Nos. 7—586 to 594, dated Simla, the 28th April 1882.

From—A. Mackenzie, Esq., Secretary to the Government of India,

To—The Secretary to the Government of Madras.

To—The Secretary to the Government of Bombay.

To—The Secretary to the Government of the N.-W. Provinces and Oudh.

To—The Secretary to the Government of the Punjab.

To—The Chief Commissioner of the Central Provinces.

To—The Chief Commissioner of British Burma.

To—The Chief Commissioner of Coorg.

To—The Chief Commissioner of Assam.

To—The Resident at Hyderabad.

I am directed to forward for consideration the accompanying copy of a letter* from the Government of Bengal on the subject of the position of Native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction to be exercised over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects. It will be seen that, for the reasons set forth in paragraph 3 of this letter, the Lieutenant-Governor of Bengal is of opinion that the time has arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed by Chapter XXXIII of the new Code* of Criminal Procedure; or that at least Native Covenanted Civilians, who have attained the position of District Magistrate or Sessions Judge, should be entrusted with full powers over all classes of persons, European or Native, within their jurisdictions. It is certainly anomalous that a Native member of the Civil Service, holding the position of a district officer, should be debarred from taking

* No. 1411 J., dated 20th March 1882, and enclosure.

* Act No. X of 1882.

up cases which his European Assistants may try, and of which he himself, if appointed Presidency Magistrate, would have full power to dispose. Before, however, taking any action of the kind suggested, the Governor-General in Council would be glad to be favoured† on the subject.

† Madras ... } with the opinion of His
Bombay ... } Excellency the Governor in Council.
N.-W. P. and Oudh ... } with the openion of His
Punjab ... ... } Honour the Lieutenant-Governor.
Central Provinces ...
British Burmah ...
Coorg ... ... } with your opinion.
Assam ...
Hyderabad ... ...

No. 329, dated Ootacamund, the 8th June.

From—C. G. MASTER, Esq., Acting Secretary to the Government of Madras,

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

In acknowledging your letter No. 7—586, dated 28th April 1882, on the subject of the position of Native members of the Covenanted Civil Service in respect of criminal jurisdiction over European British subjects outside the Presidency towns, I am to transmit the accompanying Minutes which have been recorded by the Members of Government on this important question.

2. It will be observed that, while the Right Hon'ble the Governor and His Excellency the Commander-in-Chief are in favour of the proposed extension of jurisdiction, the Hon'ble Messrs. Hudleston and Carmichael have recorded Minutes of dissent.

Minute by the Honourable D. F. CARMICHAEL, *dated the 15th May.*

It is not true, as stated by Mr. Gupta,* whose error is not noticed by the Lieutenant-Governor of Bengal, that previous to the passing of Act X of 1872 (the existing Code of Criminal Procedure) no Magistrate, even though a British subject himself, had jurisdiction (outside the Presidency town) to try a charge against a

* Paragraph 2.

British subject. From the earliest days of British settlements in India, the Governor and his Council of every plantation, factory, or fort, had plenary criminal jurisdiction over British subjects. After this, as each Supereme Court was established, British subjects resident in India, even without the Presidency towns, became amenable to those Courts only. This restriction proving very inconvenient was removed in the Company's Charter of 1813, which empowered District Magistrates—extended afterwards to all persons exercising full Magisterial powers—to adjudicate all complaints preferred against any British subject of assaults or other injuries not being felonies. So that for nearly sixty years before the present Code of Criminal Procedure came into force, the British Magistrate in the Mofussil had pretty nearly the same authority which is given to him by that Code. The only considerable enlargement in the Code is the power given to a (British) Mofussil Sessions Judge to deal with British subjects committed by the Magistrate, provided that no severer sentence than one year's imprisonment shall be inflicted on conviction.

S. cv—53 Geo III, Cap. 155.

2. It is important to notice Mr. Gupta's mistake, because, if we were going *now* for the first time to try British subjects in the Mofussil, it would be difficult to defend the propriety of limiting the jurisdiction to British officials; but the case is different where it is proposed to legislate towards the forfeiture of an ancient privilege, dating perhaps—at any rate this is the common superstition—from Magna Charta, which declares that no Englishman shall be condemned except *per legale judicium parium*?

3. I observe from Mr. Gupta's extracts that Sir James Stephen's view of the matter was that this is eminently a case where we should consult the feelings of those who are to be subjected to the jurisdiction. I agree entirely to this. Before the Company's Charter of 1833 the Government of India had not acquired the power of legislating as Mr. Gupta would desire. That Statute gave them the power of investing the Mofussil

Courts with full criminal jurisdiction (the sentence of death excepted) over any of Her Majesty's natural-born subjects and the children of such subjects. Practically, however, except the petty jurisdiction given to a Sessions Court presided over by a British subject, in the present Code passed in 1872, nothing whatever has been done, and we know why it has not been done—the British Lion, a vulgar brute, no doubt, has wagged his tail and roared; that he would do so again now is, I think, pretty certain. To refuse the jurisdiction to the *Covenanted* Native Magistrate is, I own, less defensible. He has lived some years in England, graduated at Oxford or Cambridge, and won his position by honourable competition with young English gentlemen. The members of the Civil Service receive him cordially; but 'Society' in India unfortunately does not; we propose him at the Club where 'Society' blackballs him; and I fear the lower orders of the Briton in India are not prepared to accept him as one to be trusted with their personal liberty. If they accept the Native Magistrate in the Presidency town, it is because there they are surrounded by thousands of public-spirited compatriots, who, they are sure, would never allow them to be injured.

4. Lastly, I would observe that there is no little inconsistency about the treatment of this question at Calcutta. At one time it was enacted that at all events every British subject holding any of certain high judicial offices, ordinarily occupied by Natives, in the Mofussil, should be amenable to Mofussil Courts for corruption in the exercise of such office. After some years this Act was repealed; and when during Lord Napier's Government here, the Courts of the Travancore State convicted and punished a British subject, its treasurer, for fraud, an immense stir was made at the Foreign Office, and a law was quickly passed that no Native State could so proceed by inherent right of sovereignty, though the contrary practice had prevailed in Travancore for 35 years under the formal approval of the British Government. So at present, in Travancore, no Briton can be tried by a Magistrate who is not a Briton, and

such Magistrate has no power at all till invested with it by the Governor-General in Council. But if highly respectable Natives are to try Britons in British India, how can we refuse to let Natives of the same class do the same in Travancore territory, or in that of the other civilised Native States ?

5. 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 exaspiration, perhaps accompanied with much political mischief, amongst Her Majesty's natural-born subjects, their childern and grandchildren, lawfully begotten, who now constitute the privileged class.

DAVID F. CARMICHAEL.

Minute by the Honourable W. Hudleston, dated the 6th May 1882.

I concur in opinion with my honourable colleague, Mr. Carmichael, that the proposed extension of jurisdiction would be impolitic, and is not expedient ; and I would note that section 3, Act II of 1869, which empowers the Government of India and Local Governments to "appoint such and so many of the Covenanted Civil Servants of the Crown in India or *other British* inhabitants to be Justices of the Peace in British India beyond the Presidency towns (in which *any* persons not subjects of a Foreign State may be so appointed), distinctly contemplated that the Covenanted Civil Servants would be *British* inhabitants. It was clearly not anticipated or perceived that the contrary might be the case.

2. The position in the Presidency towns with their European population and *Bar* is essentially different from that of a Mofussil Court, where, in this Presidency at least, the *accused* might very probably be the only European British subject within a circuit of 100 miles, and, with all due recognition of the merits of the Native members of the Covenanted Service, I do not think the position would be a fair one. I am confident it would raise an outcry that would aggravate race fric-

tion far more than the removal of the *already existing* disability attaching to a small number of officials would allay it.

3. Mr. Gupta seems to me to wrongly assume that the *nominated* members of the *Native Civil Service* are members of the *Covenanted* Civil Service.

W. HUDLESTON.

Minute by the Right Honourable the GOVERNOR, *dated the 22nd May*, 1882.

I have read with great care and much respect the opinions of my honourable colleagues, Mr. Hudleston and Mr. Carmichael; but I cannot agree with them. It is, perhaps, a pity that a question was raised just now which affects so few people; but I see no answer to the claim made by Mr. Gupta, which is logically defensible. It may be that to admit that claim may wake up bad passions, which are now slumbering; but I trust this will not be so. We cannot stop where we are, if pressed to advance, without stultifying our past action. Very soon, if not immediately, the Covenanted Civilian of Native birth must be put on precisely the same footing as his European colleague. Mr. Gupta does not quite ask for this, in consequence of a misconception which Mr. Hudleston has pointed out; but there isno safe standing ground till we take up that position.

M. E. GRANT DUFF.

Minute by HIS EXCELLENCY *the* COMMANDER-IN-CHIEF, *dated the 23rd May*, 1882.

I agree with the remarks of His Excellency the Governor. I don't see how, in equity, any difference can be made in the position and power of British and Native Covenanted Civilians.

FRED. ROBERTS.

No. 4622, dated Bombay Castle, the 28th July, 1882.

From—H. F. Aston, Esq., Acting Under-Secretary to the Government of Bombay, Judicial Department.

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

In answer to your letter No. 7—587 of 28th April last, enquiring as to the opinion of this Government on the question whether Native Covenanted Civilians, or at least those of them who have attained the position of District Magistrate or Sessions Judge, should not be relieved of such restrictions as are imposed on their jurisdiction in relation to European British subjects by Chapter XXXIII of the new Code of Criminal Procedure, I am directed to state that, after consulting the higher Judicial and Magisterial officers in the Presidency on the question, and finding much diversity of opinion thereon, the Governor in Council has no hesitation in concurring with the preponderating opinion, which is to the effect that, the disability of Native Judges and Magistrates in respect to the jurisdiction should certainly be removed from those Native members of the Covenanted Civil Service who attain to the position of District Magistrate and Sessions Judge.

No. 692, dated Naini Tal, 27th May, 1882.

From—The Officiating Secretary to Government, N. W. Provinces and Oudh.

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

I am directed to acknowledge the receipt of your letter No. 7—588, dated 28th April 1882, on the subject of the position of Native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction to be exercised over European British subjects outside the Presidency towns to Judicial officers who are themselves European British subjects.

2. The opinions of several officers of experience have been received and considered, and copy of a note recorded by Mr. Duthoit, D.C.L., Officiating Judicial Commissioner of Oudh, is forwarded for information.

3. The officers consulted are generally agreed that jurisdiction over European British subjects cannot any longer be withheld from Native members of the Covenanted Civil Service as a class. They are unanimous in thinking that when a Native member of the Service has risen to the position of a Magistrate of district or of a Sessions Judge, it is imperative that he should exercise over European British subjects, the same jurisdiction as is exercised by European members of the service who are Magistrates of Districts, or Judges. There is however, some difference of opinion as to the circumstances under which the jurisdiction in question should be given to Native members of the Civil Service who hold offices other than those named. In the opinion of the majority of those consulted it should be conferred on all Native members of the Covenanted Civil Service, who are possessed of the requisite Judicial experience, and who have shown by their ability, judgment, and strength of character that they are fitted to exercise it. The Local Government would exercise its discretion, as to the individual Native members of the Service upon whom the powers of a Justice of the Peace might be conferred. But the general statutory disability under which the Native Magistrates and Judges now labour, ought they think, to be removed.

4. Sir Alfred Lyall's views on the subject are briefly these. 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 generally 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 subjects and of the Administration would, in Sir Alfred Lyall's opinion, be sufficiently provided for if the general restriction, under which no one who is not himself a European British subject, has jurisdiction over a European British subject, being removed, power be left with the Local Government to appoint as 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 list of personal fitness to each particular case for Native as well as for European members of the Covenanted Civil Service.

5. On general principles of Justice, it must, Sir Alfred Lyall thinks, be admitted that the existing class differences between European and Native members of the same service should be, as far as possible, removed. But so long as the special jurisdiction of Justices of the Peace, and the special Procedure for the trial of European British subjects, are retained in our law (and the Lieutenant-Governor would not have them withdrawn hastily or upon a side issue), it is reasonable and consistent to look specially to the qualifications of officers who are to use these exceptional powers. In these provinces there has not yet been opportunity to form any very decided opinion about the character and qualifications of the Native members of the service; and the time is still distant when it will be necessary to apply to the Native Civilians of these provinces the test of personal fitness for the charge of a District, or for the post of Sessions Judge. On general grounds, however, Sir Alfred Lyall considers that the influences which are now brought to bear on Natives in the position of members of the Civil Service,—influences arising from education and professional training, and from the responsibility that must necessarily fall upon them when placed on a level and brought into comparison with European officers,—are rapidly rendering them as a class capable

of exercising impartially the jurisdiction and Judicial powers which are ordinarily exercised by European members of the Service.

6. It must, Sir Alfred Lyall thinks, be admitted, that an officer who is appointed to be a District Magistrate should have jurisdiction over European British subjects. Inconveniences of various kinds would result if this jurisdiction were not enjoyed by every District Magistrate. A Native Covenanted Civilian, therefore, who is appointed to the charge of a District, ought to exercise this jurisdiction; for a Native Civilian, who may not be entrusted with the powers of a Justice of the Peace, is hardly fit to hold charge of a district. And if he, as Magistrate of a District, may be trusted to exercise the powers of a Justice of the Peace, he should retain them when, his charge of a District being temporary, he reverts to a subordinate post. For it would be unreasonable to let a restriction in regard to the exercise of jurisdiction over European British subjects operate so as to bring about the anomalous result that an officer, though considered fit to exercise certain powers when officiating as District Magistrate, is considered unfit to exercise them when he reverts to his former appointment.

7. Sir ALFRED LYALL would, therefore, recommend that the Code of Criminal Procedure be so amended as to allow effect to be given to the views above expressed. Act II. of 1869 has now been repealed, but section 22 of the Code of Criminal Procedure (X of 1882) forbids the Local Government to appoint any persons except European British subjects to be Justices of the Peace beyond the Presidency towns. It would be necessary, therefore, to amend the section in such a manner as to allow Local Governments to appoint Native members of the Covenanted Service to be Justices of the Peace. It would be necessary in section 443 of the same Code to omit the words, "and an European British subject;" in section 444 to omit all reference to European British subjects; and to repeal section 450. These amendments would enable the Local Government

to carry out the views above expressed, whenever occasion might arise. In short, although the Lieutenant-Governor would not, for the present, advise that a Native Covenanted Civilian should be invested (save in very special cases) with the powers of a Justice of the Peace until he has been appointed, temporarily or permanently, to be Magistrate of a District, he would confer the powers of Justice of the Peace on every Native officer, whether a member of the Covenanted Civil Service or a Commissioned Civil officer in a Non-Regulation Province, who may be appointed to be a Magistrate of a District.

Note by W. DUTHOIT, ESQ., *Officiating Judicial Commissioner of Oudh, dated Lucknow, the 19th May*, 1882.

There are, I suppose, two arguments in favour of restraining Natives of India from the exercise of jurisdiction in criminal trials over Europeans:—

I.—That, say what we may, the European is the dominant race in India, and as such is entitled to have its feelings considered and its prestige maintained.

II.—That it is doubtful whether in the exercise of jurisdiction over Europeans, the Native judiciary would not be influenced by race prejudices.

There is, I think, much force in both these arguments.

As regards the former, I would remark that, go where we may in the East, we find that a claim to be judged by their peers is successfully asserted wherever Europeans are located in any numbers; and that there is much point in Mr. Fitzjames Stephen's remark (*Supplement, Gazette of India, 4th May*, 1873, *page* 577)—"There is no country in the world, and no race of men in the world, from whom a claim to 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 distinc-

tions." But the time has, I think, come when these considerations may wisely be disregarded; and I would not advocate the restriction of the powers of Native Covenanted Civilians upon an argument based upon mere sentiment. We have taken the Native into our most important governing body; let us treat him loyally, and, as far as may be, trust him.

In the latter of the two arguments, however, I find a valid reason for not placing our Native brothers quite on the same platform with ourselves.

As Mr. Gupta has pointed out, we have now two classes of Covenanted Civilians,—the men who have entered the service by competition in England, and the men who have been appointed to it by the Viceroy in India.

These two classes of men must, I think, be treated differently.

The men of the former class will, from the circumstances of the case, be men who have in their own persons overcome the caste and religious prejudices into which they were born, and who are more or less *au courant* with European feelings and customs. Those of the latter class, on the contrary, may often be men saturated with caste and religious prejudices, and ignorant of European modes of thought and feeling. In his own person a man of the former class is likely to be as impartial a Judge as his European brother, and to influence from outside he would probably be almost equally inaccessible. But can we for a long time, at any rate, look for the same impartiality, the same inaccessibility to outside influence, in the latter class of men? I think not. We must not, I think, expect for some time to come to find in the latter class of men officers of higher intellectual capacity or greater strength of character than we have at present in our Native Uncovenanted and Honorary Magistrates of good family. I do not know what officers of the last-mentioned classes may be like in other parts of India, but I am certain, that in these provinces, they are not men who can be fully trusted to do even-handed justice as between their own countrymen of different

religions, or between their own countrymen and Europeans. When I say this, I do not mean that they would be likely as a rule to press hardly upon the European; I think, on the contrary, that they would, as a rule, unduly favour the European; all that I mean is that, from my experience of them, I could not always trust them to hold the scales fairly. It is apt to be assumed that Native Civilians will make good Judges. I take leave to doubt whether more than a small minority of the men appointed for some years to come by the Governor-General, will ever be fit for Judicial employment.

Things being so, I would make a distinction between the two classes of Native Civilians.

I would make it the rule, in default of special cause to the contrary, to appoint men of the former class (the men appointed in England by the Secretary of State) to be Justices of the Peace under Act II of 1869. I would only appoint men of the latter class (the men appointed in India by the Viceroy) to be Justices of the Peace after it had been fully ascertained that they are men fitted by strength of character and Judicial ability to exercise high judicial functions.

Assuming the appointment of Native Civilians as Justices of the Peace to be restricted as above, I would meet the difficulty by omitting the words "*and an European British subject*" from between the words "first class," and the words "shall enquire" in section 443 of the new Code of Criminal Procedure; by substituting for the words "*himself is an European British subject*" in section 444 the words "is a Justice of the Peace;" and by substituting for the words "an European British subject" in section 450 the words "a Justice of the Peace."

It will, perhaps, be objected to this proposal that it interferes with the theory upon which the system of appointment of Native Covenanted Civilians by the Viceroy—*viz.*, that they should be treated in all respects as the Civilians sent out from England—is based. The objection is valid; but I would reply that as a fact the men appointed in India do not all of them

come up to the standard of excellence which was propounded for them, and that the adoption of the proposal will not require an invidious distinction to be publicly made, but merely the laying down of a rule of practice to be privately observed by the Government of India and the Local Governments.

No. 703, dated Lahore, the 5th August, 1882.

From—W. M. YOUNG, Esq., Secretary to the Government of the Punjab,

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

I am directed to acknowledge your letter No. 7—589, dated 28th April, 1882, forwarding, for an expression of the Lieutenant-Governor's opinion, a copy of a letter from the Government of Bengal, recommending that all Native members of the Covenanted Civil Service should be relieved from such restrictions of their jurisdiction over European British subjects outside the Presidency towns as are imposed by Chapter XXXIII of Act X of 1882, or that at least Native Covenanted Civilians, who have attained the position of District Magistrate or Sessions Judge, should be entrusted with full powers over all classes of persons, European or Native, within their jurisdiction.

2. In reply, I am to say that Sir Charles Aitchison entirely concurs in the arguments quoted in the enclosures of your letter from the proceedings of the Legislative Council of 16th April, 1872, and has little to add to them. His Honour considers that Native members of the Covenanted Civil Service should be relieved from all restrictions and disqualifications imposed upon them under Chapter XXXIII of the new Code of Criminal Procedure, Act X of 1882, by reason only of their not being European British subjects; and that such of them as may be from time to time appointed Justices of the Peace and

Magistrates of the 1st class, or Sessions Judges, should be authorised by law to exercise all the powers and jurisdiction which a European British subject similarly appointed can exercise under that or any other Act.——

3. Sir Charles Aitchison, moreover, is of opinion that the same powers ought to be conferred upon all Justices of the Peace and 1st class Magistrates, and upon all Sessions Judges, whether they were European or Native, and whether they belong to the Covenanted Civil Service or not. The powers and jurisdiction to be exercised by Judicial officers should, His Honour thinks, depend entirely upon personal fitness, and in no respect upon race or service distinctions. It may be assumed that no one of any class will be appointed a Justice of the Peace or Magistrate of the 1st class or Sessions Judge who is not considered to possess the requisite qualifications, and the appointment ought, therefore, to carry with it all the usual powers and jurisdiction without regard to race, service, or creed. Under Act II of 1869, any British subject, whether European or Native, and whether belonging to the Covenanted Civil Service or not, may be made a Justice of the Peace, if he is considered properly qualified to act as such, and under section 5 of the Act, every Justice of the Peace has power to commit European British subjects for trial before a proper Court, and to do all other acts which any Justice of the peace may lawfully do; and this appears to Sir Charles Aitchison to be the broad and equitable principle which Government ought to follow. The restrictions introduced by the Code of Criminal Procedure upon the powers of Courts to enquire into and try charges against European British subects, which rest exclusively on race distinctions, are, in His Honour's opinion, invidious and unnecessary. They are indeed, a mere residuum of the time when Europeans were to a great extent under English law with which Native Judges were not supposed to be acquainted, and should now be entirely abolished, having ceased to be defensible with the revision of the Codes.

No. 1694—86, dated the 15th May, 1882.

From—A. H. L. Fraser, Esq., Officiating Secretary to the Chief Commisioner of the Central Provinces.

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

I am directed to acknowledge receipt of your letter No. 7—590, dated 28th ultimo, regarding the position of Native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction to be exercised over European British subjects outside the Presidency towns, to judicial officers who are themselves European British subjects. The Chief Commissioner is of opinion that Native members of the Covenanted Civil Service should be placed in this respect on the same footing as European members of the same service, and should be relieved of such restrictions of their powers as are imposed by Chapter XXXIII of the new Code of Criminal Procedure.

No. 360, dated Rangoon, the 11th May, 1882.

From—E. S. Symes, Esq., Junior Secretary to the Chief Commissioner of British Burmah,

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

I am directed to acknowledge the receipt of your letter No. 7—59, dated the 28th April, concerning the investiture of Native Civil servants with power to try European British subjects within their jurisdictions.

I am to submit that, in the Chief Commissioner's opinion, it is desirable that Native Civil Servants should possess the same jurisdiction over European British subjects as is exercised by European Civil Servants. Native Civil Servants are, and will usually be, quite fit to exercise such jurisdiction.

European British subjects are liable to the jurisdiction of Asiatics in Upper Burmah ; and the Chief Commissioner does not apprehend that there would be any prolonged feeling against the change advocated by the Bengal Government among the better classes of Europeans in India.

No. 764, dated Shillong, the 26th May, 1882.

From—C. J. LYALL, Esq., C.I.E., Secretary to the Chief Commissioner of Assam.

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

I am directed to acknowledge the receipt of your Circular No. 593T., dated the 28th ultimo, in which you ask for the opinion of the Chief Commissioner on the proposals made by His Honour the late Lieutenant-Governer of Bengal, that all Native members of the Covenanted Civil Service should be relieved of such restriction of their powers as are imposed by Chapter XXXIII of the new Code of Criminal Procedure, or that at least Native Covenanted Civilians who have attained the position of District Magistrate and Sessions Judge should be entrusted with full powers over all classes of persons, European or Native, within their jurisdictions.

2. In reply I am to say that if the proposal had been to do away altogether with the distinction between European and Native Magistrates in this respect, Mr. Elliott would not have supported it. The distinction is no doubt open to the charge of being invidious, and rests to a large extent rather upon sentiment and prejudice than upon reason. But that such prejudice did exist in great strength some years ago is notorious, and now that the feeling has somewhat died out, the measures taken for introducing equality between the races should be gradual and tentative in order to run no risk of re-awakening the antagonism which is passing away. It should not be forgotten, moreover, that besides the strong disinclination which

would undoubtedly be felt by European British subjects in India to being made subject generally to the jurisdiction of Native Judges and Magistrates, there are several practical reasons against that course which are not without great weight. An extensive conferment of these powers to Native Magistrates would involve the trial by them of Europeans in parts of the country where neither our police nor our jails are suited for dealing with such persons. The appearance of Europeans in Court before a Native Magistrate, surrounded by Native amla, and guarded by Native police, accustomed only to deal with the generally tractable and (in the face of Justice) submissive members of their own race, might easily lead to scandals in the administration of Justice which would be very regretable, and which would, Mr. Elliott fears, by the excitement and agitation which they would create, lead to exacerbation and strengthening of that popular prejudice and race antagonism which it has taken a long course of years to soften and abate.

3. But while these considerations, in the Chief Commissioner's opinion, should forbid any extensive conferment of jurisdiction over Europeans upon Native Judicial officers at present, he is quite at one with Sir Ashley Eden in regard to the limited proposal now put forward. He thinks that there is room and reason for a distinction between Native Civilians appointed in England by competition and those Native members of the Covenanted Service who have been appointed by nomination in India. The former class should, in his opinion, be placed in every respect on an equality with their British-born brothers in the service, and permitted, like them, if appointed Justices of the Peace, to deal with cases in which Europeans are accused. In the case of Native Civilians appointed in India, who have not had their experience enlarged, and their education broadened by a visit to Europe, he would confine the extension of these powers to such of them as have attained the grade of District Magistrate or Sessions Judge, and have also been appointed Justices of the Peace.

4. The Chief Commissioner does not think that this slight progress in the direction of equality is likely to excite any serious opposition on the part of the European community. The feeling which ten years ago it would have encountered is, he believes, gradually dying out; and the experience which is being acquired of the efficiency with which Native officers administer Justice is by degrees undermining it. The extension of Native agency in the public service, and the increase of the influence of the Native voice in all political matters, are palpable facts, and the European settler is learning that he must reconcile himself to the march of events, and accept the inevitable.

No. 315—17, dated Bangalore, the 16th May, 1882.

From—Major H. Wylie, C. S. I., Secretary to the Chief Commissioner of Coorg,

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

With reference to your letter No. 7—592, dated 28th ultimo, inviting the opinion of the Chief Commissioner of Coorg, regarding Native members of the Civil Service exercising jurisdiction over European British subjects, I am directed to state, for the information of His Excellency the Viceroy and Governor-General in Council, that Mr. Sandford is of opinion that the provisions of the present law of 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.

No. 345, dated Hyderabed Residency, the 24th August, 1882.

From—W. B. Jones, Esq., Resident at Hyderabad.

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

Replying to your Circular No. 3—594 of 28th April last, I have the honour to submit in original a letter in which the Commissioner, Hyderabad Assigned Districts, discusses the matter there referred. The Judicial Commissioner, who was also consulted, is of opinion that "the time may be considered to have arrived for extending to Natives who have qualified for the Civil Service, and who have attained the position of District Magistrate, or of Sessions Judge and Justice of the Peace, jurisdiction over European British subjects."

2. My own opinion is that such jurisdiction should be exercised by—

(1) all Native members of the Civil Service who have attained the position of District Magistrate or Sessions Judge;

(2) by such other Native members of the Civil Service as the Local Government may specially empower in this behalf.

It is scarcely necessary for me to state in detail the reasons which induce me to give my opinion in favour of the small relaxation of the present law which His Honour the Lieutenant-Governor of Bengal suggests. The principle that a European British subject shall only be tried by one of his own class has the sanction of a long history behind it. I certainly should not be disposed to rest a recommendation for a departure from it on considerations of mere administrative convenience. All that can be said is that the reasons by which the general principles might be defended have, from the days when it was first asserted, until now, been gradually getting weaker, and that the reasons for the particular departure from the principle now proposed are the novel results of the altered circumstances of the Civil Service and of India generally, and that, to use the Judicial Commissioner's expression, "the time has come" when the change ought to be made. It will be a small change in itself, but it will be an act of justice to those Natives of India whom we invite to take their places by our side as Civil Administrators; and will

add to the numerous measures which of late years have tended to bridge over the separation between Englishmen and their Indian fellow subjects, which began when, assuming the Dewani of Bengal, we constituted ourselves the sole Civil Administrators of the country.

4. I will only add that, while the proposed change appears to me to be demanded of us as a measure of justice to Native members of the Civil Service, and of reasonable concession to general Native opinion, I cannot believe that it can be regarded by intelligent Europeans with serious dislike. In days when the interior of India was reached with difficulty, when no press, railways, telegraphs, or Bar existed; when Native Magistrates were untrained and unacquainted with European habits and feelings, an Englishman, almost alone in an up-country district, might with reason apprehend that he would not always obtain an impartial trial before a Native Magistrate. All this is now changed, and a claim which was formerly grounded on a reasonable apprehension, can, it seems to me, when concession is limited, as it is proposed to limit it, rest on little besides unreasonable class prejudice.

No. 32A., dated Chiculda, the 1st June, 1882.

From—A. P. Howell, Esq., Commissioner, Hyderabad Assigned Districts,

To—The Secretary for Berar to the Resident at Hyderabad.

I have the honour to acknowledge your No. 319J. of the 8th instant, forwarding for opinion a letter from the Government of Bengal, with enclosure, relative to the jurisdiction to be exercised by the Native members of the Covenanted Civil Service over European British subjects.

2. The Lieutenant-Governor is of opinion that the time has now arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXIII of the new

Code of Criminal Procedure, or when "at least Native Covenanted Civilians, who had 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." The grounds of this opinion are (1) that it is right as a matter of general policy that Covenanted Native Civilians should be empowered to exercise jurisdiction over Europeans as well as Natives; and (2) that it will be a matter of administrative convenience for Natives to exercise such powers, otherwise the anomaly might occur of a European Joint Magistrate who is subordinate to a Native District Magistrate or Sessions Judge, being empowered to try cases which his immedite superior cannot try. It is added that, as Native Presidency Magistrates within the Presidency towns exercise the same jurisdiction over Europeans that they do over Natives, therefore there is no reason why Covenanted Native Civilians, with the position and training of District Magistrate or Sessions Judge, should not exercise the same jurisdiction over Europeans as is exercised by other members of the service. These views are expressed upon a note by Mr. Gupta, of the Bengal Civil Service, representing the anomalous position in which Native members of the Covenanted Civil Service are placed by Chapter VII of the old Code, which is reproduced in Chapter XXXIII of the present Code.

3. The first point that occurs to me is, that the case is, unintentionally no doubt, very unfairly and incompletely stated by Mr. Gupta. He refers to the discussion of 1872, and says that nothing can be added to the eloquence or the sound reasoning of those who argued then in favour of the view which he advances now. He adds that the arguments of 1872 in favour of his view present themselves with redoubled force in 1882, and that "they are too obvious to require mention." Still he does mention them, and at length, in skilfully arranged "extracts for ready reference," and then he gives a reason, due to a recent but "important change," in the constitution of the

Covenanted Civil Service, why there is admittedly less force in those arguments now than there was ten years ago.

4. To this I reply that if the arguments in favour of Mr. Gupta's view are all that they are represented to be, how is it that they were in the minority in 1872? Mr. Gupta attempts to make a point in the composition of that minority; but when I find Sir J. Stephen and Sir John Strachey voting on the same side, and that side the majority, it is idle to say that the arguments against which they voted are "too obvious to require mention." Mr. Gupta cites the authority of the late Lieutenant-Governor of Bengal (Sir George Campbell), who voted with the minority, but Mr. Gupta fails to notice in his extract, or even to allude to Sir George Campbell's admission, that he seldom had greater doubt and difficulty in making up his mind, and that when he did vote for the amendment, it was on the express ground that "it appeared to His Honour that what was now proposed was a minimum of change." It was not proposed to impose upon the European public the general liability to be tried by Native Magistrates, but only the possibility of being placed under the jurisdiction of three or four Natives who had qualified themselves for admission into the ranks of the Covenanted Civil Service, and who, under the existing law, might be "Justice of the Peace." What then was Sir J. Stephen's argument? I give it, as Mr. Gupta gives the opposite views, in extracts: "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 partinacity by those who are subject to them. The Mahommedan has his personal law. The Hindoo 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 influenuce enjoy, in many cases, privileges which stand on precisely the same principle; and are

English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? that whilst 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 who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim for absolute indentity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with every distinction which race, caste, and religion can create, and passionately tenacious as are its inhabitants of such distinctions.

"It may be replied that to use this argument is to desert the characteristic principles of English Government and to make a point against an antagonist by surrendering what we ourselves believe. My answer is, that the general principle that all persons should be subject to the same laws is subject to wide exceptions, one of which covers this case. It is obvious enough; but possibly the best way of stating it will be to show how it applies to the particular matter before us. The English people established by military force a regular system of Government, and in particular, a regular system for the administration of justice, in this country, in the place of down right anarchy. The system of administering justice was, and is, beyond all question, infinitely better than any system which the English people found here; but it neither is, nor can be, the English system.

"It must of necessity differ from it in its characteristic features; and although I am not one of those who blindly admire the English system of criminal justice, I say that, if English people in India like it, which they notoriously do, they have a perfect right to have it."

Again:—"The privilege as to jurisdiction is the privilege of the prisoner, not the privilege of the Judge. The European had an objection to be tried by the Native. Considering the position in which he stood, the question was whether you would put him in a position in which he did not at present stand. You placed no slight upon the Native by saying that he could only try a man of his own race. What was there against the feelings of the Native in saying that? Why should any one feel a slight, because he was told that this particular man was to be tried in a particular way? On the other hand, it was a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen."

I think Mr. Gupta would have strengthened his case had he explained what is the answer now to Sir J. Stephen's arguments which commanded a majority ten years ago. Logically, it would seem that as long as we have personal law in this country; as long as women and privileged Natives are excused from appearing in our Courts; as long as the European British subject has any rights and privileges under the law; so long should the present law, as to the Judge before whom the European British subject must be tried, be maintained. I submit that when a European discusses the question, he is exposed to the converse difficulty of that urged by Mr. Gupta, on the score of being personally interested, and that he is likely to be deceived by the false glamour of liberality attaching to his adoption of Mr. Gupta's view, which ought not, however, to obscure the real issue whether, under the circumstances of India, the European British subject should be deprived of the one privilege of personal law which he most values. The question is by no means so obvious as Mr. Gupta represents. I believe that the majority of non-official Europeans would answer it still as Sir H. Norman did. "He had the highest regard for the Natives of the country, and particularly for those who had attained the very important position of a Magistrate of the first class; but look-

ing to the peculiarities of our position here, and to the great differences of character between Natives and Europeans, he thought it was undesirable to allow the trial of European British subjects by Natives in the Mofussil."

5. As to the arguments urged by the Government of Bengal, the first simply and admittedly begs the whole question on which Sir J. Stephen and Sir H. Norman took their stand. As for the second argument, based on administrative convenience, the question is how often would such cases be likely to arise, and whether, if they did, the inconvenience would be so frequent, or of such consequence as to supply an answer to the arguments of Sir J. Stephen and Sir H. Norman, which, I submit, are just as strong now as ever they were. In any case the plea of anomaly has far less force in India than elsewhere. Surely, too, it might be argued that Natives and Europeans are not on the same footing in fact in many ways, and that the law recognises this fact; that there must be some differences in the position of the European British subject from that of the Native, and that the law recognises these differences, and that the nationality of the Judge is no more invidious or special than the composition of the Jury.

6. In conclusion, then, if I am asked for an opinion about a clause in a law which, although only just passed, and not yet actually in force, is considered by a high authority already to require to be amended in an important particular, I would admit that there is enough force in the plea urged by Mr. Gupta, and supported by the Bengal Government, to warrant a reconsideration of the question decided in the Legislave Council on the 4th May, 1872. I go further and think that the point should be raised and discussed now, because in 1872 many of the speakers were hampered by pledges or *quasi* pledges which prevented the question being really decided on its merits. And as to the merits of the question, I would say that it is no doubt desirable that there should be no personal laws, but that, in my humble opinion, the whole question of personal law should be considered together, and

not the single point raised by Mr. Gupta. And if the question be raised, the decision should be final, for we cannot always expect the same serenity in the political horizon which we enjoy at present.

I append the replies of the Deputy Commissioners of Buldana and Amarioti, who were consulted on the subject.

In my opinion the time has certainly come when Native members of the Civil Service who have been made District Magistrates or Sesssions Judges should be entrusted with full powers over all classes, European or Native, within their jurisdiction.

A. TULLOCH,
Deputy Commissioner.

Amraoti, 27th May 1882.

I am of opinion that the invidious distinction should be abolished, or that an understanding should be arrived at under which Native members of the Covenanted Civil Service would be held to be disqualified for office as Sessions Judges or Magistrates of the District. I quite agree with Mr. Gupta, that if you entrust them with these responsible offices, you ought not to cripple their powers.

There is, however, no force in so much of the argument as is based on the fact that Native Presidency Magistrates and High Court Judges already have jurisdiction over Europeans. They are exposed to a publicity that renders their position exceptional. Mr. Gupta himself seems inclined to make distinction between Native Covenanted Civilians who have been trained in England and those who have not, and I think he does so rightly. I am, therefore, inclined to believe that the latter class of Civilians should not hold office as

Sessions Judges or Magistrates of Districts. In other words, I would make the experiment under restricted conditions, and confine the exercise of jurisdiction over Europeans to Native Civilians who have been trained in England.

H. C. MENZIES, *Lieut.-Colonel,*
Deputy Commissione.

Buldana, 29th May, 1882.

VICEREGAL LEGISLATIVE COUNCIL.*

The Council met yesterday at Government House at 11 A.M.

Present.—His Excellency the President; His Excellency the Commander-in-Chief; H. H. the Lieutenant-Governor; the Hon'ble W. W. Hunter, LL.D., C.I.E.; Hon'ble J. Gibbs, C.S.I., C.I.E.; Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.; Major General the Hon'ble T. F. Wilson, C.B., C.I.E.; Hon'ble C.P. Ilbert, C.I.E.; Hon'ble T. C. Hope, C.S.I., C.I.E.; Hon'ble Maharaja Sir Jotindra Mohun Tagore, K.C.S.I.; Hon'ble Raja Siva Persada, C.S.I.; Hon'ble Sayyad Ahmed Khan, C.S.I.; Hon'ble Durga Charan Laha; Hon'ble H. J. Reynolds; Hon'ble H. S. Thomas; Hon'ble G. H. P. Evans, Hon'ble Robert Miller.

CODE OF CRIMINAL PROCEDURE AMENDMENT BILL.

The Hon'ble Mr. ILBERT moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

He said,—The effect of the existing law on this subject is summed up in a section of the new Criminal Procedure Code (443) which directs that "no Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and a European British subject, shall inquire into or try any charge against a European British subject."

Now there is no restriction on the nationality of a Presidency Magistrate; Natives of India may hold and have held that office. The result of the law therefore is that, within the limits of the presidency towns jurisdiction over European British subjects may be exercised by any person who happens to be a Presidency Magistrate, whether he is a European British subject or not; but that outside these limits, in any part of the

* "*Englishman*," February 3, 1883.

mofussil, that jurisdiction cannot be exercised by any of Her Majesty's Magistrates, however complete may have been his training, however long may have been his judicial experience, however high may be his rank in the service, unless he happens to be a European British subject.

Such is the existing law, and it was settled in this form in the year 1872, after a very remarkable debate which resulted in a very remarkable division. The Select Committee on the Bill which afterwards became law as the Criminal Procedure Code of 1872 had adopted a resolution in which they recorded their opinion "that the jurisdiction of Magistrates and Sessions Judges who are Justices of the Peace might with advantage be extended in the case of European British subjects." It will be observed that there was nothing in this resolution which implied that the exercise of this jurisdiction in future was to be confined to persons who are themselves European British subjects. Such a limitation was however inserted in the Bill as finally settled by the Committee, but when it was brought before the Legislative Council Sir BARROW ELLIS (I shall take the liberty of referring to him and others by the titles which they now bear) moved an amendment which would have had the effect of striking out the limitation. It would appear that the limitation to which he objected had in fact been introduced in pursuance of some kind of bargain or compromise between members of the committee holding different opinions on the subject. Repeated references were made in the course of the debate to the existence of this compromise. Thus Mr. Chapman, whilst expressing his agreement with much that had fallen from Sir Barrow Ellis, said that he felt himself unable to support the amendment for the very plain and conclusive reason that he, as member of the Select Committee, considered himself bound to adhere to the pledge he had given to the European community that under the altered law an Englishman should retain his privilege of being tried by an Englishman. Again, Mr. Inglis said that he did not intend to go

into the question on its merits, as he considered that he was bound by the terms of the recommendation which he had signed with other members of the Committee. My eminent predecessor, Sir James Stephen, who was in charge of the Bill, declared in the most emphatic terms that he could not undertake to justify on principle the terms of the compromise. And Sir J. Strachey, who also supported the proposals, admitted that the provisions of the Bill represented a compromise which was open to criticism of every kind. The amendment moved by Sir Barrow Ellis was put to the vote, and was lost on a division by a majority of 7 to 5. But the minority on the division included the majority of the Executive Council. It consisted of the then Viceroy, Lord Napier of Murchistoun, the then Lieutenant-Governor of Bengal, Sir G. Campbell, his immediate successor, Sir R. Temple, the then Commander-in-Chief, Lord Napier of Magdala, and Sir Barrow Ellis. Each of these distinguished members of the Government of India not only voted but spoke in support of Sir Barrow Ellis's amendment and against the proposals that are embodied in the existing law. And I shall make no apology for quoting to-day some of the arguments which they deu and some of the opinions which they expressed.

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

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

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

LORD NAPIER OF MURCHISTOUN said that his vote would be given in conformity with the opinion which had been expressed by the Commander-in-Chief. His Excellency thought that the restriction would embody a stigma on the Native community in general. It was equivalent to stating that under no circumstances, as far as the administration of the law was concerned, could the Native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the powers of trying European British subjects. He thought that by the restriction we in effect said to the European "You are not to be tried in the mofussil by the agency by which you are tried in the High Court and in the Courts of the Magistrate in the Presidency town, with the general approval and sanction of the European and Native communities." It was saying in effect that the Native who had attained to the position of a Sessions Judge was not competent to try a European British subject, but that he might try him when he became a Judge of

the High Court and sat beside a European Judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these Native Civil Servants to try a European British subject, than in permitting Native Justices in the Presidency towns to try him. There appeared to His Excellency to be no such broad distinction whatever between the conditions of the society and of public opinion in this respect between the Presidency towns and the mofussil. There were now a great number of public-spirited men and a great deal of public spirit all over the provinces. Communications by rail, the dissemination of newspapers both in English and the Vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the Presidency towns and the mofussil. His Excellency did not himself consider that there was the slightest possibility that in the rare case of a Civil and Sessions Judge trying a European British subject in the mofussil there would be an abuse of justice.

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

And finally Sir Richard Temple said he thought that the inference was undeniable, that if the Natives were eligible to

all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as Judges over Europeans in the mofussil for offences of the trivial nature over which it was proposed to give Justices of the Peace cognizance.

However, as I have said, these views, though they commended themselves to the majority of the Executive Council, did not commend themselves to the majority of the Legislature, and the amendment proposed by Sir Barlow Ellis was lost.

It was not to be expected that a decision which avowedly proceeded on the terms of a compromise, and against which such a formidable weight of official authority was arrayed, should be accepted as a permanent settlement of the question. It has not been so accepted. Whenever proposals have been made for amending the Criminal Procedure Code the attention of the Government has been directed to the anomalous position in which Native members of the covenanted civil services have been left by the legislation of 1872. In the early part of last year Mr. Gupta, a Native member of the Bengal Civil Service, submitted to the Lieutenant-Governor of Bengal a note in which he pointed out that the existing law, if maintained, would give rise to an invidious distinction, and to very practical inconveniences in the case of those natives of the country who might expect in course of time to attain to the position of a District Magistrate or of a Sessions Judge. I may add that the anomalous nature of the present arrangements could not be better illustrated than by Mr. Gupta's own case. He officiated for some time as Presidency Magistrate here in Calcutta, and while so officiating he had, under the law as it stands, full powers over European British subjects, even in comparatively serious cases, and exercised those powers with satisfaction to the Local Government and the public. On his removal to a more responsible appointment in the interior he ceased to be qualified to deal with even the most trivial cases affecting Europeans. Mr. Gupta's proposal was that the law should be amended by

extending the jurisdiction over European British subject, to natives of this country holding the office of a District Magistrate or of a Sessions Judge, and he suggested that the amendment might be made in the Bill, which has since become law as the Criminal Procedure Code of 1882. However, that Bill had then nearly reached its final stage, and it was obvious that a question which was of such importance and difficulty, and about which it would be impossible to take action without consulting both local Governments and the Secretary of State, could not with propriety be raised at so late a stage of the discussion on the Bill. In this, as in other matters, the Government had, as was pointed out last year by my friend Major Baring, to choose between, on the one hand, passing the new Code, with the amendments which had been generally accepted—amendments which were of considerable importance—or on the other hand, postponing the Code, with all its improvements of form and substance, until all possible amendments of law had been got together and considered.

Of these two courses the Government adopted, and I think it will be generally agreed, wisely adopted, the latter, taking care, however, to make it clear that whilst re-enacting for the purpose of consolidation certain provisions of the existing law, they were not to be considered as expressing an opinion that these provisions might not with advantage be amended.

This was Sir Ashley Eden's view, and accordingly he postponed the submission of Mr. Gupta's note to the Government of India until the new Criminal Procedure Code had become law. But when he did submit it, he accompanied it with a strong expression of opinion as to the expediency of altering the law in the direction indicated by Mr. Gupta. He remarked that as a question of general policy it seemed to him right that, Covenanted Native Civilians should be empowered to exercise jurisdiction over Europeans as well as over Natives who are brought before them in their capacity as Criminal Judges,

Now that Native Covenanted Civilians may shortly be expected to hold the office of District Magistrate or Sessions Judge, it is also, as a matter of administrative convenience, desirable that they should have the power to try all classes of persons brought before them. Moreover, if this power is not conferred upon native members of the Civil Service, the anomaly may be presented of a European Joint-Magistrate who is subordinate to a Native District Magistrate or Sessions Judge being empowered to try cases which his immediate superior cannot try. Native Presidency Magistrates within the Presidency towns exercise the same jurisdiction over Europeans that they do over natives, and there seems to be no sufficient reason why Covenanted Native Civilians, with the position and training of District Magistrate or Sessions Judge, should not exercise the same jurisdiction over Europeans as is exercised by other members of the service.

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

Before taking any further action in the matter, the Government of India considered it desirable to ascertain the views of local Governments and Adminstrations as to the expediency of the amendments suggested by Sir Ashley Eden, and accordingly they addressed a circular letter to the several local Governments inviting a confidential expression of opinion on those suggestions The result was remarkable. There was an overwhelming *consensus* of opinion that some change in the law was required and that the time had come for removing the present absolute bar on the investment of Native Magistrates in the interior

with powers over European British subjects. As to the precise extent to which the law should be modified, there was, as might naturally be expected, some difference of opinion; but it was generally admitted that a native civilian in the position of a District Magistrate or Sessions Judge should have equal powers with his European colleagues, and there was a very strong body of opinion that there should be no distinction made between Native and European members of the Covenanted Civil Service at any step in respect of their judicial powers, provided that they were individually found qualified to exercise those powers.

Under these circumstances, it has become abundantly clear that the existing law cannot be maintained, and the only question which we have to consider is not whether the law should be altered, but how it should be altered. In approaching this question there is one consideration of which we must not lose sight and of which it is not likely that we should lose sight, and that, is, that this is a subject with respect to which it is eminently undesirable to avoid constant tinkering of the law. The settlement arrived at in 1872 may not have been satisfactory, I do not myself think that it was satisfactory, but such as it was, we should not be justified in re-opening this difficult question, unless we saw our way to a solution which should be, I will not say final, for nothing in legislation is absolutely final, but which should contain in itself the elements of stability and durability. Can we find any such solution? If we look the question fairly in the face, and endeavour to realise distinctly the object at which we ought to aim, and the facts with which we have to deal, I think that we can. As to the object at which we ought to aim, there will be no difference of opinion. It is simply the effectual and impartial administration of justice, and as to the facts with which we have to deal, no one who has studied the statistics and reports of the cases involving charges against European British subjects can fail to be struck with two things, first, that as compared with the great mass of ordinary

criminal business they are exceptionally rare, and secondly, that they are exceptionally troublesome and difficult. To what conclusion do these two peculiarities point? They appear to me to show that, in the interests of the effectual and impartial administration of justice it is not necessary, and that, in the same interests it is not desirable, to clothe all Magistrates indiscriminately with the power of dealing with these cases. As we are justified in excluding from the jurisdiction of interior Magistrates as such the cognisance of the graver classes of offences, so we should be justified in excluding from their jurisdiction the cognisance of a class of offences the trial of which, from the circumstances under which they are ordinarily committed, presents features of exceptional difficulty. It involves no disrespect to the magisterial or judicial office to say that an officer who may be fully competent to dispose of a common case of theft or assault may not be competent to dispose of a class of cases which, as will be admitted by all impartial persons, are apt to put an exceptionally severe strain on the judicial qualities of tact, judgment, patience and impartiality. We are therefore, I conceive fully justified, on principles of general applicability, in confining the jurisdiction exercisable in this particular class of cases to a specified class of Magistrates, and the further question which we have to determine is how this class is to be defined. My answer is that the line ought to be drawn with reference to the presumable fitness of the Magistrate, and with reference to that alone, and that we ought not to base any difference we which may think fit to make between particular classes of Magistrates, on race distinctions which are as invidious as they are unnecessary.

These are the principles by which we have been guided in framing the proposals which I am now asking leave to lay before the Council. We are of opinion that the time has come when the settlement which was arrived at in 1872 may with safety, and ought in justice to be reconsidered: we are of opinion that if this question is reopened it ought to

be settled on a permanent and stable foundation; and finally we are of opinion that no change in the law can be satisfactory or stable which fails to remove at once and completely from the Code every judicial disqualification which is based merely on race distinctions.

Accordingly we propose to amend the law, first by repeating the words which confine the exercise of jurisdiction over British subjects to persons who are European British subjects themselves; secondly, by declaring that every District Magistrate and Sessions Judge shall be, by virtue of his office a Justice of the Peace, and as such, capable of exercising jurisdiction over European British subjects: and thirdly, by empowering Local Governments to invest with the office of Justice of the Peace, and consequently with jurisdiction over European British subjects, any person who, being either—

(*a*) a member of the Covenanted Civil Service.

(*b*) a member of the Native Civil Service constituted under the statutory rules.

(*c*) an Assistant Commissioner in a non-regulation province; or

(*d*) a Cantonment Magistrate—

is for the time being invested with the powers of a Magistrate of the first class, and is, in the opinion of the Lieutenant-Governor fit to be entrusted with those further powers. We propose to make no distinction in the law between European and Native officers. We consider that the care exercised in the selection of officers for the Covenanted Service, both in Regulation and non-Regulation provinces, together with the subsequent training that they receive, warrants our amending the law in the manner proposed. As a fact no officer would be eligible until he had passed all the departmental examinations and been in training long enough to show the superior authorities

whether he would be likely to use any powers conferred on him with proper discretion. These proposals will completely remove from the law all distinction based on the race of the Judge. The limitations remaining on the jurisdiction of particular classes of Magistrates will be based not on any difference of race, but simply on differences of training and experience.

These, then, are our proposals. I repeat that in making them the only object which we have in view is to provide for the impartial and effectual administration of justice. It is by that test that we desire our proposals to be tried. If they are tried by that test, I am not without a confident hope that they will commend themselves both to the European and to the Asiatic subjects of Her Majesty as reasonable and just.

The Hon'ble Mr. EVANS said that he was not aware of the rules of debate in that Council, but wished to know whether the principle of this measure should be debated on this occasion when leave was asked to introduce a bill, and whether or not the measure should be debated at a later stage. Most of the non-official members of the Council were in the same position as himself and had heard to-day for the first time what the proposed measure was. It was no doubt one with regard to which the principle had been often debated and was a vexed question. As had been pointed out, it was settled by a compromise in 1872, and Mr. Evans would also point out that there was nothing which was more dear to any man, and more especially to an Englishman than his liberty, and nothing which he was more jealous of than any change in the tribunal which could deprive him of that liberty in a moment. He might also point out that when an Englishman came into a tropical country, a sentence of imprisonment on him in certain seasons and places meant almost certain death. He did not propose now to discuss the principles of the settlement which it was now proposed to come to. He thought that the able speech in which it was introduced and the grave matters which were set forth in it

deserved full consideration, and he did not think he would be justified in propounding any views of his own on the subject at once. But time should be given to the non-official community considering that the question of the tribunal was one of the greatest importance, far greater than any question concerning the law of property and other such matters. Under these circumstances he would ask His Lordship if he considered it was convenient to debate the principle of the bill on the motion for leave to introduce it, than that the motion should be postponed so as to give time to the non-official English community in India, which was scattered far and wide in the various provinces, to make their voices heard, or at any rate that it should be postponed to-day, as he felt he could not give full consideration to it that day.

His Excellency the PRESIDENT said: Nobody is pledged in the smallest degree by the introduction of this or any other Bill, and it would be obviously very unfair that Hon'ble members of Council should be called upon to express an opinion on the principle of a Bill which they have not seen. Nothing could be more lucid than the statement made by my Hon'ble and learned friend who proposes to introduce the Bill, but until the Bill itself is in the hands of the public it would be unfair both to them and to the Government that any opinion should be expressed upon it, or that any discussion should take place upon the measure in this Council.

No one knows better than my Hon'ble and learned friend Mr. Evans how difficult it is to understand a Bill, even with the clearest explanations of its provisions, until you have the Bill itself before you; and the public are sometimes perhaps a little too much inclined to criticise by anticipation measures of which they know nothing and have seen nothing, and I myself should not be in the smallest degree inclined to give any sort of encouragement to a procedure which, as I have said, is unfair

both to the Government and to the public. I need not, I am sure, say that the Government has no desire to push this matter forward without giving full time for its consideration.

The proper occasion, I think, for discussing the principle of the Bill will be on its reference to a Selected Committee.

I look upon that stage of the procedure as standing in the place of what is called the second reading in Parliament at home. In the House of Lord's a Bill is often brought in and put on the table without saying a word; in the House of Commons this is not the case, but the occasions on which discussions arise on the introduction of a Bill are rare, and debate on the principle of the measure takes place on the second reading.

What I would therefore suggest would be that leave should now be given to bring in this Bill, that it should be brought in at the next meeting of the Council and then published; and that due time should be given before the motion is made for its reference to a Select Committee in order to enable members of Council to consider it when they receive it in print and to be prepared to discuss it fully after they have acquired a perfect knowledge of its provisions.

Maharajah Sir Jotendro Mohun Tagore was about to speak when His Excellency continued and said—

Although according to strict rule, the Maharajah has lost his time for speaking, I am sure that this Council would wish me to give him leave to address them. And in doing so, I should like to take the opportunity of expressing the great regret I feel that this, I believe, is the last occasion on which we shall have the presence in the Council of our Hon'ble colleague, Maharajah Sir Jotendro Mohun Tagore. During the long period of his service in the Legislative Council the Maharajah has distinguished himself by his fairness, his enlightened views, and his remarkable courtesy towards all the members of this Council.

THE PRESIDENT.

The Government of India have derived very great advantage from the presence of my Hon'ble friend on the Council, and it is a source of deep regret to me that the fair rule of giving a chance to others to take their place in the Council, and therefore of not unduly prolonging the presence in it of any one particular member, added to the Maharajah's own desire to be relieved of duties which clash with his other engagements have necessitated his retirement, and occasioned the great loss to the Council which must result from his absence from it.

The Hon'ble Maharajah JOTENDRO MOHUN TAGORE said :—Lord,—I have listened with great interest to what has been said by my hon'ble and learned colleague opposite, and as this may be the last occasion on which I shall have the honour of addressing this Council, I beg leave to take this opportunity of offering, on behalf of my countrymen, their grateful thanks to your Excellency for redeeming the promise which was held out to them during the last session of the Council, to amend that portion of the Criminal Procedure Code which relates to the trial of British born subjects. Although it is impossible to say anything with regard to the details of the Bill before it is introduced, the very fact that something will be done now to remove the anomaly which has been a source of standing complaint with my countrymen from a very long time, is of itself a matter for congratulation. Knowing the broad and statesmanlike views which have always characterised your Lordship's Government, we have every reason to hope that legislation in this direction will be of a piece with those other great measures of reform, among which I may name the repeal of the Vernacular Press Act, and the Act which for the first time has introduced the principle of Self-Government in this country which we feel sure will mark your Lordship's administration as an epoch in the annals of British India; and I am free to confess, my Lord, that on this closing day of my humble career in this Council, I feel an honest pride that I have had

the good fortune to occupy a seat here while these great measures have been either passed or initiated under the auspices of your Excellency's liberal Government.

And I take this opportunity, my Lord, to tender my most hearty thanks for the very kind manner in which your Excellency has been pleased to speak of my humble services in this Council.

The Motion was then agreed to.

A Bill to Amend the Code of Criminal Procedure, 1882, *so far as it relates to the exercise of jurisdiction over European British subjects.*

Preamble.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects; It is hereby enacted as follows:—

Amendment of section 22.

1. For the last clause of section 22,(1) the following shall be substituted:—

"may, by notification in the official Gazette, appoint such persons as he or it thinks fit, who, being

(*a*) members of the Covenanted Civil Service,

(*b*) members of the Native Civil Service constituted under the Statute 33 Vic., cap. 3(2).

(*c*) Assistant Commissioners in Non-Regulation Provinces, or

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(1) 22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency towns.

And every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid.)

May, by notification in the official Gazette, appoint such European British subject as he or it thinks fit to be Justices of the Peace within and for the territory mentioned in such notification.

(2) Empowers authorities in India to appoint Natives of India to Civil Service without certificate from the Civil Service Commissioners.

(*d*) Cantonment Magistrates,

are invested with the powers of a Magistrate of the first class, to be Justices of the Peace within and for the territories mentioned in the notification."

Amendment of section 25.

2. In section 25, (1) after the words "British India" the following shall be inserted:—

"Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving."

Amendment of section 443.

3. In section 443, (2) the words "and an European British subject" shall be omitted.

New section substituted for section 444.

4. For section 444(3) the following shall be substituted:—

"444. An Assistant Sessions Judge shall not exercise jurisdiction over an European British subject, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government."

Assistant Sessions Judges who may try European British subject.

(1) 25. In virtue of their respective offices the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

(2) 43. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall enquire into or try any charge against an European British subject.

(3) 444. No Judge presiding in a Court of Session shall exercise jurisdiction over an European British subject unless he is himself an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Repeal of section 450 and of the last sixteen words of section 459.

5. Section 450(1) and the last sixteen words of section 459(2) are hereby repealed.

Construction of Act with Code of Criminal Procedure, 1882.

6. (1) In this Act "section" means section of the Code of Criminal Procedure,

(2) All references to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

Saving for existing appointments.

7. Nothing in this Act shall affect the validity of any appointment made before the passing of this Act.

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(1) 450. If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the committing magistrate for the orders of the highest court of criminal appeal for the province within which such division is situate.

In British Burma the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the highest court of criminal appeal.

(2) 459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or any Magistrate or Sessions Judge outside the Presidency towns not being an European British subject.

STATEMENT OF OBJECTS AND REASONS.

SHORTLY after the Code of Criminal Procedure, Act X of 1882, was passed, the question was raised whether the provisions of that Code which limit the jurisdiction over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects should not be modified. It was thought anomalous that, while Natives of India were admitted to the Covenanted Civil Service and held competent to discharge the highest judicial duties, they should be deemed incompetent to be Justices of the Peace and to exercise jurisdiction over European British subjects outside the Presidency towns.

2. After consulting the Local Governments, the Government of India has arrived at the conclusion that the time has come for modifying the existing law and removing the present bar upon the investment of Native Magistrates in the interior with powers over European British subjects. The Government of India has accordingly decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judical disqualification which is based merely on race distinctions.

3. With this object the present Bill has been prepared. In section one it amends section 22 of the Code, which provides that only European British subjects can be appointed Justices of the Peace, and gives the Government power to appoint to that office such persons as it thinks fit belonging to the following classes :—

(*a*) Members of the Covenanted Civil Service;

(*b*) Members of the Native Civil Service constituted by the rules made under the Statute 33 Vic., cap. 3;

(*c*) Assistant Commissioners in Non-Regulation Provinces ;

(*d*) Cantonment Magistrates, and being persons invested with the powers of a Magistrate of the first class.

4. The Bill then in section two amends section 25 of the Code, and makes all Sessions Judges and District Magistrates *ex officio* Justices of the Peace.

5. Section three repeals so much of section 443 of the Code as limits jurisdiction over European British subjects outside the Presidency towns to Magistrates who are themselves European British subjects.

6. Section four repeals the similar provision of section 444 of the Code with regard to Sessions Judges.

7. Lastly, section five repeals section 450 of the Code, which provides for the case where the Sessions Judge of the division within which the offence is ordinarily triable is not an European British subject. The same section of the Bill also repeals so much of section 459 of the Code as provides that that section shall not be deemed to confer on Magistrates and Sessions Judges outside the Presidency towns, not being European British subjects, jurisdiction over European British subjects.

C. P. ILBERT.

The 30th January, 1883.

THE "TIMES"

February 5, 1883.

(FROM OUR CORRESPONDENTS.)

(*By Indo-European Telegraph.*)

INDIA.

Calcutta, February 4.

Government, without giving any warning of its intention, has suddenly sprung a mine on the European Community. At a meeting of the Legislative Council on Friday last, Mr. Ilbert moved for leave to introduce a Bill amending the provisions of the Criminal Procedure Code, regarding European British subjects. Some explanation is necessary to make the subject intelligible.

Prior to 1872, judicial officers, outside the Presidency towns, were not permitted to pass sentences of imprisonment on European British subjects; and any person belonging to that class, when accused of crime had the privilege of being sent to a Presidency town for trial by a Jury before the High Court. When the Criminal Procedure Code of 1872 was under discussion, it was proposed to abolish this privilege; and warm discussions were held, both in the Select Committee and in the Council. Eventually a compromise was arrived at which passed into law. District Judges and Magistrates who were themselves Europeans and Justices of the Peace, were granted a certain limited jurisdiction over European British subjects, and allowed to pass upon them sentences of imprisonment not exceding one year while the more serious offences remained triable as before, only by the High Courts. The new Criminal Procedure Code, passed last year, made no change in the law in this subject.

Now, however, Mr. Ilbert has proposed to sweep away what he describ s as an anomaly in the law. This anomaly, he says, was first pressed upon the notice of the Government by the late Lieuteuant Governor of Bengal; who pointed out that for some years past one of the Calcutta Police Magistrates had always been a Native and under the acts applying to Presidency towns had exercised precisely the same jurisdiction over all classes of the community as his European colleagues. The Supreme Government, on receiving Sir Ashley Eden's note, proceeded to consult the various local governments; and the result was, in Mr. Ilbert's words, "an overwhelming *consensus* of opinion that some change in the law was required." But none of these answers of the local administrations have yet been laid before the public; and it is impossible to say what changes they suggest, or by what arguments they support their views. The measure, which it is now proposed to introduce, purports to empower the Government to appoint to the office of Justice of the Peace, with jurisdiction over European British subjects, such persons as it thinks fit belonging to the following classes:—First, members of the Covenanted Civil Service; secondly, members of the Statutory Native Civil Service; thirdly, Assistant-Commissioners in non-regulation provinces; and, fourthly, Cantonment Magistrates It cannot be doubted that this measure will be intensely unpopular with the European non-official community, and will be strongly opposed in its passage through Council.

As soon as Mr. Ilbert had finished his speech, Mr. Evans stated that he and the other non-official members had that day heard of the proposed measure for the first time, and he urged the Government to give full time and opportunity for debate upon the principle of the Bill, and for the European community to express its opinion on the subject.

The Viceroy answered that such opportunity would be given; that the Bill would be introduced next Friday; and the debate on its principle held on some future day, when a motion

would be made to refer it to a Select Committee.

But although the debate on the Bill is thus postponed, not a day should be lost in drawing attention to the real meaning of the very grave step which the Government proposes to take. No one will deny that in this, as in certain other of its recent measures, the Government is actuated by high humanitarian motives, for which it deserves every credit. But it cannot be too strongly impressed upon the British public that the hyper-sentimental policy of the present Government and its craze for applying English rules and English standards to everything Indian, must infallibily, if persisted in, loosen our hold on the country. Mr. Ilbert claims for the Bill that it will sweep away the anomalies now existing in the administration of the law. But even if it passes, it will leave many anomalies still existing. Such anomalies must always, and of necessity, exist in a conquered country, ruled by the conquering race. He altogether overlooks the deep-seated prejudice of Englishmen, all the world over, against being tried for their lives and liberties by Orientals.

It is no argument to say that natives in the provinces may safely be intrusted with powers which their countrymen have been found to exercise without abuse in Calcutta. Police Magistrates in the Presidency towns exercise their functions in the full blaze of publicity, amid a large European population, with a powerful Press and a fearless Bar looking on in their courts. It is a very different matter in a remote district, where Europeans are to be counted by twos and threes, and where public opinion is a thing unknown.

It is especially unfortunate that a step like this should have been taken at the present time, when English capitalists are just beginning to perceive what a magnificent field for enterprise there is in the development of the great natural resources of India. Everyone acquainted with this country knows that when a native has a dispute with his neighur about land, a contract or some other civil matter, his first step is almost invariably to

trump up a criminal charge against his opponent; and to bring forward a legion of suborned witnesses to support it. Hitherto the safety of Englishmen residing outside of the Presidency towns has lain in the fact that such charges, when brought against them, were investigated by their countrymen, who could weigh pobabilities, and could judge whether an Englishman was likely to do such an act as was alleged. This safeguard, it is now proposed to sweep away—for, however skilled a lawyer, or pure a Judge, a native may be, it is obviously absurd to say that he can be as competent as an Englishman to form a correct opinion concerning an Euglishman's conduct, or that he will be trusted by the English residents of the district to which he has been appointed.

If this Bill passes, will the Lieutenant-Governor of Bengal venture to appoint a Native Magistrate for Tirhoot, or more than one other district, where there is a large community of English planters? There can be no doubt that he will not. I will go further, and assert, without hesitation, that should this proposed change in the law be effected, it will be unsafe for any European to reside outside the limits of the three Presidency towns; and a deathblow will be inflicted on the prosperous industries of tea, coffee, and indigo planting, while all new projects for mining, railway making and so forth, will be nipped in the bud. It is, however, to be hoped that the Government will pause before it is too late. Should it persist in this most unwise scheme, all young Englishmen who dream of an Indian career, will do well to transfer their ambitions to some other country, where their characters, their liberties, and their lives will be exposed to less danger.

Lord Ripon seems determined to put his mark on Indian administration. His tenure of office has been signalized already by the introduction of one or two very sweeping measures of change. The Bengal Rent Law is a bold attempt to grapple with an admitted difficulty of long standing, and re-

quiring to be vigorously treated. Its principle is unquestionably sound, and we wait with interest to see how it will work, and how far it will be found in practice to conform to the intentions of its authors. His scheme of local self-government for India is a more doubtful measure in every way. We feel ourselves on experimental ground, where, if we are to move safely, we must move slowly and tentatively, and must not run on too fast under the guidance of abstract ideas, untrustworthy in any case, and least of all to be trusted in the necessarily anomalous conditions which our presence in India implies, and by which alone it can be justified. Still, if due caution is observed, we see no reason to question the propriety of what LORD RIPON is attempting to do in this matter. As far as the Natives of India prove willing and capable to administer their own affairs, we are well satisfied that they should obtain administrative rights. But we do not wish to see a scheme forced upon them for which there is no genuine demand, or carried out in excess of the demand, and persevered with when it has been found to fail, and to bring confusion and mischief with it. The further new scheme, of which our Calcutta Correspondent sends us an account this morning, is of a more questionable character than the others. It is a proposal, in effect to place British subjects under Native jurisdiction in grave criminal cases, and in circumstances where the ordinary guarantees for the rightful administration of justice do not and cannot exist. The rule at present in force as to the legal status of British subjects accused of a criminal offence is a compromise. The old rule, prior to the Criminal Procedure Code of 1872, was that British subjects, wherever resident, could be tried only by jury, in a Presidency town and before the High Court. In 1872 this privilege was diminished, but it was not wholly taken away. District Judges and Magistrates of European race were then empowered to ass on British subjects sent ences of imprisonment not exceed- one year. Graver cases, requiring a heavier punishment, remained as before triable only by the High Courts. This is the

rule which Lord Ripon and his advisers are running a tilt at. It offends them as "anomalous," and this in a certain sense it is. For some years past there has always been one Native on the roll of the Calcutta Police Magistrates, and exercising, as such, the same jurisdiction as his European colleagues over British subjects as well as over natives. If such powers can be safely intrusted to one Native in one place, why, Lord Ripon asks, should they not be intrusted to all natives everywhere? Why may not a Native Civil Servant, or Assistant Commissioner, or Cantonment Magistrate be suffered to pass sentence on British subjects who may be brought before him, however grave the offence with which they may be charged, and however severe the punishment which the law adjudges to it? All men, we are asked to believe, are equal, and all must have equal rights. We are to look, not to the consequences, but to the abstract justice of the thing. The case, so stated, is unanswerable. The danger which the change would cause to the lives and liberties of British subjects, the offence which it would give, its almost certain result of driving British capital and its owners out of the country districts of India, are none of them to be taken into account. Justice must be done, and if we seek to know what justice is, we shall find it written down for us at large in the Declaration of American Independence, in the maxims of 1793, and in every repertory of texts and rules which *a priori* philosophers have stamped with their approval and which still pass current in the Liberal cant of the day.

If Lord Ripon is resolved to clear Indian administration of every anomaly he can discover in it, the best thing he can do will be to pack up his trunks and come home at once. He is himself the greatest of anomalies, the very head and front of the offence he is seeking to remove. English rule over India is an anomaly in itself, not in this or that point of detail, but in every point. We must accept it for what it is, or we must give it up altogether and leave India to the full enjoyment of the natural rights of man. It is possible, however, that so

fundamental a change of system as this does not as yet commend itself to Lord Ripon's mind. He has still to rise to the full courage of his opinions. He has not abandoned all thought and care for the actual wants of the country which has been placed in his charge. We venture to assume that considerations of practical utility may still have some weight with him, and we are certain, in any case, that it is these, and not abstract fancies about so-called justice and injustice, which will find favour in this country and which will prevail in the long run in India. There are, as our correspondent points out, some very grave practical objections to be urged against Lord Ripon's scheme. It has come as a surprise, and a most unwelcome surprise, to the whole European community whom it will affect. Feeling, in such a matter, must count for a good deal. We are wishing by all means to attract British capital to seek an investment in India. The future prosperity of the country depends not a little on the degree in which this can be done. It must be by British capital and British enterprise that the vast unoccupied field of India must be opened up. The native population has neither the energy nor the material wealth to do what has to be done. At the present moment, when British capital is seeking an outlet in every direction, when there is hardly a country in the world in which it has not effected a lodgment, and when India is just beginning to be recognized as a comparatively untried region well worth trying, it is not wise to do anything to check the flow which is setting in. Capital is proverbially sensitive. It is difficult to attract it and very easy to drive it away. If Englishmen are made to feel that they are no longer safe in the country districts of India, that they and their belongings will be at the mercy of a Court which they neither like nor trust, they will take good care to avoid the position which Lord Ripon is making intolerable to them. The profits to be gained from tea and jute and tobacco, the returns from railway enterprises, the more speculative ventures in mining, will cease to have any charm for them. Their natural wish is to look after their own business affairs on

the spot. They must be present where their money is to be sunk. If this is not to be, their money will not be forthcoming, and India will be so much the poorer, and her crowded population so far deprived of their share in the joint benefit. Nor are the apprehensions which LORD RIPON'S scheme is causing in any sense unreasonable. If the appeal against it were to mere prejudice, and if experience were likeley to show that it is no such bad thing after all, we should hardly care about discussing it. The prejudice would pass and the apprehension and the mischief with it. But if, as our correspondent believes, the characters and liberties and lives of British subjects will not be safe under the operation of the proposed change, if native Judges are not only thought unfit to deal with grave criminal charges against Europeans but are actually so, the mischief will be great and lasting. We all know how common a thing it is for trumped-up charges, supported by perjured evidence, to be brought into an Indian Court. One of the first lessons which a Civil Servant has to learn is to distrust native testimony. India is a country where DAVID'S hard judgment on his fellow mortals might pass as almost literal truth. Perjury is in the Indian air. For the plaintiff in a civil case to bring forward a criminal charge against his opponent and to get his friends and neighbours to swear to it, or for the defendant to employ the same tactics by way of an answer, is a very ordinary method of proceeding. A boundary dispute or a question of wages between a British settler and his native neighbour or workman might thus give occasion for a charge of criminal assault, or for any worse charge which native ingenuity could make plausible, and which native testimony could be found ready in any case to support. It is safe enough for a native Judge to have criminal jurisdiction as one out of many on the Bench of a Presidency town. His colleagues keep him traight if he is inclined to go wrong. Public opinion has its influence. The Bar and the Press keep watch upon him. Far away, up country, these safeguards no longer exist. The native Judge can follow his own course, and it is well known that native

opinion does not look favourably upon British enterprise in India, and would lend willing help to thwarting it. To grow tea or tobacco or indigo is, the native thinks, to divert so much soil from its proper use of growing food. If the intruding crops were forbidden, there might be so much more rice and grain in the country. This is the popular view which finds expression in the native Indian press, and which would have its due weight in determining the decision of a native Indian Judge when an offending planter was brought before him. One bad case of gross injustice would run through the country, and would be an effectual deterrent. Lord Ripon would do well to pause before proceeding further with a Bill as likely to be mischievous as the one on which he is at present engaged, and as little called for by any real or asserted injustice which the existing rule involves. If there must be experimental legislalation anywhere and adherence to first principles as the guide of legislative conduct—and as long as Mr. Gladstone is with us this sort of thing is not likely to become extinct— India is about the last country into which it ought to find admittance and about the worst and most unpromising subject for it.

February 12.

FROM THE CALCUTTA CORRESPONDENT.

(By Indo-European Telegraph.)

Calcutta, Feb. 11.

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In the Legislative Council, on Friday last, Mr. Ilbert brought in the Bill giving certain native magistrates jurisdiction over European British subjects of which he had given notice a week before. In doing so he made no remarks, and it is understood that no discussion on the principle of the measure will take place for some time. During the past week much has been said and written on the subject of the proposed law. The native Press, as might have been expected, is strongly in favour of the Bill; the European community, on the other hand is as strongly against it. Much satisfaction has been caused by the news that the latter view receives the support of the English Press; and it is understood that the Chamber of Commerce proposes to call a meeting in order to obtain an expression of the opinion of the non-official community.

The arguments on which the Europeans generally rely are—That the measure will be dangerous, as tending to discourage the employment of English capital up country; that it is a breach of the agreement made in 1872; that it is unstatesmanlike, as being a step for which the country is not yet fitted, as being uncalled for, and opposed to the maxim *Quieta non movere;* that it is at best a tinkering measure, meant to secure a little cheap popularity with the natives and to procure an appearance of logical consistency the reality of which is absolutely unattainable; that it violates the fundamental principle laid down by Sir FitzJames Stephen when he voted against a similar proposal in 1872—namely, that in establishing a new tribunal the feelings to be consulted are not those of the Judges but those of the persons who will be subjected to their jurisdiction; and, finally, that it will embitter race antipathies instead of sweeping them away.

The Government replies that the Bill would abolish invidious race distinctions. But it would do nothing of the kind; for, even if it passes, Europeans will remain exempt from the jurisdiction of the native Subordinate Magistrates. Then it is pointed out that only two native magistrates in Bengal could be invested with the proposed power, but in a few years there might be 20, or 200, and, besides, the existing two might do infinite harm if appointed to a planting district or a military cantonment.

The "overwhelming consensus of the opinion of the local Governments," of which Mr. Ilbert spoke, will hardly bear examination. It appears that a year ago, a native civilian, named Gupta, then and now a police magistrate in Calcutta, submitted to the Bengal Government a note in which he proposed the change in question. In this note the exact position of affairs is not very fully or fairly stated. Sir A. Eden, however, forwarded the note to the Supreme Government, which circulated it among the local Governments. The Madras Government was equally divided; the Governor and Commander-in-Chief being in favour of the change, while Messrs. Carmichael and Huddleston opposed it. The Bombay Government replied that it found much diversity of opinion among the officers it had consulted; but that the Governor in Council had no hesitation in concurring with the preponderating opinion, which was to the effect that the disability of the Native Judges and magistrates should be removed. The Lieutenant-Governor of the North-West Provinces also concurs, but grounds his opinion chiefly on the consideration of administrative convenience. The Judicial Commissioner of Oude would give the jurisdiction only to native civilians who had entered the service by competition in England. The Lieutenant-Governor of the Punjab expressed unqualified approval of the proposal; as does also the Chief Commissioner for the Central Provinces. The Chief Commissioner of British Burmah sees no reason why Europeans, being subject to the jurisdiction of Asiatics in Upper Burmah, should object to it in British India.

The Chief Commissioner of Assam would object had the proposal been to do away altogether with the distinction between European and native magistrates; but thinks that the present proposal is not likely to excite serious opposition on the part of the European community. The Chief Commissioner of Coorg thinks the present law wise, and that it should, for political reasons, be maintained. The Resident at Hyderabad believes that the time has now come when specially selected natives may be intrusted with jurisdiction over European British subjects. The Commissioner of the Hyderabad assigned districts expresses the opinion that most non-official Europeans would answer the question now as Sir Henry Norman did in 1872 by saying that it was undesirable to allow the trial of European British subjects by natives.

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February 19.

FROM THE CALCUTTA CORRESPONDENT.

(By Indo-European Telegraph.)

Calcutta, February 18.

It is understood that Mr. Ilbert will, at the next meeting of the Supreme Council on Friday, move that the Bill giving certain native magistrates jurisdiction over European British subjects be referred to a Select Committee. It would seem therefore, that the Government are bent on pressing on this most ill-advised measure. The entire independent European community, as I anticipated, is strongly opposed to it. The Anglo-Indian Press of the three Presidencies, with one exception, condemns the Bill, and the one paper which supports it does so in a half-hearted manner, and admits that the action of the Government is ill-timed.

The Calcutta *Englishman*, commenting on the answers given by the various local Governments to the question of the Supreme Government, draws attention to three striking points about these answers. The first is that, while the majority of

the authorities consulted favoured the proposed change, not one of them makes any attempt to meet the arguments which induced Sir FitzJames Stephen and the majority of the Council to vote against a similar proposal in 1872. They rest their opinions entirely on the so-called invidiousness of the present law and the possibility of its causing the administration inconvenience in the remote future. The next point is that, while it is admitted that privilege as to jurisdiction is the privilege of the prisoner and not of the Judge, the persons on whose opinions it is now proposed to take away this privilege are all persons who, though theoretically liable to become defendants in criminal cases, are practically exempted by their position from all serious risk of such misfortune. The third point and, perhaps, the most striking, is the extraordinary nonchalance with which a body of Englishmen, presumably not altogether deficient in political experience or historic knowledge, approach a proposal to deprive a large multitude of their fellow-countrymen of a cherished privilege, inherited from a long line of forefathers.

The *Englishman* might have added two more points—namely, that the Supreme Government, when asking for the view of the local administrations, adopted the very extraordinary and unusual step of expressing its own opinion on the subject, for the circular letter of the Government reads more like a mandate than a simple request for advice; and that no steps appear to have been taken to obtain the opinion of the present Lieutenant-Governor of Bengal, who is generally believed to be hostile to the proposed measure, and who voted against it in 1872* with the majority of the Legislative Council.

The *Pioneer*, a paper which is seldom found in opposition to the Government, writes thus:—

"There are probably no persons more utterly unsuited in the whole of India from training and position to give advice as to the sentiments of the non-official community than Lieuten-

* This obviously is an error. Mr. Rivers Thompson was not in the Supreme Legislative Council in 1872.

ant Governors, their secretaries, and high judicial functionaries. It has long been known how utterly wanting the Local Governments are in any means of gauging the feelings of the non-official community, and on the present occasion not the slightest attempt seems to have been made in any province to do this. Already one of the leading exponents of native public opinion has put forward a claim that the extension of jurisdiction shall not be confined to the classes mentioned in the Bill, but shall take in the native magistracy generally. Looking to the line taken by Lord Ripon, and Mr. Ilbert, on what ground can this claim be resisted? On none. The present law is anomalous. It is illogical, and on what grounds can the existence of the Government of India itself, an anomaly of anomalies, be justified? Every day makes it more apparent what a serious mistake the Government has made in raising this discussion at all. The mischief done is irreparable, but it is to be earnestly hoped it may be stopped before it becomes the cause of actual political danger."

The same paper points out how scrupulously Englishmen have respected the innumerable personal laws of the various races and castes of natives. The Brahmin enjoys his enormous social privileges in all their integrity. The Mahomedan is still lord paramount in his household and divorces his wives at pleasure. The wealth of religious endowments is safer than in any European country. Native noblemen and ladies whose dignity would be offended by appearing in court are exempted from doing so, a privilege enjoyed by no Englishman or woman from the highest officials and their wives downwards. Are Englishmen, then, asks the *Pioneer*, to be told that, while it is their duty to respect these laws scrupulously, they are to claim nothing for themselves? It is still true, as was said by Sir James Fitzjames Stephen in 1872, that there is no country in the world and no race in the world from whom such a claim comes with so bad a grace as from the natives of India, filled as it is with every distinction which race, caste, and religion can create, and passionately tenacious as are its people of such distinction.

The Bengal Chamber of Commerce has called a special meeting for Wednesday to consider the subject and a requisition to the Sheriff to convoke a public meeting for Thursday is being circulated. These meetings will probably throw an unpleasant light upon the assumption on which the Government has relied all along—namely, that the Native Police Magistrates in Calcutta and Bombay have given universal satisfaction. It is to be hoped that the Government will pause and reflect that while it is well to make all reasonable concessions to the native and to court popularity with them as far as is consistent with justice to Europeans, something is due to the feelings of the race which won the Indian Empire, and on which the future of that Empire depends. If Mr. Ilbert insists on pushing on the measure the members of the Executive Council will, of course, support it; but it is earnestly to be hoped that the Additional Members, official and non-official, will have the courage to vote against it, and thus rescue the Council from the charge often made against it of cynical indifference to public opinion and of being a mere machine to register the Viceroy's edicts.

February 26.

FROM THE CALCUTTA CORRESPONDENT.

(By Indo-European Telegraph.)

Calcutta, February 25.

The motion to refer Mr. Ilbert's Criminal Jurisdiction Bill to a Select Committee, which was to have been made in Council on Friday, has been postponed; but it is generally believed that the Bill will be brought on again in some form before the members of the Government leave Calcutta. Meanwhile, the excitement among the European community is rapidly growing, and although it is strongest in Bengal, where there are large planting and other industries which will be most seriously affected by the measure, it is spreading to the Madras and Bombay Presidencies. In the course of an experience in India extending over several years, I have never known any measure to

arouse so intense and general a feeling of indignation among the European population. Every day the newspapers are filled with articles and letters on the subject. Among these letters are several from Volunteers, calling on their brother Volunteers to resign *en masse*, rather than serve a Government which seems bent upon degrading them. Nor is the feeling confined to the non-official class. With the exception of the small group of officials who are dependent upon the Viceroy for promotion, every Anglo-Indian, official and non-official, to whom I have spoken on the subject, is opposed to the Bill.

At the meeting of the Bengal Chamber of Commerce upon the subject, held last Wednesday, three resolutions were passed unanimously. The first, proposed by Mr. Keswick, and seconded by Mr. Murdoch, was in these words:—

"That in the opinion of this meeting, the alteration of the law proposed by the Government in the Bill entitled a Bill to amend the Code of Criminal Procedure so far as relates to the exercise of jurisdiction over European British subjects, calls for the unqualified disapproval of the Bengal Chamber of Commerce, and should be opposed to the utmost, by every means in its power.

The second, proposed by Mr. O'Keefe, and seconded by Mr. Thomas, was as follows:—

"That a sub-committee be appointed to draw up a memorial against the Bill, and to take steps to procure signatures to the memorial throughout every district."

The third, proposed by Mr. Turnbull, and seconded by Mr. Guise, ran thus.—

"That this Chamber confer with the Chambers of Madras and Bombay, so as to have united action against the Bill."

A requisition has been presented to the Sheriff of Calcutta requesting him to call a public meeting in order that the sense of the European community may be taken, and made known to the Indian Government, and, if it be thought desirable, to the Secretary of State and to Parliament. This requisition has been signed by all the leading non-official Europeans in Cal-

cutta; and among others by a son and two nephews of the Premier. In compliance with it, the Sheriff has called a public meeting for next Wednesday. The Trades Association is to hold a meeting upon the question on Thursday.

The people of Madras have alredy responded to the invitation to the Bengal Chamber of Commerce, by holding a large and influential meeting on Friday last, when it was resolved:—

"That the Bill demands the concerted opposition of the European community, throughout British India, as being an unnecessary sacrifice to ideal legislation of a highly prized right and as likely seriously to check the introduction of European capital into India."

The meeting then appointed a committee to prepare a petition to Parliament.

At Dibrughur, in Upper Assam, a meeting of 90 planters was held last Wednesday, when the following resolution was passed:—

"That this meeting indignantly protests against the ancient privileges of Britons being sacrificed merely for a political sentiment; and is strongly convinced that, especially in Assam which differs greatly from other parts of India, both in being isolated from the influence of public opinion, and in owing everything to European enterprise and capital, such legislation as is proposed will not only vitally injure existing European interests, but by debarring future capitalists, and alienating existing ones, will stop the progress of the province and is even now aggravating and will certainly revive the antagonism and friction of races, which of late years have remained dormant."

A correspondent at Mozufferpore, the headquarters of the Behar indigo district, telegraphs:—"The feeling here is very strong against the proposed amendment in criminal procedure. The Planters' Association has addressed a strong remonstrance against it." A correspondent at Lahore telegraphs:—"The general feeling here regarding Mr. Ilbert's Bill is one of unqualified condemnation and indignation; but as the (European) community in this province is mostly official there may be some