that our Sovereign's Imperial crown sits but lightly on her head, another noble Lord, her Indian Viceroy, is forging hated chains for those who would be the first to rally round their beloved Queen-Empress if there were any truth in that audacious assertion. Well may we exclaim to Lord Ripon: "*Quousque tandem abutere patientiâ nostrâ?*"

As to the war declared against us by the Bombay orator, the Bengali Attorneys, Vakeels and Editors, *et hoc genus omne*, all we would say, if it were to come to blows, is

a Lay on Macduff,

And damned be he that first cries "Hold enough."

BRITANNICUS.

12th March, 1883.

March 22.

THE DEBATE ON THE CRIMINAL CODE AMENDMENT BILL.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—We expected to find in the speeches of those members of the Legislative Council who supported the Bill to amend the Code of Criminal Procedure of 1882 some statesmanlike reasons for the measure. We have been grievously disappointed.

Mr. Ilbert, in introducing the Bill, made certain statements for the purpose of correcting some misapprehensions with respect to the course which the Government had adopted. Among other things he stated that the Bill "originated with a proposal for legislation which was made by the Government of Bengal to the Government of India in March 1882." His Excellency the Viceroy did not quite corroborate this statement. He said the intention to legislate in this direction originated in a promise made by him to Maharajah Jotendro Mohun Tagore, but that before any steps had been taken to redeem that pledge the Government of India received a letter, he did not say from the Government of Bengal, but from Sir Ashley Eden. We opine, therefore, that it would have been more correct to have said that the proposal was made by Sir Ashley Eden on the eve of his retirement from the office of Lieutenant-Governor of Bengal. For since there is no record of Sir Ashley Eden having consulted his Council, the Judges of the High Court, or any other bodies or persons of note

in his Province, his letter cannot properly be styled a proposal made by the Government of Bengal, but rather an expression of his own individual opinion. At any rate the point was, to say the most in its favour, so doubtful that, taking into consideration the fact that, before the matter was submitted to the Local Governments, the reins of the Government of Bengal had been assumed by a new Lieutenant-Governor, who, we now know, was opposed to the measure, and would have been supported in his opposition by most, if not all, of those whom it is usual for a Lieutenant-Governor to consult upon such an occasion, we are justly entitled to say, that, notwithstanding all the specious excuses made by certain members of the Executive Council, the omission to consult the Government of Bengal, when the other Local Governments were consulted, was not only impolitic but inexcusable. To be sure, if the Government of Bengal had been consulted, the supporters of the Bill would not have been able to boast so airily of the almost unanimous approval of the Local Governments; but, on the other hand, the Government of India might have been saved by the arguments of the Government of Bengal and the respectful memorials of influential representative bodies, from committing the egregious blunder of stirring up race animosities which were gradually dying out.

Mr. Ilbert then says: "the conclusion to which I came on the materials before me, was that we ought to legislate on the lines on which this Bill has been framed." We do not doubt Mr. Ilbert's honesty in the matter, nor his ability to come to a correct conclusion when he has a sufficiency of the proper materials on which to arrive, at it. What we do doubt is that the materials furnished to him were either sufficient or the best to be had in the market; and the incorrect conclusion to which he came proves that our doubts are reasonable.

He next informs us that the definition of a European British subject in the Criminal Procedure Code of 1882, passed before he came to India, is "arbitrary and artificial." We thank him for that word "artificial." Such being the case, what faith can the British in India have in an Executive Government which, by means of the artifice of an arbitrary definition in a voluminous Bill, abused their confidence to such an extent as to rob their great-grandchildren in India of their birthright; and especially what confidence can they have in that Councillor, who, being a member of that Government which committed the robbery and therefore a *particeps criminis*, had the unblushing effrontery to taunt his countrymen, in his speech, with their ignorance of having been so robbed? That unenviable rôle was jauntily performed by the Honorable Mr. Gibbs. If he calls this invective, I admit that it is, not however in the sense which he gives to the word, but in the sense given to it by Dr. Johnson, namely, "censure in speech or writing," for that is the only kind of invective with which the Government, of which he by fortuitous circumstances is a member, has been assailed.

Mr. Ilbert is, then, guilty of an unintentional *suppressio veri*. I say "unintentional," because I cannot believe that an honourable man like Mr. Ilbert could be guilty of an intentional suppression of

the truth. He did suppress a fact, however, when he stated that the law that "no person shall by reason of his descent or place of birth be in any civil proceeding exempted from the jurisdiction of the Courts," was first enacted by Act XI of 1836, for that Act does not say "from the jurisdiction of the Courts," but "from the jurisdiction of the Courts hereinafter mentioned," and it then proceeds to specify the Courts, omitting those of Munsiffs. It was not until 1843 (Section 7, Act VI of that year) that the jurisdiction was extended to Munsiffs. The bearing of that fact upon the present controversy was pointed out in my letter which appeared in your issue of the 28th ultimo, in which I stated that, as we were deceived, unintentionally of course, but still deceived, in 1836, by the then Government of India, as to the finality of the legislation contained in Act XI of that year, so it was possible that we might be deceived, unintentionally of course, but still deceived, in 1883, by the present Government of India, as to the finality of the legislation contained in the Bill under discussion. Of course I did not expect Mr. Ilbert to read my letter, but we had a right to expect him to quote Act XI of 1836 correctly. Under these circumstances, notwithstanding our profound respect for H. E. the Viceroy, we do not think that we can be justly expected to accept his declaration of the finality of the proposed legislation in any other sense than that of an intention open to alteration when, to use a favourite phrase of his Government and the supporters of the Bill, "the time has come."

In conclusion Mr. Ilbert tells us: "We propose to substitute for the disqualification arising from race a qualification depending on tried personal fitness;" that is to say, they propose to make the leopard change his spots. The only way to do that is to make him continually move on from one spot to another.

BRITANNICUS.

March 17, 1883.

March 26.

MR. QUINTON'S SPEECH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Our feelings on reading Mr. Quinton's speech were those of pity. Poor man! he was dragged from the pleasant occupation of his Commissionership at Allahabad, where he might have vegetated without his defects becoming publicly known, until the time arrived for him to retire into that delightful obscurity in England to which all the mediocrities of the Indian Civil Service are sooner or later relegated—cruelly dragged, alas! by a ruthless Viceroy to display his incapacity as an orator and advocate before a discriminating audience in the Legislative Council. Being so painfully aware of his own defects as he admits himself to be, we should have admired his obedience to the order of the Viceroy, had his speech not proved it to be servile. His advocacy of the Bill, however, was so feeble, as, to do him justice, he frankly admits, that one is led to doubt whether he really approved of it. If our doubts are well-founded, why did he not decline the honour

March 30.

RAJAH SHIVA PROSAD'S SPEECH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—After what I said in reviewing the speech of Mr. Kristo Dass Pal, it is not worth my while to waste any time upon that of Durga Churn Laha, for it only echoes other people's platitudes, and contains no argument in favour of the Bill.

I trust, however, you will grant me a little space for Rajah Shiva Prosad.

He has spoken so kindly of us, and has testified so truly to the bravery of our gallant soldiers, that I wish to deal as gently with him as possible; but there are some points in his speech which, I think you will agree with me, are worthy of notice. Besides, one question of his opens up such an important one for the consideration of the Government, that, with your permission, I shall give it special attention.

The Rajah begins with a compliment to H. E. the Viceroy, calls him "the incarnation of liberality," and flatters his policy. This, of course, is merely an Oriental salute. He then describes the intolerance and cruelty of the Arvan race towards the aborigines of this land, and the tyrannical conduct of the Aryans' Nemesis, the Muhammandans, towards them.

He is kind enough to inform us that the Hindus have no idea of the restoration of the Kshatriyan Empire. We thought they had given up that idea several centuries ago, when the Kshatriyas were extirpated by the Brahmins. He neglected to tell us, however, that the Hindus have no idea of the restoration of a Brahman Empire. But, on second thoughts, we could hardly expect him to be so disloyal to the thrice-born.

He kindly suggests that it may be dangerous for us to adhere to what he calls our privileges, but we call our rights; but he does not tell us what the danger is, nor whence it will come. In return for his advice, let me inform him that the danger note is the worst to sound in a Briton's ears, for, instead of frightening him, it only rouses all his dormant pugnacity.

The Rajah then asks the following question:—Are the Aryans still to be treated as a conquered and subjugated race? That question suggests another which deserves the most serious attention on the part of Government. Indeed justice will not be done to the down-trodden aborigines of this land, down-trodden by the Aryans, if it be not satisfactorily answered. Let Lord Ripon say to the Aryans as follows:—

"Raja Shiva Prosad, claiming to be your spokesman, has informed me that you have been most intolerant towards the aborigines whom your race conquered, and that you have made no distinction between the conquered and a slave. Up to this time the Sudras, the remnants of the conquered aborigines who form the mass of the population, are looked down upon by you as worse than slaves,

There are other aboriginal tribes, such as Dhers, Dhangars, and others thrust down by you even lower than the Sudras. It is clear then that when your race conquered these aborigines, you deprived them of all their rights and privileges, degraded them into unclean animals, and laid upon their shoulders an intolerable burden of disabilities. Therefore, before we can entertain your application, justice to those aborigines compels us to require you to give categorical and satisfactory answers to the following questions:—

1. Have you ceased to treat the Sudras, Dhers, Dhangars, and the other aboriginal races of the Peninsula, commonly called India, as conquered and subjugated races?

2. Have you restored to those aborigines all the rights and privileges of which your race deprived them?

3. Have you ceased to maintain race distinctions, and distinctions of race between yourself and those aborigines?

4. Have you removed from the shoulders of those aborigines the intolerable burden of disabilities which your race imposed upon them?

5. Do you treat them with the same consideration as that with which an Englishman, whose equal you seek to be made, treats his fellow men, however inferior to his own their station in life may be?

6. Do you grossly insult the dignity of the manhood of those aborigines by insolently arrogating to yourselves such purity, and attribute to them, or any of them, such uncleanness, that, not only their touch, but even their shadow falling upon you or your food, contaminates you and it?

7. Are you so intolerant to the Sudra race of aborigines, that if a Brahmani woman marries one of that race, you degrade a son, the offspring of that marriage, into the lowest of outcastes, whom you call a Chandal, to whom you assign filthy and degrading duties, and whom you refuse to permit to live in an Aryan town or village?

When you have answered these questions categorically and satisfactorily, you may renew your application; but, if I were to grant it before you do so, I should not be worthy of the flattering title of 'the incarnation of liberality,' so kindly conferred upon me by your spokesman, Raja Shiva Prosad, or of that of Viceroy of your tolerant Empress, who loves all her subjects equally, be they noble or simple, Brahman or Dher."

Until the Aryans do this, with what face, but that of the raven (which the Rajah naively tells us their Muhammadan conquerors described their faces to be), can the Aryans ask their conquerors, the British, to place them in the position with respect to themselves, in which they (the Aryans) refuse to place their conquered, the aborigines, with respect to themselves?

Will our Rulers never open their eyes to the truth? Will they never see that the Aryans are greedily grasping at the rights of their conquerors, the British, whilst wrongfully retaining, in their

insatiable may, the rights of their conquered, the aborigines? Will they never comprehend that their progressive policy, progressive towards the Aryan quarter only, is helping the Aryans to keep up that almost impassable barrier which they have created between the aborigines and Christian civilisation? For how can the missionaries, good and earnest men though they be, approach the aboriginal races with any success, whilst the Government by its fostering care of the Aryans and neglect of the aborigines, encourages belief in the fiction impressed by the former upon the latter, that a Brahman, however filthy and wicked he may be, is an incarnation of purity and godliness. I am no mawkish sentimentalist or sour faced Puritan, but it needs not to be either to see, what is patent to the world, that the Christian religion, even supposing it to have the defects its opponents attribute to it, is the most civilising religion upon earth. It is therefore a most astounding fact that the Government of India, though Christian, and professing to be neutral, both by its acts of commission and omission, impedes the work of Christian missionaries, and helps the Aryans to hold in thralldom the aborigines, whom they will neither admit within the pale of their own religion nor permit to enter within the pale of any other.

If any excuse were needed for importing the word "Christian" into this controversy, I would say that it was not I, but Rajah Shiva Prosad, who introduced it. These are his words: I leave it to the generous Christian feelings" &c.

The Rajah concludes his speech on the Bill with the statement that, though his head approves, his heart condemns, the Bill, for what follows that statement is merely an anecdote of 1857. Thus, again, does history repeat itself, for, like his ancestor Jagat Seth Mahtabari, he gives his head to his Sovereign's Viceroy, and his heart to the British people.

We would rather have his head.

BRITANNICUS.

March 26, 1883.

April 2.

THE HON'BLE W. W. HUNTER'S SPEECH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The speech of the Hon'ble W. W. Hunter is replete with the erudition which I expected to find in the utterances of so able and learned a man. After the prosy platitudes of other supporters of the Bill it afforded me great pleasure to read so instructive a disquisition. It is indeed a work of art worthy of so accomplished a scholar, but the art consists in studiously avoiding any attempt to answer the able and forcible arguments advanced against the Bill by the Hon'ble Messrs. Miller, Evans, and Thomas. In this Dr. Hunter only displays the wisdom for which he is famous, for what wise man would expose himself to certain failure by attempting to answer unanswerable arguments?

I have refrained from calling Dr. Hunter's speech a Speech in support of the Bill, because that would be a misnomer. Its correct designation is the Hon'ble W. W. Hunter's apology for the Bill, for, from the line he took, that appears to be all he intended it to be, and it is due to him to say that his apology, though insufficient, does honour to his head and heart.

He begins by telling us that he hopes he will not disregard either the expressions of disapproval from without, or the arguments so skilfully arrayed against the Bill in Council. I sincerely hope so too, and I trust that before the Bill comes before the Council again in November, Dr. Hunter will have so completely digested those objections and arguments that the Bill will appear to him as impolitic, unwise, and suicidal a measure as it has always done to me.

I request him, however, before he begins to consider those arguments and objections, to forget that he said in his speech under review "I feel constrained to support this measure." This he can do without stultifying himself, on account of the assurance which, His Honour the Lieutenant-Governor of Bengal stated in his speech, H. E. the Viceroy had given him, that the motion before the Council, on the day Dr. Hunter uttered those words, "pledged no one to the principle of the Bill." I ask him to forget those words in order that he may avoid entering upon the consideration of our objections and arguments in a controversial spirit, with a determination to support his previous utterance at all hazards, and that he may consider them in a calm and judicial spirit, with no intention but that of arriving at the truth. If he enters upon a consideration of the measure in the latter spirit, I feel confident that his sound judgment will constrain him to see that the Bill is utterly indefensible; but, if he enters upon it in the former spirit, I have no hope for him, for his intellect is powerful enough to prove to his own satisfaction that white is red or any other colour, if he commits himself to such a statement.

Whilst requesting him to forget that he said, "I feel constrained to support the measure," I most strongly urge him to remember that he also said, "If a distinct administrative necessity had not arisen, I should decline to support a change which must be painful to an important section of the community," and at the same time to call to mind that after he had uttered those memorable words, His Honor the Lieutenant Governor of Bengal, in whose Province the administrative necessity was said to have arisen, and who, if any confidence is to be placed in our Local Rulers, must be held to be the best judge of the administrative necessities of his own Province, most distinctly stated that, in his Province, no such administrative necessity had arisen. The following are His Honor's words: "Ample and exhaustive as was the speech of my Hon'ble and learned friend Mr. Evans with a great deal of which I sympathise, there are a great many facts which will support his contention that there is no administrative difficulty in connection with the matter." From this it appears that, in addition to the exhaustive arguments of

the Hon'ble Mr. Evans, there are, in the opinion of His Honour the Lieutenant Governor of Bengal, "a great many facts," not mentioned by Mr. Evans," which will support his contention that "there is no administrative difficulty in connection with the matter." It is therefore clearly proved that "a distinct administrative necessity has not arisen," so that the state of affairs, the existence of which Dr. Hunter made a condition precedent to his declining to support the Bill, actually exists.

Under these circumstances, it is surely not asking too much of Dr. Hunter to ask him to redeem his pledge by declining to support a measure which he truly and feelingly says is "painful to an important section of the community." Indeed his refined sense of honour is so well known that I should not be surprised at his at once intimating his intention to oppose the Bill; for a man like Dr. Hunter, who could not break the lightest promise given in private, is not likely to break a solemn pledge publicly given in the Legislative Council of the Indian Empire.

BRITANNICUS.

March 26, 1883.

April 3.

* TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I said that the proper designation of the Hon'ble W. W. Hunter's speech is "An apology for the Bill." I propose to show that it is an apology for the Bill to deprive us of a cherished right and that it is insufficient.

I must premise, however, by saying that, with all due deference to the Hon'ble Mr. James Gibbs, our rights are not secured by "Magna Charta" only, in which these words occur, "*Nullus liber homo aliquo modo destruatur nisi per legale iudicium parium—, suorum,*" but by the statute 25 Edw. I intitled *confirmatio cartarum*, by the "Petition of Rights" in the reign of Charles I, by the "Bill of Right," confirmed by the statute 1 W. and M. 2, cap. 2, and by the "Act of Settlement" 12 and 13 W. III. c. 2, whereby the Crown was limited to the illustrious house of our present Queen Empress, any infringement of which last statute by her Viceroy is a revolutionary measure, as I styled the Criminal Amendment Bill in a former letter.

The "Bill of Rights" concludes with these memorable words of the Lords and Commons of England to the Prince and Princess of Orange, afterwards crowned King and Queen of England;—"And they do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties." I do not find that any of the speakers on the 28th ultimo used stronger words than those nor do I find stronger words than those in any of the editorials or letters published by you in the course of your noble defence of our rights. At what then is Lord Ripon so angry? Shall we be less bold than our ancestors in asserting our rights? Is a

Viceroy greater than a Sovereign Prince, that words used by our ancestors to the Prince of Orange, afterwards King of England, without offending him, give umbrage to Lord Ripon? Let me warn him, that, instead of being angry, he ought to rejoice, that notwithstanding the enervating influence of this climate, the hearts of the British in India are as bold as those of their ancestors; for, if he continues to listen to the Mephistophelian counsels of Aryans and Aryan-worshippers, and to pursue his present policy, he will need all their brave hearts and ready hands to save him from the demon he is evoking by his suicidal incantations.

Dr. Hunter's apology for depriving us of a cherished right is this:—The Government has deprived the natives of certain things, which, for the sake of argument, I will, for the present, admit to be rights; therefore we ought not to complain at its seeking to deprive us of our rights. Dr. Hunter is far too clever a man to intend this as an argument. No one knows better than he does, that, if it was wrong on the part of Government to take away the alleged rights of the natives, the perpetration of wrong cannot justify Government in depriving us of our rights. That is why I call it an apology.

The apology is insufficient, inasmuch as the things enumerated by Dr. Hunter, as those of which Government has deprived the natives, are not rights, but injurious excrescences, the excision of which by the Government no more justifies it in depriving us of our rights, than the cutting of Dr. Hunter's corns by a barber would justify that barber in stealing my watch.

I now proceed to show that the things enumerated by Dr. Hunter as the things of which the Government has deprived the Hindus and Mahomedans are not rights but injurious excrescences.

I. The *patria potestas* whereby the head of a family could inflict punishment on its members, which included slaves, for there were slaves in those days, as you will find on consulting Hickey's *Bengal Gazette* of the 11th April 1780, in which an advertisement appears, offering thanks to any one who will give intelligence of the whereabouts of a little slave boy who had eloped. The excessive punishments, often resulting in death, especially to the female members of the family, and the abolition of slavery, rendered it necessary to cut off that injurious excrescence.

II. The punitive sanctions of caste, whereby, as Rajah Shiva Prosad tells us, a Sudra could be put to death for slandering a Brahmin, or have scalding oil poured into his mouth for daring to speak or teach Sanscrit, and whereby many other punishments could be inflicted for the infringement of absurd caste rules, quite incommensurate with the infringement, which in itself constituted no offence at all. Therefore it was found necessary to cut off this injurious excrescence.

III. The erection of *kurhs* by Brahmins for credulous old women to kill themselves upon. That injurious excrescence was also cut off.

IV. *Dharna baithna*, whereby a Brahmin could extort compliance with any demand by sitting at a man's door and fasting

or pretending to fast, until his demand was complied with. That injurious excrescence was also cut off, because it was used by Brahmins to extort money and other things not due to them.

V. The custom of having a Moulvi and a Brahmin attached to each Superior Court of Justice to expound Muhammadan and Hindu law. The expositions of these learned gentlemen were so conflicting and contradictory that the inconvenience of the practice was exposed. This injurious excrescence was therefore cut off.

VI. The Muhammadan Criminal Law was an injurious excrescence, because, the sovereignty having passed from the Muhammadans to the British, it ought to have departed with the sovereign to which it belonged. It was therefore also lopped off.

VII. The custom of depriving a Hindu of his ancestral property on his becoming a convert to Christianity. This excrescence was injurious, inasmuch as it interfered with the liberty of the subject and that free will with which God has endowed man; therefore to fine a man to the full value of all his worldly goods for exercising that free will was considered so monstrously tyrannical and oppressive that the custom could not be upheld. That excrescence was also lopped off.

Why did not Dr. Hunter mention the car of Jagarnath? Is it that it is not abolished, but only suspended, and kept ready by Government, with Mr. Gupta as the driver, to drive over us, our wives, and daughters?

BRITANNICUS.

27th March 1883.

April 4.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—The Hon'ble W. W. Hunter then continues his apology by pointing out that "the personal law and exemptions peculiar to British European subjects in India have undergone scarcely less important curtailments." Again I say that Dr. Hunter is far too clever a man to intend this as an argument in favour of the Bill. For no one knows better than he does, that if the things which he enumerates as having been taken away from us were rights, the wrongful act of the Government, in depriving us of those rights, no more justifies it in depriving us of others, than the stealing of my rings by a thief would justify him in stealing my watch also. If, however, the things enumerated by Dr. Hunter were not rights, but injurious excrescences which the Government acted rightly in removing, the argument and the illustration contained in my last letter contain a sufficient answer to his apology.

Dr. Hunter then tells us that the European community bitterly resented the privative laws, referred to by him, and opposed every effort to pass them; nevertheless they were passed. Of course Dr. Hunter does not intend us to understand that he means that as an argument in favour of passing the Bill, for it amounts to this:—Since the European community were too weak, in former days, to prevent the Government from passing privative laws against

their will, therefore it is right to pass the present privative law against their will. Oh! no, he only uses the fact of Government having passed privative laws in former days against the will of the European community as an apology for attempting to pass the present Bill in the same way as a polite highwayman, after relieving you of your money, might use the fact of his having done so as an apology for taking your diamond ring also. Now Dr. Hunter is a great scholar, but as that accomplished man, Mr. Ilbert, forgot his Horace, so Dr. Hunter appears to have forgotten his Xenophon. Let me, then, remind him of the answer Pericles is reported to have made to Alcibiades, when the latter, being a student under Socrates of less than twenty years of age, put the following question to him:—"Whether or not may we call it oppression on the part of the few" (in an oligarchy) "to pass a law against the will of the many?" I give Pericles' answer in the original Greek, but, as I do not know whether you have any Greek type, I write it in English characters, using the grave accent over the "e" and "o" to represent eta and omega: "*Panta moi dokei, phanai ton Perikleia, hosa tis me peisas anankazei tina poiein eite graphon eite me, bia mallon è nomos einai.*" I render this passage thus: [It is stated] "that Pericles replied: 'that all things, as many as any one, not having persuaded,' [him], (i. e. against his will) 'compels any other to do, whether writing or not, i. e., whether by written law or not) are oppression rather than law.'" I have made the translation as close to the original as possible, but if I have misinterpreted the passage I shall be grateful to any one who will set me right. That *graphon* signifies passing a law is clear from the context, for in answer to a previous question Pericles says whatever the ruling power "may have written is called law," (*grapè nomos kaleitai*). The passage will be found in Chapter II *Xenophontos Apomnèmonèumaton*. Now, though Lord Ripon is a despotic ruler, he is too true an Englishman not to love fair play, consequently he would scorn to use undue influence to induce any member of the Legislative Council slavishly to follow his lead, nay more, he is too true a gentleman not to despise any one who did so follow it. Therefore, *quà* legislation, the Legislative Council is an oligarchy. But the question put by Alcibiades had reference to an oligarchy, the word *oligarchia* being distinctly used in the context in connexion with the question. Therefore the Legislative Council corresponds with "the few," and the British in India with "the many," mentioned in the question. I therefore submit that the opinion given by Pericles is clearly applicable to the matter under discussion, and that it is, that the passing of the Bill to amend the Code of Criminal Procedure of 1882, against the will of the British in India, will be oppression rather than law. Of course I am aware that Lord Ripon is not bound by the opinion of Pericles; but I am sure he will pay due respect to it, as the opinion of the greatest of Athenian statesmen.

Dr. Hunter next refers to the Black Bill of 1849, with which Mr. Drinkwater Bethune tried to put us, our wives and daughters, under the clumsy shoe of the Aryan. He failed, and if Dr. Hunter will refer to the file of the *Englishman* of that year, I think he will find further reasons for the failure beyond those stated by him;

for the *Englishman* was as true to its name then, as it is now. Yes, the Brown Bills of England (metaphorically of course) were as victorious against the Black Bill of 1849, as I trust they will be against the Black Bill of 1883.

I again ask why is Lord Ripon so angry with us? Can he not see that the opposition to the Bill is unanimous among those whom it will injuriously affect? Can he not hear our young men cry out like Neocles, when his father Themistocles, in Metastasio's Drama of that name, after restraining his ardour to resent the insult put upon his father by Xerxes, says: "*Va ; taci e spera.*"

Neocle.—"Ch'io spero? Ah padre amato,

E come ho da sperar?

Qual astro ha da guidar

La mia speranza?

Mi fa tremar del fato

L'ingiusta crudelta;

Ma piu tremar mi fa

La tua costanza."

BRITANNICUS.

April 5.

TO THE EDITOR OF THE ENGLISHMAN.

SIR—The Hon'ble W. W. Hunter continues his apology for the Bill thus:—"By a narrow majority the Legislature" (in 1872) "abstained from giving these powers" (to try, fine and imprison British men and women) "to the native members of the Covenanted Civil Service." If he means a narrow majority in numbers, we agree with him, provided the leading representatives of the non-official European population, who, Sir Fitzjames Stephen tells us, in his letter to the *Times*, were consulted, be not taken into account, but, if the majority be gauged by the intellect arrayed on each side, it was overwhelming; for Sir Fitzjames Stephen was one of the majority, and he was a giant in intellect to the pigmies who supported the measure, even though the Hon'ble Mr. James Gibbs, as he tells us, supported it by a Minute. Sir Fitzjames Stephen, as he tells us in his letter to the *Times*, is as strongly opposed to the measure in 1883 as he was in 1872, notwithstanding the alleged altered circumstances of which Dr. Hunter attempts to make so much.

Sir Fitzjames Stephen says:—"Why it should be considered necessary to amend in 1883 a Bill which had been carefully considered and re-enacted in 1882, I am at a loss to imagine." Is it wonderful then that we, who are pigmies in intellect to him, have also failed to imagine the reason? And yet Lord Ripon is angry with us for that failure! Sir Fitzjames Stephen continues:—"This in itself seems to show that there can be no solid reason for the change proposed to be made." The reason why the change was not made in 1872 is obvious. "There were giants in those days."

What are the altered circumstances to which Dr. Hunter alludes? They are:—1. New enterprises have since then (1872)

brought an influx of Englishmen into the interior and created independent public opinion in the districts. 2. Telegrams have poured into the *Englishman*, which show that our non-official countrymen are everywhere opposed to the Bill, and that Englishmen of the interior have now the means of expressing the public opinion of their class. 3. Since 1872 the length of railways open in India has increased from about 5,000 to about 10,000 miles. 4. The number of private telegrams has increased from 600,000 to 1,337,526. 5. The number of post offices and letter-boxes has increased from about 5,000 to about 11,000, and the number of letters from 89 millions to 158 millions. 6. Districts formerly isolated have now speedy and constant communication with the capital. Really, if I knew nothing of the subject but what is contained in this part of the speech, I should have thought that Dr. Hunter was arguing for a restoration of the *status quo ante*, 1872; for the principal reason for empowering European Magistrates and Judges in the Mofussil to try European British subjects for minor offences, was the difficulty and expense of bringing the accused and witnesses to the Presidency towns, where the High Courts were located: and Dr. Hunter's argument shows that that difficulty has disappeared. How that can be a reason, or even a sufficient apology, for giving Native Magistrates powers to try Europeans, their wives and daughters, I am utterly at a loss to imagine. If Dr. Hunter means that, because there is a larger amount of independent English opinion in the Mofussil, therefore Native Magistrates will not be able to do injustice to Europeans, I reply there is not so much as there is in Calcutta, and yet the independent British opinion in Calcutta, aided by the eloquence and forensic talent of that able lawyer, Mr. Branson, did not deter Mr. Gupta and his native colleague from inflicting upon a European a fine of Rs. 1,000 for an offence, for which the High Court thought Rs. 50 would have been an adequate punishment. I submit therefore that that portion of the apology is also insufficient.

I have already shown the worthlessness (with all due respect I say it) of the opinions of the Local Governments in support of the Bill. I therefore submit that the "overwhelming preponderance of opinion" alleged by Dr. Hunter has no real existence.

Dr. Hunter next begs the question by assuming that "we have guaranteed to them" (Native Civilians) "equal rights with their English brethren." But whether the proposition is true or not, it does not affect the question, since no man has a *right* to sit in judgment on another. And here let me remind him that Montesquieu says:—"In Governments where there are necessary distinctions of persons, there must likewise be privileges;" and "One of the privileges least burdensome to society, and especially to him who confers it, is that of pleading in one Court preferably to another," and not, as he seems to think, that of sitting in judgment upon the dominant race. Of course, if Dr. Hunter can show that necessary distinctions do not exist, that argument falls to the ground; but I think he will hardly attempt to do that in the face of the necessary distinctions created by Hinduism and conquest, and of the distinctions which the Government, of which he is a member, has declared to be necessary, by excluding Englishmen from the new Civil Service, and the Roorkee College,

Now I really have great respect for Dr. Hunter, and therefore I would not willingly treat lightly anything he says. You can, then, imagine how ludicrous his allusion to the Queen's Proclamation appeared to me, when I tell you that I could not repress a smile on reading it. What hope is there for these men, I thought, when even one of the most talented of their number is so absorbed in the contemplation of one side of the shield, that he forgets there is another? He actually does not see that, in quoting the Queen's Proclamation in favour of natives, he is condemning the policy of the Government of which he is a member. "In that Proclamation," he says, "she commanded that her subjects, of whatever race or creed, be freely and impartially admitted to office in [her] service," &c., and the way in which his Government obeys that command is by opening wide the door of Her Majesty's service to heathen natives and shutting it closely against Christian Britons!!!

The rest of Dr. Hunter's apology for the Bill, when carefully added up, amounts to this:—

Pity the sorrows of a poor old Gap,
Whose whine for power is sounding at our door,
Pray give him all you can, and shut him up,
And when he gets it, let him howl for more.

The remainder of Dr. Hunter's speech has been so fully answered by you and your able correspondents, as well as by Sir Fitzjames Stephen in his letter to the *Times*, that it would be an impertinence on my part to attempt to add anything to what my superiors in argument have said upon the subject.

BRITANNICUS.

30th March, 1883.

April 6.

THE HON'BLE SIR STEUART BAYLEY'S SPEECH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Aristotle informs us that the ancient Cretans had a peculiar method of preventing their Chief Magistrates, or Rulers, from abusing their power. They got up an insurrection, rose up in arms, put their Chief Magistrates to flight, and compelled them to return to private life. This was supposed to be done in accordance with the law. Montesquieu refers to this custom, and wonders that it did not subvert the republic of Crete, for it did not, since, after the insurrection, everything went on smoothly. The Americans, when their Chief Magistrate, George III, abused his power, adopted the same plan. The difference, however, was that the Cretans lost nothing, but the British lost America. When our Chief Magistrates abused their power, by announcing the Criminal Amendment, we, being Britons, and not Cretans or Americans, adopted a more dignified, if less effective,

method. We got up, not an insurrection, but a grand public meeting, at which our eloquent orators expressed our sentiments and our young men shouted their indignation at the insult offered to themselves, their mothers and sisters, and—well, yes,—their sweet-hearts also. Sir Steuart Bayley calls that “spread-eagleism,” a description which would have been correct only if, like the ancient Cretans and modern Americans, we had swooped down upon our Chief Magistrates and put them to flight. As it was, we only shouted, and therefore a better description of what occurred would have been “The British lion roared.”

We, however, forgive Sir Steuart Bayley the misdescription on account of the kindness he feels for us, and especially for that noble body of men, our Indigo Planters. If he had known our Tea Planters as well as he knows our Indigo Planters, he would doubtless have expressed himself as kindly towards them. He is evidently one of the Civilians of the pre-competition era, of whom Sir Fitzjames Stephen has been imbued with the incorrect idea, that they looked upon the Supreme Courts as intruders. This may have been the case on the first institution of those Courts, but it was not so for many years before they merged into the High Courts, for the Civilians of those days were men whose hearts were too full of honourable and kindly feelings for petty jealousy of the Supreme Courts, or of any other person, or thing, to find room therein. There may have been Philistines among them, who looked upon all Europeans in India out of the Civil Service as “white trash,” and upon the Supreme Courts as intruders, for Philistines intrude everywhere, but these spots on their honorable shield were few and far between.

We are thankful to Sir Steuart Bayley for so clearly pointing out in his speech some of the dangers to which we shall be exposed if the Bill becomes law, even though he did not absolutely oppose it. We are surprised, however, at so clear-sighted an officer of Government having failed to foresee either the “extent or the depth of feeling which the measure has aroused among the European population.”

Some supporters of the Bill laid great stress upon one argument the fallacy of which ought to be exposed. The British in India they say, strenuously opposed the passing of the law which subjected them to the jurisdiction of native Judges in civil matters, yet the result has proved that their fear of injustice was ill-founded. *Ergo* their fear of injustice at the hands of native Judges in criminal matters is unfounded also. The fallacy consists in assuming that the decisions of native Judges in civil suits between Europeans and natives have been just and satisfactory, the contrary as a rule, being the fact. The incorrect assumption is probably based upon the fact that no complaints have been made to Government against those decisions. The fact is that the British being a law-abiding race, when the Bill became law they submitted to it under protest, and when injustice was done by means of it, their school training in England prevented them from running with tales about it to the Master, the Governor-General, on every occasion, even if they had had time to do so. They therefore either

submitted quietly or got the injustice set aside on appeal when they could, though native Judges often cast such a glamour over their decisions, and make their reasons appear so plausible, that it was often difficult to do so. The danger of assuming that the people are satisfied, because their Ruler does not take the trouble to ascertain the truth, and his counsellors neglect their duty, has been too often practically proved to require further proof from me. Louis XVI heard no complaints about *corvées*, and his counsellors failed to tell him the truth; he therefore concluded that there were none. He lost his head. I do not mean to hint that Lord Ripon will lose his head in a similar way, but merely to show him that it does not follow that unwise and illogical counsellors are correct, when they tell him that the decisions of native tribunals, in civil suits between Europeans and natives, are either just or satisfactory, because no complaints against them have reached his ears. A very clever and talented Civil and Sessions Judge, with whom I was intimate, told me that the decisions of the Principal Sudder Ameen, at the Sudder Station of his district, were very unsatisfactory in suits between Indigo Planters and natives, and that he was morally certain that the native judge received bribes from native litigants, but, as the bribes were always paid to his brother who was living with him, but was not a Government officer, he could not obtain legal proof against him. If Lord Ripon will take the trouble to read the decision of Moonsiff Babu Mohendro Lall Gossain, of Shibgunge, in suit No. 90 of 1882, and the remarks made thereon by the Judge, Mr. J. G. Charles, on appeal, he will be able to form some idea of that which some of his counsellors call the satisfactory nature of the decisions of native Judges in suits between Europeans and natives in Civil suits, and he will be able to form some faint idea of the indignities to which we, our wives and daughters, will be subjected, if the bill under discussion becomes law. If Lord Ripon will then take the trouble to read the decision of Kheter Mohun Mookerjee, officiating Deputy Magistrate, dated the 21st March 1877, on the complaint of Ramdhari Sing Jowardar of the Bhagavanpore Indigo Factory against Najib Mandal and others, he will also learn how wise and just native Magistrates can be.

One would imagine, by the Queen's Proclamation being quoted so often, that the natives had not a fair share of offices under Government before it was made. A reference to the number of European and native uncovenanted officers at that time will prove the contrary to be the fact.

We regret as much as any one the present state of affairs, but we hope it will not subside until the British in India obtain all their rights, one of which is that the Government of India shall cease to disobey their Sovereign's command, contained in the Queen's Proclamation, issued when Her Majesty assumed the Government of India, that her subjects, "of whatever race or creed, be freely and impartially admitted to offices in her service, the duties of which they may be qualified by their education, ability and integrity duly to discharge," and shall forthwith obey that command by reopening the Uncovenanted Civil Service and the Roorkee College to European British subjects in India, and by

giving at least half the appointments in the new native Civil Service to European British subjects.

BRITANNICUS.

March 31, 1883.

April 7.

THE HON'BLE MR. JAMES GIBBS' SPEECH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Whenever any one was brought to the notice of the great Napoleon, the first question he asked was, "What has he done?" If he were alive now, and were to make that inquiry about the Hon'ble Mr. James Gibbs, the answer would be, "He wrote a Minute." That is the most prominent fact in his speech. He wrote a Minute. This, he tells us, was in 1870, when he adorned the Bench of the High Court of Bombay. He fails to inform us, however, whether the late Chief Justice Sir M. R. Westropp, the present Chief Justice Sir C. Sargent, and, we trust, the future Chief Justice, the Hon'ble Mr. Justice Bayley, who, we are informed, were his learned colleagues in that year, also wrote Minutes, and whether their Minutes agreed with his, or differed from it. Was this kind to them or himself? If their Minutes agreed with his, what lustre would be added to their honorable names, by the mention of the fact! If they differed from his, in what bold relief would the mention of the fact cause his to stand forth! And with what bright effulgence would his Minute shine, when contrasted with the darkness of theirs! Nevertheless this fact stands prominently forth, that he wrote a Minute. He then proceeds to tell us the contents of that Minute. I need scarcely say that I entertain the highest respect for the learned ex-Judge. But I cannot help lamenting that his zeal to lighten our darkness has led him into a violation of a general rule of law, namely: "The contents of a written instrument, which is capable of being produced must be proved by the instrument itself, and not by parole evidence." I need hardly tell one who has eaten his dinners at an Inn of Court, and has sat upon the Bench of the High Court of Bombay, that "this rule is as old as any part of the Common Law of England, has ever been regarded with favour, and maintained with approbation by the Judges." How then could he permit himself to violate it, especially when he was seeking to use the document against us? If he could not produce the original, why did he not produce a certified copy? For, it being a public document, he knows that, under the Evidence Act, a certified copy is admissible as evidence. We are the more grieved at his great forgetfulness of this general rule of law, because we feel sure that this modesty has prevented him from doing himself that full justice which the production of the document, or of a certified copy thereof, would have done; as well as because, in conformity with that general rule of law, we are compelled, much against our will, to reject his parole evidence of

its contents; so that the information we have upon the subject is reduced to the bold statement, that he wrote a Minute. That fact may make him famous, but it leaves us unenlightened. The non-production of the Minute also debars us from applying to him the legal maxim, "*Verba chartarum fortius accipiuntur contra proferentem*," the words of an instrument shall be taken most strongly against the party employing them. This is an act of injustice towards us, of which an ex-Judge ought not to have been guilty, especially in his own cause. There is another point on which we regret he did not enlighten us. Was the Minute he wrote published in Bombay? I fancy not, or we should have heard something about it from Mr. Maclean of the *Bombay Gazette*, who would have been delighted to do honour to the author of his facile pen. Moreover, the publication of the Minute, with Mr. Maclean's comments thereon, would have greatly assisted Mr. Gibbs in his sedulous search for popularity among the people of Bombay, especially the natives. They would, whenever they saw him, have said: "He wrote a Minute." Let us do the same, and whenever we see him, say, "He wrote a Minute."

The next prominent point in Mr. Gibbs's speech is his statement that he is "of a somewhat unsentimental disposition." What a pity it is that one naturally so amiable should have so schooled himself to repress his feelings, as no longer to possess any! Has he read "*Realmah*?" It is by a well known author. There is a sentence in that book which he will do well to ponder in his heart. It is this: "If you constantly repress the expression of feelings, you will gradually cease to have those feelings." Is it since he became a member of the Viceroy's Council that he has thought it statesmanlike to divest himself of the feelings which made him sympathetic when he was courting popularity in Bombay? If so, he is wrong, for a man without feeling is incapable of feeling the pulse of the people, or of sympathising with them. And a statesman, who cannot do either of those things, is incapable of ruling either well or wisely. The best and most successful statesmen have not been those who have had the procrustean precivities which prompted the preparation of the present Bill, but those who have had large hearts and have been widely sympathetic.

The next idea with which his speech impresses us is that he leads an easy and happy life. In seeking for the reason why his speech so impressed us, we found it was because we gathered from it that he neither indulges in ideas nor believes much in anything or any body, and on referring to "*Realmah*" again, we found the following passage, which solved the riddle:—"It was not so much the stupid man, as the limited man, the man of routine, the man who does not indulge in ideas, who does not believe much in anything or any body, who will have an easy and happy life." This reminds us of another passage in the same book:—"I think, to put the matter briefly and frankly, that there is not sufficient intellect brought to bear upon the affairs of Government." Recent events have proved that sentence to be peculiarly applicable to the Government of India.

On returning to the speech we made a discovery. It was not Lord Ripon or Mr. Ilbert who was the prime mover of this measure. It was Mr. Gibbs. He tells us that, as the member of Council in charge of the Home Department, he is intimately connected with the general administration of justice in the Empire. He also tells us that he wrote a Minute. When we put these two facts together, it appears to us that nothing is more likely than that he is the prime mover in the matter of the Bill. Now prime movers, as every mill-owner knows, are very dangerous things, if not well looked after. They are apt to be the cause of explosions. Here is a case in point. The prime mover, Mr. Gibbs, through not having been properly looked after, has caused the entire British population of India to explode with indignation at his Bill, and with laughter at his speech in support of it. Does not this prove that some one ought to look after him? We recommend him to the care of the Defence Association.

But why did Mr. Gibbs, who objects to innuendoes, not speak out? Why did he not tell us distinctly that he is the prime mover of this Bill? Why throw the blame upon an absent man, poor Sir Ashley Eden? Why say, like the little sneak at school, "Please, Sir, it wasn't I, it was Ashley Eden did it"? His Minute was written twelve years before Sir Ashley Eden's letter. Why then did he not take to himself all the honour of being the prime mover of the measure? Was it because he thought the honour doubtful? Who knows? Or was it because, like Sir Walter Scott, he wished to see how the British public received his works before he owned them? If the latter be the case, with what amusement he must have sung to himself, "*Sic vos non vobis*," &c., when the public attributed the authorship of his work to others! How he must have wondered at the obtuseness of the British people in not at once divining that the great work was the great man's! But why was he not frank with us in his speech? Why did he not tell us plainly that he was the author, instead of leaving us to infer it from the facts above-mentioned? Why in short, did he not finish his song of "*Sic vos non vobis*," &c., with a quotation from the *Ingoldsby Legends* slightly altered? Thus:—

"Hos ego versiculos feci, tulit alter honores.

"This Bill is mine. Who says it's Ilbert's, he tells stories."

Having already trespassed too much upon your valuable space, I will conclude to-day, and, with your permission, resume the subject to-morrow.

BRITANNICUS.

April 2, 1883.

April 9.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Your able correspondent "Whincop" has so fully answered Mr. Gibbs' speech that he has left me very little to add. He has pointed out that the "large railway works" in the neighbourhood of

Mr. James Gibbs' Speech.

Carwar which the speaker said were being commenced have no existence. The fact is, the Government, of which he is a member, with its usual unwisdom, sanctioned the Marmagaon-Hubli Railway to benefit a foreign port, that of Goa, in preference to a railway into the interior from Carwar. It is probably the Marmagaon-Hubli Railway that was in Mr. Gibbs' mind whilst he was speaking, but as its terminus, at the coast end of the line, is in foreign territory, it would not help him in his argument, so, by a mental process peculiar to himself, he transported it to Carwar. But even supposing there were large railway works at Carwar and it were necessary to try some British employé on a criminal charge, and there were no British Magistrate and Justice of the Peace at that station, there would be no need to incur the "inconvenience, danger, expense, and delay" of sending him to Belgaum or Carwar, for any of the steamers which constantly touch at Carwar could convey him to Bombay, from which, if necessary, he could be sent on to the Magistrate at Tanna, only 21 miles further, by rail. Mr. Gibbs was fully aware of this when he was making his speech, but it suited him to throw the Belgaum and Dharwar dust in the eyes of his hearers, and so he ignored it. Was this dodge worthy of a Councillor of the Indian Empire? This is a specimen of the fallacious arguments to which the Government of India are reduced in attempting to support their notoriously indefensible Bill.

Strangers will doubtless feel highly flattered at the amount of stupidity with which Mr. Gibbs credited them when he said—"From the extraordinary excitement which has been raised, a stranger would be led to suppose that the majority of Europeans were constantly before the Criminal Courts in serious and intricate cases; whereas, as far as my experience goes, there are very few cases in which Europeans come before them, and those of a simple nature petty thefts or assaults." His mental vision must be very dim since it does not enable him to see that it is to keep those cases few, and prevent the Government, of which he is a member, from increasing their number indefinitely by means of their Criminal Amendment, that we are striving with all our might. No, he cannot understand this, and he will blindly go on with his Bill, without being able to see many other things, for, as Schiller truly says, "Against stupidity the gods themselves are powerless."

Mr. Gibbs in support of his argument, if anything he said is worthy of the name, stated that foreigners are liable to the jurisdiction of Native Magistrates in the Mofussil. "Whincop" has fully answered that part of his speech, and has clearly shown that it has nothing to do with the question at issue. I therefore refer to it only to exhort foreigners to agitate through their own Governments and the Defence Association to get themselves relieved from that unmerited degradation.

If we may judge from the number of times the word "inconvenience" is repeated, it would seem as if that was the argument upon which Mr. Gibbs mainly relied. His Honor the

Letters from Britannicus.

the Lieutenant-Governor of Bengal has clearly shown that it does not exist in his Province. "Whincop" and I have shown that it does not exist in the Province of Bombay, and it is not alleged to exist in Madras or elsewhere. Hence that which Mr. Gibbs styles the "inconvenience argument" turns out to be only *inconvenant*, for which it is highly unbecoming in a Councillor of the Indian Empire to advance as an argument that which has no foundation in fact.

Mr. Gibbs expresses his "inability to understand why all this commotion should have arisen about this measure"; much less can he understand why Lord Ripon "should be looked upon as the leader of an anomalous, unconstitutional, and illegal confiscation of chartered rights"; nor can he understand why the European gentry of Calcutta should now rise to prevent their countrymen and countrywomen in the Mofussil from being subjected to the jurisdiction of native Magistrates and Judges. He is unable to understand any of these things, although Messrs. Miller, Evans and Thomas had only shortly before fully explained the reasons to him. He then says he is not sure that the great bulk of the European and Eurasian population of Bengal know the meaning of the term "European British subject," and then this gentleman, who has eaten his dinners at an Inn of Court, has sat on the bench of a High Court, and claims to be a leader of men as a member of the Viceroy's Council, practically explains why he is unable to understand so many things, by wrongly interpreting a simple point of law, which it was his peculiar duty to understand thoroughly. His indeed must be one of those peculiar minds so well described by Phillip von Artevelde in the following lines:—

"A mind it is
Accessible to reason's subtlest rays,
And many enter there, but none converge."

Mr. Gibbs is the member of Council in charge of the Home Department. One of the duties of that Department is to admit qualified candidates into Her Majesty's Uncovenanted Civil Service. Her Majesty has commanded that her subjects, of whatever race or creed, shall be freely and impartially admitted to offices in her service. A member of Council in charge of the Home Department who wilfully and systematically excludes Her Majesty's Christian British subjects from her service, wilfully and systematically disobeys Her Majesty's commands. A subject who wilfully and systematically disobeys his Sovereign's command is a rebel. If, then, Mr. Gibbs wilfully and systematically disobeys his Sovereign's command by excluding her Christian British subjects from her service, he is a rebel.

If Mr. Gibbs is a rebel, he can no longer deserve or possess the confidence of his Sovereign. In that case it will be neither unconstitutional nor inequitable for the British in India to petition Her Majesty to inform him that his services are no longer required.

BRITANNICUS.

April 3, 1883.

*April 10.***H. E. THE COMMANDER-IN-CHIEF'S SPEECH.**

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I deeply regret that any one should have attributed selfish motives to H. E. the Commander-in-Chief for giving his adhesion to the notorious Bill. My theory is, that he had not given the matter sufficient thought when he spoke, and that he had been led away by the specious arguments of some one inferior in intellect to himself. The unselfish way in which he denuded himself of the flower of his army to enable that gallant General, Sir Frederick Roberts, to distinguish himself by making his rapid and successful march from Kabul to Kandahar, is alone sufficient to prove him to be incapable of so mean a feeling as selfishness. That he attended to the interests of the gallant soldiers under his command, or thought he was doing so in what he did, goes without saying, for it was his duty to do so. That he failed in his attempt to protect their interests was not his fault, but the fault of those who persuaded him that by restricting the office of Cantonment Magistrate to British officers; and making them Justices of the Peace, his soldiers (which of course includes officers) would be saved from the jurisdiction of Native Magistrates. That the panacea proposed was no panacea at all, the following case will show :—

If, on a shooting excursion beyond the limits of cantonments, and within the district of a Native District Magistrate and Justice of the Peace, one of his soldiers accidentally hurts a Native, without killing him, he may be charged with an offence under Section 336 of the Indian Penal Code, and since, by a section of the Code of Criminal Procedure, "every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the district in which it was committed," the soldier would be tried by the Native District Magistrate and Justice of the Peace. Any lawyer will tell His Excellency what a fearful amount of discretionary power Section 336, above referred to, gives to a Magistrate. There may really have been no rashness, and no negligence, on the part of the accused; the infliction of the hurt may have been perfectly accidental, and the soldier may be as deeply grieved at the accident as it is possible for a kind-hearted man, be he officer or private, to be. The Native Magistrate, however, happening to have a grudge against His Excellency's soldiers on account of their being fellow-countrymen of those who so strenuously opposed the Bill, or for some other cause, uses the fearful amount of discretion the law gives him against the accused, and sentences him to three months' imprisonment and a fine of Rs. 250. Does His Excellency think that such a state of affairs will lessen the difficulty, at present experienced, of obtaining recruits for regiments which must come to India in their turn? Does he think it will conduce to the honour of an officer or private to be unjustly sentenced to imprisonment by a spiteful Native Magistrate? Does he think it will improve the morale, prestige, or discipline of his army?

Let His Excellency then contemplate the possible fate of an officer's wife on her way to join her husband on his return from one of our great or little Indian wars in which he has been distinguished for his bravery. The lady, whilst passing through the district of a Native District Magistrate and Justice of the Peace, is falsely charged with some offence by a wicked Native. The Native Magistrate in his discretion (a most dangerous weapon in the hands of a Magistrate determined to convict), finds her guilty, and sentences her to three months' imprisonment and a fine of Rs. 1,000. Does His Excellency think that will be a fitting reward for the husband's gallantry? Will the chivalry of our gallant Commander-in-Chief allow him to aid in passing a Bill, which will permit even the possibility of the wife of one of his gallant officers being treated with such indignity, or ever permit the possibility of the wife or daughter of any officer, non-commissioned officer, or private being compelled to appear, as a prisoner, before a Native Magistrate, whose hereditary qualities and early education render it impossible for him to have that respect and tenderness for the dignity of womanhood which are innate in a Briton? It is true that the wives and daughters of our gallant soldiers (which word, as I said before, includes officers) are not soldiers, though Anacreon tells us, in his Ode commencing "*Physis kerata taurois*," that nature has given them a weapon, *Kallos* (beauty), superior to any his soldiers possess, with which it is no disparagement of his gallant army to say that the ladies are able to vanquish the bravest of their number. But though they are not soldiers, I think His Excellency will admit that they are as much entitled to protection at his hands as their husbands and fathers themselves.

If His Excellency agrees with me so far (and who can doubt it?) surely his gallant, chivalrous nature will constrain him to oppose a Bill, which will subject any of his countrywomen, albeit neither wives nor daughters of soldiers, to such indignity and danger as that above referred to.

We trust, therefore, that His Excellency will ponder well the arguments against the Bill, so that, when it comes before the Council again, he will be able to oppose it with all his might.

With reference to the experiment argument, with which he has been impressed by some one, I would remind him that we are not cels, and so are not likely to get used to skinning, and that vivisection experiments are illegal.

BRITANNICUS.

April 4, 1883.

April 11.

H. E. THE PRESIDENT'S SPEECH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—Having learnt from unquestionable authority, the authority of a Bengali contemporary of yours, the editor of which belongs to a race whose veracity has passed into a proverb, that

the Government of India is powerfully supported by the naked black arms of 250 armless, black-skinned millions, I naturally approach the speech of the head of that Government with fear and trembling, albeit he is an Englishman, and therefore, according to the same veracious authority, "not a very intelligent creature."

Here allow me to remark that, since, according to your veracious contemporary, "an Englishman is not a very intelligent creature," and according to Dr. Hunter a Bengali Covenanted Civilian is "more English than an Englishman," a Bengali Covenanted Civilian must be "not a very intelligent creature" in a greater degree, that is, a less intelligent creature than an Englishman; therefore he is not equal to, or the peer of, an Englishman. Now since Lord Ripon calls the Bengali Covenanted Civilian "the cream," how far inferior to Englishmen must be the skimmed milk, that is, the educated Bengalis who have not been to England! How thankful we ought to be to Dr. Hunter and your veracious contemporary for solving, by their joint labours, this much vexed question.

There are two things which stand forth prominently at the commencement of the speech of H. E. the President. They are his explanation of the action of Government in neglecting to consult the Government of Bengal when it consulted the other Local Governments, and the reason he assigns for the intention of Government to press the Bill forward to the second reading, so nobly frustrated by the Hon'ble Mr. Evans. In both of these cases the policy of Government was not so straightforward as we should have liked it to be. For my part, I entirely acquit Lord Ripon of want of straightforwardness or of any fault in these two matters, but that of allowing himself to be led into these two errors by some one not so straightforward as himself, and I do so notwithstanding his having, in his speech, generously adopted the faulty policy as his own, in order to screen his impolitic adviser. For the purpose of discovering who that adviser is, it is necessary briefly to recapitulate the impression made upon one by a careful perusal of every speech in support of the Bill.

The Hon'ble Mr. Ilbert's speech is explanatory. It is just such a speech as might be expected from the Legal Member, who had drawn the Bill upon lines settled before he joined Government.

The Hon'ble Mr. Quinton's is the speech of one groping in the dark for reasons, and falling into a quagmire of absurdities of his own creation.

The Hon'ble Messrs Kristo Dass Pal's and Durga Churn Laha's speeches are those of men who know the Bill is indefensible, but who, by compliments and flatteries, encourage the Government to pass it, because it panders to Bengali lust for power.

Raja Shiva Prosad's speech is that of a kind-hearted Hindu gentleman of the old school, who, though urged to support his co-religionists by false statements, is constrained to tell bitter truths about them.

The Hon'ble Sayad Ahmad Khan makes no speech at all, for the written speech, read as his, is the elegant composition of some one who puts into it sentiments which, being opposed to the teaching

of the Koran and the tenets of Islam, it is impossible for a Sayad, that is, a descendant of the Prophet, to think or utter.

The Hon'ble Mr. W. Hunter's speech is a learned apology for the Bill, which, though insufficient, does equal honour to his head and heart.

Sir Stuart Bayley's speech is that of a cautious and kind-hearted gentleman, who sees some of the dangers of the Bill, and is too honest to conceal them; but since he does not see all the dangers, though he depreciates, he does not oppose, the Bill.

H. E. the Commander-in-Chief's speech is that of a gallant soldier, persuaded by the specious arguments of some one to give qualified support to the Bill under the erroneous impression that the appointment of British officers to the office of Cantonment Magistrate will prevent the possibility of the soldiers under his command from being affected by it.

The Hon'ble Mr. James Gibbs' speech is that of a self-sufficient, supercilious prime mover of the Bill, determined to use every artifice in his power to get the Bill passed without caring who is injured by it.

The last mentioned speech, that of Mr. Gibbs', appearing to us to be the least straightforward of any, for the reasons given in a former letter, we are inclined to believe that it is through his evil counsels that the two errors we are discussing were committed.

My theory is that Mr. Gibbs, "the member," as he tells us, "in charge of the Home Department," and therefore intimately connected with the general administration of justice in the Empire, having written a minute in favour of such a measure, was most anxious to distinguish himself by getting it passed. He therefore went cautiously to work, and before any action was taken upon Sir Ashley Eden's letter, he ascertained that Sir Ashley Eden's successor and the Judges of the High Court of Bengal would not be favourable to such a measure. In order, therefore, to avoid the obstacle which the record of the unfavourable opinion of the Government of Bengal would place in the way of the measure, Mr. Gibbs advised Lord Ripon that the Government had better take Sir Ashley Eden's letter as a letter from the Government of Bengal proposing legislation in this direction, in which case there would be no need to consult the Government of Bengal, when the other Local Governments were consulted, and Lord Ripon, trusting in the *bona fides* of Mr. Gibbs, adopted his suggestion. We also believe that Mr. Gibbs, fearing for the fate of the Bill, attempted to get it pushed on quickly to the second reading stage.

This is my theory. If I am wrong, I apologise to Mr. Gibbs! If I am right, let him apologise to the British in India for placing their Sovereign's Viceroy in so invidious a position.

BRITANNICUS.

April 6, 1883.

April 14.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—If anything were needed to show the straits to which the supporters of the Bill are reduced, the contradictory nature of their arguments, and the pitfalls of their own digging into which they fall, one part of Lord Ripon's speech would supply it in a remarkable manner. His Excellency, after arguing as strongly as he could in favour of the institution of a Covenanted Civil Service to which natives are admitted, to the exclusion of Europeans, without going to England to compete for admission in the usual way as well as in favour of the admission of natives to the Uncovenanted Civil Service also to the exclusion of Europeans, and after citing the opinions of several eminent men in favour of that policy—that is to say, after arguing as strongly as he could in favour of the policy of race distinctions in the matter of admission to Her Majesty's covenanted and uncovenanted services in India—His Excellency flatly contradicts himself by saying that with those who are in favour of retaining race distinctions, he has “no sympathy whatever.” He may say, perhaps, that he meant that he had no sympathy with the retention of race distinctions which would be an obstacle to the passing of the Bill. In that case his policy is clear. It is this. Race distinctions, whenever they are unfavourable to natives and favourable to Europeans, shall be abolished; but, whenever they are favourable to natives and unfavourable to Europeans, they shall be retained. That is the policy most distinctly declared in Lord Ripon's speech. I recommend it to the careful attention of the Defence Association. Let it be proclaimed from the housetops. Let it be printed in letters of gold over every gateway of the Viceregal palace and over the entrance to every gubernatorial palace but those of Bengal and Coorg. Let it be loudly proclaimed in every city and town in the United Kingdom, and let it be proclaimed by the stentorian voice of a powerful orator in a full House of Commons, and not in the hole and corner way in which Indian affairs are usually discussed, with just enough members to prevent the House from being counted out.

Again, if anything were needed to show the ignorance of Indian affairs, not only of our non-official countrymen at home, but also of Secretaries of State for India, H. E. the President's speech would abundantly supply it; for he cites the names of the following statesmen in favour of admitting natives to Her Majesty's Indian Service to the exclusion of Europeans—Lord Cranbrook, Lord Halifax, Lord Salisbury, the Duke of Argyll, and Sir Stafford Northcote. Is it possible that these statesmen were aware that there were any British Colonists in India? Is it possible that they knew that among these Colonists there were, as there are still, well-educated and honourable young men whose fathers had served the State well in Her Majesty's Covenanted and Uncovenanted Services? Is it possible that they were aware that there were, as there are still among those Colonists well-educated and honourable young men, the sons of gallant officers, who had shed their life's

blood in defence of the State? Is it possible that they were aware that there were, as there are still, among those colonists well-educated and honourable young men, the sons of Merchants, Lawyers, Planters, Civil and Mechanical Engineers and Tradesmen, who, if they had not served the State directly, had served it well indirectly, by developing the resources of the country, by attracting wealth to it and by their civilising influence? Is it possible that they knew that they, in whose favour they were excluding the above mentioned well educated and honourable young men were the sons of men who had done nothing good for the State the sons of men who as rebels, had done harm to the State, and the sons of men who, as well as their sons were injuring the State by retarding the march of civilisation by means of their absurd and finical caste rules? No, it is not possible that they were aware of these things, and yet they are facts. The fact is that those statesmen have been kept in ignorance of the truth. And why? Because the Viceroys and Governors whose duty it has been to instruct them have been surrounded by those who, with rare exceptions, have been men whose antecedents and proclivities have unfitted them to be sound counsellors, inasmuch as they themselves have, ever since their arrival in this country, been surrounded by sycophantic natives whose flattery and subservience have blinded their sight, which was never strong or clear; and because those Viceroys and Governors have never seen or heard anything themselves but what they have seen and heard when fulsomely flattering addresses have been presented to them by sycophantic natives during their Viceregal and Gubernatorial progresses. On such occasions, my advice to my countrymen is, "Britons be silent. If etiquette prevents you from expressing your true sentiments, do not out of compliment say what you do not feel."

The Viceroy and his Councillors, instead of being ashamed, actually boast of their oppression of their countrymen in India. They gloat over their Act XI of 1836, whereby they subjected us to the injustice of native Judges in civil suits! They boast of excluding from Her Majesty's service the loyal sons of loyal men who have served the State well, and shed their blood in its defence! And they glory in throwing open that service exclusively to the sons of rebels, and of those who have never served the State, all of whom do all they can to retard the march of civilisation by their absurd and finical caste rules? In short, they boast of having thrown down the stalwart props of the Empire, and of supporting it with rotten reeds. And, not content with this they are now violently striving to force down the delicate and lovely heads of their countrywomen beneath the clumsy shoe of the heathen and woman-despising Aryan!!! Oh! were it not that, as Marcius Porcius Cato said more than 1,900 years ago, "*Jampridem equidem nos vera vocabula rerum amisimus*" (for some time past indeed we have lost the true names of things), I could describe these tyrants and their deeds in such true and glowing words, as might, perhaps, [with justice be styled "assertion and invective," but not "insinuation." But I must stop, for I feel the *vera vocabula rerum* violently trying to force themselves off the nib of my pen on to the paper, before me.

Let me conclude, however, by quoting, with a slight alteration, the complete passage of the speech of M. P. Cato, of which I have quoted a part, for it is peculiarly applicable to the Government of India at the present juncture, "*jampridem equidem nos vera vocabula rerum amisimus quia omnia jura publica abrumpere, liberalitas, malorum rerum audacia, fortitudo vocatur: eo respublica in extremo sita est,*" which may be rendered thus. "For some time past, indeed, we have lost the true names of things, for to violate all public rights is called liberality, and audacity in wickedness is called firmness; thus the State is placed in the greatest danger."

BRITANNICS:

April 9, 1883.



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