"CIVIL AND MILITARY GAZETTE."
(*Lahore.*)

March 6.

But the ill-timed attempt to remove one of those indispensable anomalies on which our position in India depends has made discreet reticence no longer possible. In attempting to bridge the gulf between Indians and Europeans, Lord Ripon has widened it. The report of the great meeting at Calcutta shows how indignant are the feelings that have been aroused; how irreconciliable the expression of public opinion now provoked. Mr. Branson, one of the ablest members of the unofficial community in India, has not said a word more than was justified, and indeed demanded, by the deplorable circumstances of Mr. Ilbert's proposal; but that such things should have to be said is none the less to be deeply regretted. They will be backed up by the consent of Englishmen all over India; and, as we have already seen, the leading organs of English opinion in London are ready to adopt the same tone. Our remonstrance will be met by recriminations from the other side; and it is difficult to see where the ill-feeling that has been generated, will stop. Here in the Punjab, it would be impossible to hold such a meeting as that in Calcutta. The unofficial members of the English community are widely scattered; and officials, however much they must sympathize with the motives of a public protest, can take no part in it. Nevertheless, the resolutions passed in Calcutta, and every word of the indignant speeches made, would meet with ample support in this part of India. We hope, therefore, that something will be done to show that, in the Punjab as well as in the Presidency towns, there is a public feeling amongst Englishmen, which the Government of India will do well to consult beforehand, when next it proposes to gratify men like Mr. Behari Lall Gupta, by curtailing English privileges. Let a Committee be formed in Lahore; for drawing up a memorial, to be signed by Englishmen, throughout the Province—at least, by every non-official Englishman—for pre-

sentation to the Viceroy in Council and to the Secretary of State. The Government of India, in the Legislative Department, profess to be anxious to get at public opinion: this time, at any rate, it should be ready and decided.

March 9.

The English in the Punjab will not be behind the rest of India in opposing the proposed Amendment of the Criminal Procedure Code. Arrangements are already being made for holding a public meeting in Lahore, at an early date. Next Monday will probably be fixed on; and all classes of the European community will be invited to attend. Officials are naturally reluctant to take any active part in the proceeding. There were not a few officials present, however, at the preliminary meeting on Wednesday. It seems to be generally conceded that though an Englishman be in the Government service, he neither forfeits the right—nor can evade the duty—of protesting against the attempt of a Government in which he is not represented, to interfere, for a sentimental idea, with his rights and privileges. *Nemo potest exeure patriam.* There are times, we must remember, when above all things we should be Englishmen. It is to be hoped, therefore, that the public meeting which is to be held in a few days will be attended by all sorts and conditions of that class which must suffer should Mr. Ilbert's Bill become law.

THE LEGISLATIVE COUNCIL.*

The discussion in the Council on Friday on the Criminal Procedure Amendment Bill lasted from eleven o'clock in the morning to within a few minutes to eight in the evening. The unusual interest of the business before the Council drew together an audience which in the morning must have numbered over 300, and even at the end of the proceedings could not have been fewer than 100. A strikingly noteworthy feature was the large proportion of ladies present, who, moreover, sat out speech after speech with courageous patience. The audience was a singularly attentive one, and the Hon'ble Members must have been gratified at the interest which their orations excited. Once the audience allowed their feelings to overcome their self-control, and loud applause spontaneously burst forth on the conclusion of Mr. Miller's speech. His Excellency the Viceroy, for the moment apparently taken aback, presently, succeeded in checking the outburst, and it was not again repeated. The preliminary business before the Criminal Procedure Bill was reached, consisted of some notices of a formal nature from Mr. Ilbert regarding two or three minor measures, and these matters having been worked off in a few minutes, Mr. Ilbert introduced his motion regarding the Procedure Bill. Leaving His Excellency the Viceroy to deal with the policy of the Bill, Mr. Ilbert, it will be seen, contented himself with explaining briefly and precisely the character of the proposed amendment. Mr. Quinton, as junior Member of the Council, taking up the discussion, proceeded to announce himself in favour of the Bill, a course which Babu Kristo Dass Pal followed. Mr. Miller, in an eloquent and courageous speech, gave expression to the feelings which are general among the bulk of the European community on the Bill. At the conclusion of the speech the abovementioned burst of applause took place. There was much clapping of hands and other audible signs of approval of what had been said. This demonstration having been after a while checked, the Viceroy pointed out its irregularity. Mr. Evans next followed also in the opposition side, and in an exhaustive and most able speech, which lasted two hours and a half, dealt lucidly and thoroughly with the whole question at issue, reviewing it from its historical, legal, administrative, and emotional aspects. Mr. Evans' speech brought the hour to half-past two, and on the suggestion of the Viceroy, the Council now adjourned for a quarter of an hour, a large portion of the audience leaving during the interval. On the re-assembly of the Council Mr. Thomas, in a most powerful

* *Englishman*, March 13.

speech," resumed the debate on the opposition side. The advocates of the Bill then had the benefit of the accumulated eloquence of Mr. Reynolds—who, however, expressed his opinion that, if the present opposition to the Bill continued, the responsibility of passing it would be a most serious one—Baboo Durga Charan Laha, Syed Ahmed Khan (whose speech was read for him by Mr. Crosthwaite) and Mr. W. W. Hunter. Raja Shiva Prosad next expressed himself against the Bill. The debate had now reached the confines of the august heights of the Executive Council, and it was at one time thought would not enter that region. The proposal, however, to limit the debate to the members of the Legislative Council had been abandoned, and (Mr. Hope not desiring on this occasion to give public expression to his views) Sir Steuart Bayley took up the theme in favour of the principle of the Bill, but without expressing a decided opinion regarding its policy. Major General Wilson next pointed out that it was with regret that he had alone, of the Viceroy's advisers, found himself in opposition to the Bill from the first, but he had no reason to modify his original opinions. At the same time he denounced strongly the character of the outdoor agitation against the Bill, and particularly the agitation among the Volunteers. Major Baring following Mr. Hope's example of reticence, Mr. Gibbs explained the nature of his reasons in favour of the Bill. H. E. the Commander-in-Chief also favored the Bill, and denounced any attempt to extend the agitation against it to the army. The Lieutenant-Governor spoke strongly against the Bill, and while reserving a detailed expression of his views, urged the expediency of withdrawing it. As it was getting dark, H. E. the Viceroy began his speech in conclusion of the whole debate, and at a few minutes to eight terminated what forms, perhaps, the most able statement that has yet been made on the part of the advocates of the Bill.

Mr. Ilbert said :—My Lord,—I have the honour to move that the Bill to amend the Code of Criminal Procedure, 188', so far as it relates to the exercise of jurisdiction over European British subjects, and Statement of Objects and Reasons, be published in the *Gazette of India*, and in the local Gazettes, in English and in such other languages as the Local Government might think fit.

This publication is a necessary stage—and it clearly ought to be an early stage—in the progress of a Bill ; but under the Rules of Business as they stood before the recent alteration, the Council could not have ordered the publication of a Bill until a motion that it be referred to a Select Committee or some

equivalent motion had been put and carried. However, under the new rule which was passed the other day, the Council may direct the publication of a Bill at any time after leave to introduce it has been granted. The effect of passing the motion, which I now make, will be that this Bill will be published in the usual manner, and that the various Local Governments will have the same opportunity of expressing their opinions on the provisions of this Bill as they have of expressing their opinions on the provisions of any other Bill.

I give these explanations for the purpose of correcting some misstatements which have been made with respect to the course which the Government have adopted, and proposed to adopt, in dealing with this measure. It has been alleged that we are pushing the Bill through the Council with unusual and improper haste. There is no foundation for this statement. The Government never intended to pass the Bill into law during the course of the present Calcutta session. They have dealt, and they always intended to deal, with this measure in accordance with the ordinary rules of business; and in dealing with it they have not departed from the usual course of procedure except in one particular, namely, that in order to give the public the earliest possible notice of the nature of their proposals, they sent copies of the Bill and the accompanying papers to some of the leading Journals before any order for formal publication of the Bill had been made by this Council.

To substantiate this statement let me recapitulate shortly the several stages through which this measure has passed, both before and since its introduction as a Bill into the Council. It originated with a proposal for legislation which was made by the Government of Bengal to the Government of India in the month of March, 1882. That proposal was in the month of April last communicated in the ordinary way to other local Governments for their opinions. On receipt of those opinions the Government of India considered whether legislation should be undertaken, and, if so, what form it should take. Having come to a conclusion on these points, they submitted their proposals—the proposals which are embodied in the present Bill—to the Secretary of State in Council. The then Secretary of State, Lord Hartington, informed us that these proposals had been very carefully considered by him in Council, that he agreed in the conclusions at which we had arrived, and that he sanctioned the introduction of the Bill embodying the proposal which we had submitted. Accordingly, the Home Department, within whose cognizance the measure properly fell, issued instructions to the Legislative Department to frame a Bill, and the Bill when framed was placed in charge of the Legal Member

of Council who, I believe, always takes charge of Bills amending the Procedure Code. I obtained leave to introduce the Bill on the 2nd of February. I introduced it in the following week, and the papers containing the opinions of Local Governments were, I believe, sent to the newspapers within three days after the introduction of the Bill. Since then the Bill has not been carried through any further stage.

It has been also alleged that the Bill originated in the opinion of an adviser not sufficiently acquainted with the circumstances of Indian life, the reference being obviously to myself. Now, I do not wish to disclaim or lessen in any way my due share of responsibility for this measure, but it is not right that the measure should be prejudiced by a statement that happens to be inaccurate. It is not the fact that this measure originated in any opinion given by me. The letter of Sir Ashley Eden was received by the Government of India before I landed in this country. It was sent round to various Local Governments before I took my seat as a Member of this Council, and I never heard anything about the subject at all until after the replies of the Local Government had been received by the Government of India. My duty then was simply to form the best conclusion I could after seeing what had been written on the subject, and hearing what was said on the subject by persons who had an acquaintance with the country, which I never affected or claimed to possess. The conclusion to which I came on the materials before me was, that we ought to legislate, and that we ought to legislate on the lines on which this Bill has been framed. That opinion I still hold. But the Bill is the Bill, not of the Legal Member of Council, but of the Government of India, and that being so it will, I think, be more meet that I should, on the present occasion, leave to the head of the Government the task of explaining the policy of what is essentially a Government measure.

Accordingly I shall confine myself exclusively to the legal aspect of the measure. But I do not intend to waste your time by reference to any of the so-called legal arguments purporting to show that we have no power to alter the law in the mode in which we propose to alter it. I do not anticipate that my honourable friend Mr. Evans will venture to use any such argument. He is much too good a lawyer to do so. For he knows as well as I do that about the legal power of the Legislative Council to pass this Bill there is not and cannot be the shadow of a doubt.

What I propose to do is to give you a dry, simple statement shewing the jurisdiction which is, under the existing law,

exerciesable by the Courts of this country in cases affecting European British subjects, and the mode in which it is proposed to alter that law by the present Bill. It is necessary that I should do this, because the scope and effect of the Bill have been much misunderstood or misrepresented, and I observe that an important London paper has alleged that we are running a tilt against a rule, which, as a matter of fact, we do not propose to touch, the rule, namely, which limits the extent of the criminal jurisdiction exerciseable by Magistrates in the mofussil over European British subjects,

Let me explain what is meant by a European British subject. The term European British subject is defined by the Criminal Procedure Code (section 4) to mean

(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain or Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2) any child or grandchild of any such persons by legitimate descent.

It will be seen that the definition is somewhat arbitrary and artificial. It includes persons who are neither European nor British. It excludes persons who may be in all essential characteristics Englishmen, but who are not of legitimate descent.

Such being the European British subject, let us see what is the nature and extent of the jurisdiction exerciseable over him in this country in civil and criminal cases.

First, then, as to the jurisdiction exerciseable over European British subjects in civil cases. That jurisdiction is precisely the same as that which is exerciseable in the case of persons not being European British subjects. Section 10 of the Civil Procedure Code enacts that "no person shall by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of the Courts." This section, I remark, was first enacted in what used to be known as the Black Act XI of 1836, and has remained in the Indian Statute Book ever since then. No person is exempted from the jurisdiction of the civil courts by reason of his being an European British subject; no person is disqualified for exercising that jurisdiction by reason of his not being a European British subject. A Native Judge has the same civil jurisdiction over a European British subject as any other Judge, and may exercise that jurisdiction in such a way as to affect not only his property, but his reputa-

tion and his person. He can give judgment against him in a suit for fraud or libel; he can send him to prison for debt; can punish him for contempt of Court; and can issue a warrant for his arrest in case of his non-attendance as a witness.

So much as to jurisdiction in civil cases. Next, as to jurisdiction in criminal cases. I will deal first with the jurisdiction of the High Courts, including in that expression, not only the High Courts at the Presidency towns of Calcutta, Madras and Bombay, but the High Court at Allahabad and the Chief Court of the Punjab at Lahore. The criminal jurisdiction of these Courts is unlimited. No person is exempted from it by reason of race or place of birth. No person is disqualified for exercising it by reason of race or place of birth. And any person may exercise the jurisdiction, whether he is a European British subject or a Native of India. And a Judge of the High Court, whether he is a European British subject or not, is by virtue of his office a Justice of the Peace within and for the whole of British India.

Then, as to Presidency Magistrates. Here, again, there is no exemption, no disqualification, based on race or place of birth. Any Presidency Magistrate, whether a Native of India or not can try or commit for trial any European British subject, and can pass any of the following sentences :—

(1) Imprisonment for a term not exceeding two years, including solitary imprisonment;

(2) Fine not exceeding one thousand rupees;

(3) Whipping.

Lastly, as to the criminal jurisdiction of ordinary Magistrates and Judges in the Mofussil. Here there are distinctions between cases affecting European British subjects and other cases, both as to the extent of the jurisdiction which may be exercised, as to the privileges of persons subject to that jurisdiction, and as to the persons qualified to exercise the jurisdiction.

As to the extent of the jurisdiction, a Magistrate cannot sentence a European British subject to more than three months' imprisonment or Rs. 1,000 fine, or both. A Court of Session cannot sentence a European British subject to more than a year's imprisonment, or fine, or both. And neither a Magistrate nor a Court of Session can sentence him to the punishment of whipping.

Then, the Eurepean British suhject has certain special privileges as to the mode of trial, the right of appeal, and the right to apply for release from custody.

MR. ILBERT.

He may claim to be tried by a mixed Jury or a mixed set of Assessors, not less than half the number of Jurors or Assessors being either Europeans or Americans, or both Europeans and Americans.

If he is convicted on a trial held by an Assistant Sessions Judge or a Magistrate, he may appeal either to the High Court or to the Court of Session at his option. He can appeal against small sentences of fine or imprisonment for which there is no right of appeal in ordinary cases, and if he is unlawfully detained in custody he can apply to the High Court for an order directing the person detaining him to bring him before the High Court.

And lastly, he cannot be tried by any Magistrate unless the Magistrate is a Justice of the Peace, a Magistrate of the first class, and a European British subject; he cannot be tried by any Sessions Judge unless the Judge is a European British subject; and he cannot be tried by any Assistant Sessions Judge unless the Judge is a European British subject, has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered by the Local Government to try European British subjects.

The privilege of being tried by a mixed Jury or mixed Assessors belongs to all Europeans and Americans; the privilege of being tried by a European British subject belongs to the European British subject alone.

Now of all these various rules the only one which we propose to alter is that which relates to the race qualification of the Judge. We have left untouched the limitations on the sentences which may be inflicted by the Judge. We have left untouched the right to trial by a mixed Jury or by mixed assessors; we have left untouched the right to apply for release from illegal custody. The single alteration which we propose to make is this. We propose to substitute for the disqualification arising from race a qualification depending on tried personal fitness. We propose to say that a very small number of specially selected Native Magistrates may exercise that limited and qualified jurisdiction which can at present be exercised only by persons who fall within the extremely arbitrary and technical definition of European British subjects.

The Hon'ble Mr. Quinton said:—It cannot be denied by the most earnest opponents of the present Bill that there is a strong array of official opinion in support of it. The measure

which it embodies originated with the Government of Bengal. The Governments of Bombay, Madras, North-Western Provinces and the Punjab, the Chief Commissioners of the Central Provinces, of British Burma, of Assam and of Coorg,* and the Resident of Hyderabad, who is *ex-officio* Chief Commissioner of the Hyderabad Assigned Districts, have all written in no qualified terms expressing their approval of it on the grounds of public policy and administrative convenience.

It is unquestionable that the Bill, if passed into law, will deprive the European British subject in the interior of being tried in certain cases by a Magistrate or Judge of his own race. I say "in certain cases," for, as the law at present stands, there is nothing, should he be unfortunate enough to be committed to the High Court, to prevent his being tried by a Native Judge of that tribunal. Whether this partial deprivation of a peculiar privilege be one which State policy and the interests of good administration demand, is the question this Council has now to determine—a question which the heads of all the Local Governments have answered in the affirmative.

The policy of the British Government in India for many years has been to throw open to Natives of the country proved to possess the necessary qualifications offices in the public service which were at first reserved exclusively for Englishmen. The progress of education, the gradual adoption among the better classes of Natives of India of European standards of honour, integrity, and truthfulness, the increase of intelligent interest in public affairs exhibited by the leaders of Native society, have all tended to break down the barriers which obstructed their advancement to the higher appointments of the administration. Successive opportunities in such employments have of late years been afforded to native gentlemen which have placed within their reach seats on the benches of the High Courts, and admission to the Covenanted and Native Civil Service. This last privilege will, except in cases of manifest incapacity, lead to the bench of the Sessions Court and to the magisterial and executive charge of districts.

It is scarcely needful for me before this Council to dwell on the importance of this change. District Officers have been rightly called the eyes and ears of Government. They are in their districts the outward and visible representation of British authority—often but a dim and distant shadow—and upon their efficiency and on the respect and confidence they inspire depend the reputation, the influence, and perhaps in the last resort the existence of British rule in India. They are entrusted with

* This is incorrect.

weighty judicial and executive functions, and have in their hands power which may affect the welfare and happiness of hundreds of thousands of humun beings, for they, and they only, can adequately represent and secure a hearing for the wants of their people. Similarly Sessions Judges preside over the administration of criminal justice in areas co-extensive with or larger than those of districts, and have powers of trying all offences, even of a capital nature, committed by persons residing within their jurisdiction.

To these high offices for reasons of State policy which cannot now be questioned, Her Majesty's Government has thought it good that Natives of India should be admitted, and the Bill before Council is only the natural outcome and complement of that policy. It simply invests the holders of them when they happen to be other than Europeans, with powers hitherto inseparable from these offices.

It is much to be regretted that this cannot be done without depriving Englishmen in India of a privilege, however small, which they have hitherto possessed, but that it must be done, sound policy and good administration alike seem to me to require.

With what fairness can Government, which has held out to Natives prospects of reaching the highest posts in the public service, which induced and encouraged them to incur the labor and expense of qualifying for such appointments, turn round upon those persons now who have satisfied all the requirements for high office and say—"We make you Sessions Judges and Magistrates of districts, but we find you wanting by reason of your descent in the qualities essential to the discharge of a portion of the duties which devolve upon you in those capacities, and for the performance of those duties you must give place to others junior to you in the service."

Is such treatment likely to conciliate or win public esteem and confidence for Sessions Judges and Magistrates, to strengthen their hands in the execution of their offices, or to promote that good feeling and cordiality between European and Native Civilians which are indispensable to their working efficiently together. It is obvious that it must produce effects the direct opposites of these.

No, my Lord, I believe it is now too late to stop short. We cannot retrace our steps, and, as the change now in contemplation must be made sooner or later, and, when it is made, appears to arouse passions which we all deplore, the sooner it is made the better.

MR. QUINTON.

The warmith of feeling which has been called forth by the publication of the Bill, and the excitement to which it has given rise, seem to me very disproportionate to the results which may be reasonably expected to flow from it. The number of Native Civilians employed under each Local Government is very small; the localities where there are persons likely to be affected by the Bill are not numerous. Years must elapse before the few Native officers to whom the Bill refers can reach the qualifying offices or prove their fitness to be nominated as Justices of the Peace; and the Local Governments have under these circumstances full opportunty for giving effect to the proposals under the most favourable conditions. Notwithstanding all this it has been assumed in the vehement discussions which have taken place outside this Council Chamber that the present proposal is one to subject European residents in the interior of the country to the jurisdiction of all Native Magistrates—an assumption altogether unfounded. No Deputy Magistrate, no Honorary Magistrate and no Extra Assistant Commissioner, which classes comprehend nearly the entire Native magistracy, can be nominated under the Bill.

Similarly much of the heated declamation which has been resounding in our ears can only spring from the idea that all distinctions of law between Europeans and Natives of India are to be abolished, but where are the facts?

The Bill leaves altogether unaltered the main provisions of the law that, for heinous offences, European British subjects must be tried before the High Court, that for grave offences meriting a punishment of imprisonment of less than one year's duration they are to be tried before the Court of Session, and that the accused, if he pleases, can require that half the number of the Jury or Assessors at such trials shall be Europeans or Americans. The only change made is that a Magistrate trying a European British subject for petty offences or enquiring into graver charges against him, and that a Sessions Judge presiding at his trial on such charges, shall not of necessity be a European, though such Magistrate, unless a Magistrate of the district, must have satisfied Government of his ability to discharge the duties of Justice of the Peace.

It is difficult to find any intelligible reason why an officer of sufficient judicial ability to be appointed a Presidency Magistrate should, when promoted or even transferred to a district beyond the Presidency, forfeit powers which he had been found to exercise in a satisfactory manner; or why a Native gentleman who has proved his fitness for the bench of the Sessions Court should be declared disqualified from presiding at a trial of

a European British subject when the accused can have the advantage of a number of his countrymen on the Jury or among the Assessors.

In the Lower Provinces of Bengal, where the cry of opposition has been loudest, and where the Bill, if it passed, is likely to have the most extensive operation, trials before Courts of Sessions are by Jury.

The arguments which might justly have been urged a quarter of a century ago, arising more from the inaccessibilty of Courts in the interior, and their seclusion from the fierce light of public opinion, was discussed and answered in the debate in this Council in 1872, in the speech of Lord Napier of Murchistoun, quoted on a previous occasion by the hon'ble and learned member who introduced this Bill, and if anything further were wanted I have but to point to the countless letters and telegrams in the columns of the newspapers arriving every day from different parts of the country, as evidence that where Europeans and Indians are concerned things cannot now be done in a corner.

Such, my Lord, are some of the reasons—sound, I believe, in themselves—but as I am painfully aware most feebly stated, which compel me to vote for the motion.

The Hon'ble KRISTO DASS PAL said;—My Lord,—I think I would best consult the interests of the Bill if I should say as little as possible on the subject. I am convinced that I cannot do better than leave it to your Lordship as the responsible head of the Government to enunciate the reasons and policy of this measure. I cannot, however, allow this occasion to pass without saying that I look upon this Bill as a legitimate and logical development of the progressive policy which characterises British rule in this country, and that its principle being sound, just and righteous, my countrymen feel a deep interest in it.

None can, my Lord, regret more than I do, the ebulition of feeling which this Bill has caused. Considering the innocuous character of the Bill, I confess I did not expect it, nor did the Government, I believe, anticipate it. Had it not been for the great and important principle at stake, I would have been the first to counsel the withdrawal of the Bill rather than oppose the wave of feeling which has risen against it. I have too strong a faith in the character of John Bull to believe for a moment that he will carry to the bitter end his opposition to a noble attempt to establish that equality in the eye of the law, which the history

of his own country and the teachings of his own political system so loudly proclaim. I was young when the hurricane of the sepoy revolt burst over the country in 1857, but I well recollect how feelings were torn asunder by the sad events of those days. How furious was the rage of denunciation and how terrible the voice of vengeance. And yet when the storm of the Mutiny subsided, the feeling also subsided, and not a few of those who had stood forth as uncompromising enemies of the Natives now stepped forward as zealous champions of their cause. It has been my good fortune to work with many of them, and to profit not a little by their advice, assistance, co-operation, and example. Who could for a moment say that the Anglo-Indian of the Mutiny days was the Anglo-Indian of the succeeding days of peace and progress? This is my experience of the character of honest John Bull.

Pride of race, I use the phrase in no offensive sense, is a commendable feeling. It is an honest and honourable pride. It has been the mother of good deeds, valiant acts, patriotic exertions and national glory. But there is a higher and nobler pride, —that of fostering human happiness under beneficent laws, raising the weak and lowly to the level of the strong and high, and making equal law and equal justice the basis of political paramountcy in the world. It is to that noble feeling I appeal. All Englishmen, whether in India or in England, I humbly think, should rejoice that, within the century and a quarter they have ruled India, they have effected such a complete revolution in the Indian mind both intellectual and moral, that Indian Magistrates are found fit to be trusted with the administration of the laws of the land, not only over their own countrymen, but also over the members of the ruling race. This is a wish of which England may justly feel proud. This is a consummation over which all Englishmen may well rejoice.

The Hon'ble ROBERT MILLER said:—My Lord,—I can hardly imagine a subject likely to be brought up for discussion in this Council concerning which I should speak with greater unwillingness than this Bill. If there ever was a matter to which the proverb, "Least said soonest mended" applied, it is this one. To speak will lead to misunderstanding, and so also will the keeping silence. To the best of my judgment I choose the less, for there have been misunderstandings enough; for which, however, I cannot feel that I, or those for whom I speak, are in any way to be held responsible.

No subject for many years has evoked in India so deep or such united feeling on the part of the European com-

munity as this Bill. In the presence of a feeling so strong, and I cannot help saying also so powerful, for mischief, it is an infinite pity that a measure of the nature which deeply affects the material interests, as well as the sentiments, of Europeans should have been introduced without any attempt made beforehand to ascertain their views.

The disappointment on our part would have been excited under any circumstances, but recent events intensify and attract attention to it; for we have of late been hopeful that the former policy on the part of Government, of relying solely on information derived through official channels, would be relaxed, and that the views of the non-official community would be sought for and weighed more than has been hitherto the custom, and as we have been encouraged to form opinions and at times even taunted with having none.

The fact that a measure on which, if on no other, the European community in, and connected with, India think strongly and think together, should have been introduced without a word of warning, leads reasonably and properly to disappointment, and tends to throw discredit on the profession of Government when they say they wish to know our views.

But from what I and many others have seen of your Lordship and of your Lordship's Government, we are led to believe this must have arisen from some misapprehension; and that when it is made plain on this subject the interested class, whom alone the proposed alteration of the law would practically affect, not only have an opinion, but are practically unanimous in it, as regards this measure; when this, the true state of affairs, is discovered, the Government may see their way to withdraw their calamitous proposal.

On this subject I can confidently say the European non-official community think together. I only wish there were less positive proof. I wish it were still a matter of opinion, and that the opinion alone could be accepted, for the very fact of asking the public in a public way to state their views is injurious to the best interests of India. There is hardly another subject which could call the widely scattered, in places solitary and isolated, Europeans in this country so unanimously together as a proposal to subject their personal liberty to Native tribunals in the Mofussil; for the proposal threatens them in all ways,—their liberty, their reputation and the stability of their property. The trade organization in all parts of the country agree in this view: from Kurrachee, from Bombay, although the planting interest is entirely absent in

those parts of India; in Madras and Rangoon the same response is made; and in Bengal and in Southern India the Europeans in the Mofussil speak practically as one man.

It seems to me to be altogether a fallacious argument to say that the proposal is at most a trifle. In the first place, it is not a trifle to deprive the European of his most cherished right. The first sign of an inclination on the part of Government to deprive him of his right to be tried by a fellow-countryman excites him far beyond what actual immediate danger justifies; and it is not a trifle to stimulate feelings of distrust and indignation in the minds of Europeans in the country against the Government; for this indignation and distrust is not brought into effect directly against the Government, as would be the case in England, but affects rather the country itself and the Natives.

If means were being sought to stir up and inflame those race antipathies which were the noble ambition of your Lordship's administration, to efface a more effective one than this "trifle" could not be found. It is not a trifle, for if by mischance a Native Sessions Judge or a Native District Magistrate were to misjudge a European and condemn him to imprisonment on grounds which were afterwards proved to have been erroneous, it is perfectly certain that more positive, immediate I may say, instantaneous harm would be done to their country than could be repaired in half a dozen years. It is not a trifle, for one of the most common crimes, I will not say one of the ingrained customs, of this country is the fabrication of false evidence in the Courts of Law. Perhaps, the honourable and learned member who introduces the Bill may think I am only uttering one of the common Anglo-Indian fossilized prejudices; but I would appeal to universal Indian experience to bear me out. False evidence is cheap. One single miscarriage of justice through the medium of false evidence sworn before a Native Magistrate will do more infinite mischief by driving English workmen and English capital out of the country than the united efforts of Government and of all the guarantees they can offer, can repair in a quarter of a century.

If a trifle, then, why in the name of common sense provoke all their animosity for the sake of it. It is difficult in a matter like this to appeal to experience that is purely English. This country is full of anomalies, and it is difficult for the English mind, unaccustomed to the facts of Indian life, to discover how it is that a practice which is submitted to without demur in a Presidency town should be so bitterly resisted in the Mofussil.

MR. ROBERT MILLER.

The answer is simple. A public opinion, a Press and legal assistance are at hand here. There, there is nothing but a Judge to condemn and a Jail to confine. English enterprise—and on this side of India at least there is very little enterprise of any kind, except English—is largely concerned, and English capital largely invested in this country, especially in Bengal. The Indigo factories, the Tea Gardens, and the consequent inducement to that migration of population which is so urgently needed. In parts of India, mills and mines are all supported by English capital, and the tendency has been to increase this. It has begun to be recognized by European capital that India most wants to buy what England most wants to sell, namely, material for increasing the trading power of the country; and a stimulus has lately under the auspices of your Lordship's Government, been given to the inward flow of capital.

But there is one thing that European capital will not do. It will not entrust itself to Native Indian management. Possibly it is prejudice. It is hopeless and useless to say this is the result of prejudice. But the result of the prejudice is a tangible factor, which cannot be denied, cannot be ignored, and which must in fact be acknowledged. Capitalists will not entrust their money to Native management, and they are satisfied the feeling is well founded. I will not give reasons for this, for I do not wish to give unnecessary offence, but I ask your Lordship to take note of it.

Capital employed in the province is invested on the faith of European agency, but such agency is expensive and is not employed in greater strength than the circumstances of the case render positively necessary. A practice exists in the Mofussil: I am not drawing on my imagination,—I am not uttering an Anglo-Indian prejudice,—I am stating a fact which is known to every zemindar as well as to every ryat—to every official European equally as to non-officials who ever engaged in litigation that the practice of bringing false charges to injure rivals or to gratify grudge is a common practice. This is a fact of which European capital has to take account before it allows itself to be locked up in India, and capital reflects that if an European manager is removed from the charge of the enterprise on which he is employed in the Mofussil at a critical moment and imprisoned on a false accusation, the loss and damage may be overwhelming.

No Native criminal tribunal in the Mofussil, can, under these circumstances, command the confidence of our employes. Any thing that touches the person and safety of our European employes in the Mofussil reflects back again on us, and if it

threatens their safety. it deters the inflow of capital. It is said this is all prejudice. We think it to be fact. Capital is sensitive, and when you deprive the investor of one of the safeguards on which he mainly relies, namely, the right on the part of his employes to be tried by one who, whatever may be his knowledge of the crtminal law, is at last a fellow-countrymen, and capable of understanding, as one of ourselves. our own feelings,it is of no sort of use to assure that capitalist that what he looks upon as a safeguard is only an "anomaly."

It is only eleven years ago since Sir James Stephen addressed this Council on the same subject that is now before us; and in allusion to the law which had then been decided upon, but which it is now proposed to alter, he used the following words:—"I need not remind the Council of the extreme warmth of feeling which discussion upon a measure of the nature excited at no distant date, nor need I insist on the great importance to the Government of the country, of the existence of harmony between the Government and the general European population.

These words still hold true. In what respect have circumstances changed since they were spoken? Is a compromise in itself more objectionable now than it was then; or are the facts which rendered the whole law a tissue of compromise in any manner or in any degree of manner different?

The Europeans who have capital in this country do not think so, and they look in vain to anything that has been stated in advocacy of the Bill for reasons which justified a change in the law. A compromise the whole law is, and a compromise it must remain, until the conditions of daily life in the country render a simpler law admissible.

Is this compromise the least objectionable, the least actively offensive of any that are to be found within the four corners of the book highly valued by the section to whom it applies? We have the trader and planters' association from every part of India answering with one voice. I think it is a most regrettable thing—the idea of being called upon to answer the question had ever to be proposed to them; but of the fact of their reply, there is no sort of doubt.

My Lord, the exasperation of race that is now going on is terrible and deplorable. Enough harm has been done, and yet the exasperation is increasing every day. It has not done so yet, but it is leading to a sense of insecurity. If the Government depart from Calcutta to Simla, leaving the population of Bengal "to stew in the juices of mutual animosity" engendered by this most unfortunate proposition, the mischief, which will

not be prejudice but a fact, not imaginary but tangible, may be beyond repair; and I call upon those of your Lordship's Council, who have served their years in the country, and who have more than a theoretical knowledge of the people, to tell your Lordship frankly that I have not overstated the case. And of yourself, I would earnestly beg, in the interest of that concord between the races which you have so much at heart, to withdraw this Bill which satisfies no one, and which, with the smallest amount of good, does almost the largest possible amount of harm.

THE Hon'ble MR. EVANS said:—My Lord,—It is with a heavy heart that I trespass upon your patience, and on the patience of the Council, to discuss this Bill. Nothing that has happened since I have been in India has caused so much sorrow as this. Ever since I have been in India I have seen a cordiality growing up between the two races. There is jealousy, my Lord—and we know that that was inflamed to a fearful extent during the Mutiny; and I am sorry to say that, although that fire has died out, yet I have known myself that it was not altogether dead, and even though I would gladly see it dead and past. I knew that it was there still, at least the embers of it, *suppositum cineri doloro*. I thought it was the greatest wisdom not to stir up these ashes of a dead fire to see whether the embers had gone out; as long, at least, as so many of the old generation who had gone through the Mutiny were still alive. I thank the Hon'ble Kristo Dass Pal for the speech which he has made: nothing could have been better; nothing could have been more considerate; and yet, my Lord, though we know that that speech was directed towards a right object, we also know all the angry feelings which exist outside this Council. It is useless shirking the matter. Let me ask any one man who knows Bengal; let me ask His Honor the Lieutenant-Governor; let your Lordship ask any one of these, and they will tell you what the real state of things is. They will tell you that never since the Mutiny has there been so great exasperation as has taken place since the introduction of this Bill. My Lord, I regret that this is so, and it is with the hope that what I wish to say to-day may lead your Lordship to consider the matter of withdrawing this Bill, that I really ask to take up your Lordship's and the Council's time. Right well assured I am that, if your Excellency had guessed the feelings with which this Bill is regarded, your Excellency would never have brought it forward; and I would ask your Lordship now to consider whether this mischief cannot be stopped before it produces more harm. I do not talk of the "danger." It is

unworthy the occasion and the word to talk of danger. We know that there can be nothing of the sort to be apprehended from the Europeans of India. The lives, the property of the Europeans are bound up in the safety of the Government of India. People will, in wild moments of excitement, talk wild things. Therefore I ask your Lordship to consider that there is not, and has not been, and could not be, any real talk on the part of the Europeans of threatening the Government. The thing is impossible. Their lives, their property, their security, is the Government of India. But what they do feel, and very deeply feel, is, that no sufficient good is to be operated or brought about by this Bill, to justify the abandonment by them of a cherished privilege, and that feeling is very deep-rooted. It is a very strong feeling, and the feeling is so strong that none understand it better than the Natives of the country themselves. We quite understand and feel that, strange as many of their caste-feelings are, if you were to go and pass a Bill against their caste feelings, a storm of discontent would arise, whether the measure would operate immediately or within the next five years. You cannot touch that thing, and if you did it would arouse feelings of the greatest and strongest antagonism This is the case with all feelings which are very strong. Aroun l them are gathered legends of their origin, and, no doubt, Mr. Ilbert will find it an easy task to dispel these legends. But with regard to all strong feelings, it is the belief which gives rise to the legend, and not the legend which gives rise to the belief, and it is no use attempting to win an easy victory by showing the baselessness of what is said in excitement.

The belief is there,and it is the same when all is said. This is a measure which, while it benefits nobody and satisfies nobody, is already producing most lamentable results—a measure which has had the effect of uniting the whole European community in Bengal in one common protest against it,as unnecessary, useless and mischievous.

I shall have to trouble the Council at some length on this Bill in order to examine the previous history of this subject, not from the beginning, but from 1857, to show what the settlement was which it is now proposed to reverse, and I propose to show that there was a real compromise in 1872, a wise compromise, although your Lordship, I quite admit, might have been misled by the opinions and letters received from many high quarters, the error of judgement has been in a great measure on the part of many of those gentlemen who gave those opinions; and of many who have given opinions, I believe that they would retract them if they were now here in Calcutta.

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There are only eleven Native Civilians who have entered the service since 1862. Six of these are in Bengal, two in Bombay, and one young Parsi in the N. W. P. One has left the service and one is dead, and, practically, the only Government which had much to do with this matter is Bengal; Bombay, no doubt, has to consider the position of her two Native Civilians. Sir Alfred Lyall said that it would be many years before the Government had to consider the possibility of putting this class of officers in independent positions, and therefore, when I heard of "administrative necessities," I heard it with some surprise. Now the Commissioner of Burmah has nothing to do with it—he has no Native Civilians at all, and the attempt to judge by the state of things in Upper Burmah was somewhat speculative. I do not know whether this Council is aware of the state of things as regards criminal justice in Upper Burmah. I may inform your Lordship here, on the authority of a Privy Council case in which there had been a charge against a European with regard to some logs of timber, a complaint was made to a Burmah officer, and the European was placed in a dungeon with an iron collar round his neck to await his trial. That was the administration of justice in Upper Buamah. We all know the spirit of adventure which animates many Europeans, a spirit which will impel them to go to Upper Burmah or anywhere else,—a spirit which impels many to go to places whether justice is administered there or not; I have no doubt whatever that if the learned Chief Commissioner of British Burmah was here in Calcutta, he would admit frankly that he was mistaken in supposing that there would not be any serious objection to this change. I shall have to return to this matter, but I was about to point out what was the origin of the compromise of 1872, and point out to the Council that the compromise was a real compromise —that the Europeans conceded something to the Government in return for exemption for the Criminal Jurisdiction of the first Native Civilians. They were few in number. It was not intended by the Government then, and it is not intended by the Government now, to force upon Europeans the general jurisdiction of the Native subordinate courts.

But it is necessary, in order to explain the compromise of 1872, that I should describe the situation in 1857.

In 1857, European British subjects in Bengal were (with small statutory exceptions) triable only by the Supreme Court in Calcutta, presided over by Europeans. Grave administrative inconveniences were already felt from the want of some local tribunals fitted to try Europeans, inconveniences much aggravated by the imperfect means of communication in those

days. The Penal Code was then about to be passed providing the same criminal law for Natives and Europeans. A Criminal Procedure Code was also proposed as the complement (s it was) of the Penal Code, subjecting all persons in India, without the distinction of race, to one uniform set of *tribunals*, consisting of Sessions Courts, Magistrates' Court, and two classes of subordinate Courts. The *Magistrates and Judges* were in those days all Europeans, but some of the subordinate Courts were presided over by Native Munsiffs or others. Against this proposal the Europeans protested most vehemently, and a petition, signed by about 1,000 British subjects resident in Bengal, was presented to the Council.

Public meetings were held and feelings ran very high both against the proposal to subject European British subjects to the general criminal jurisdiction of the Mofussil Courts, as involving the surrender of trial by Jury and the substitution of less competent Courts, and more especially against the proposal to subject them to the criminal jurisdiction of the subordinate Courts presided over by Natives. With the permission of the Council I will read a few extracts from a speech which Sir A. Buller, one of the Judges of the Supreme Court, made in the Legislative Council on the 7th March 1857.

In the debate of the 7th March 1857, Sir Arthur Buller said:—

> The Council had not yet had to deal with any question on which public feeling had been so much excited. Nor was it a sudden or transient excitement, lightly got up and easily to be allayed. These murmurs, these remonstrances that we now heard, were but the angry echoes of that old protest which had systematically, resolutely, vehemently been repeated by successive generations of British subjects at every attempt to make them amenable to the Criminal Courts of the Mofussil.

He then went on to say:—

> Then, who were they who thus came forward with this language of remonstrance? Were they some ignorant, or insignificant, or worthless section of our community? Far from it. They represented the life, the vigour, the best hopes of our Indian possessions. To the industry, the skill, the indomitable energy of the British speculator in the Mofussil, it was no little that we already owed; and it would be the height of impolicy, as well as of ingratitude heedlessly to discourage so valuable a subject in the onward course of improvement along which it was his mission to lead the destinies of this country.

I think all will acknowledge that much has been done in this country by Europeans.

He continued:—

> But, above all, let us bear in mind, that their prayer was, not that we should bestow upon them a new privilege, but that we should not

take away from them one long enjoyed and incalculably prized. He was confident, therefore, that the Council would approach this question in a forbearing spirit; that, if it thought that the petitioners were some times unreasonable in their demand or intemperate in their language, it would not angrily shut the door in their face, but would give their petition a patient and indulgent hearing, and that, if it could not concede to them all they asked, it would, at all events, not take from them one jot more than it felt compelled by the strictest necessity to take.

He then went on to deal with the intolerable difficulties which had arisen in bringing a criminal down all the way from a distance to the Supreme Court, a course which sometimes amounted to a denial of justice. He then dealt with the claims for trial by Jury. Then, after having said that the petitioners claimed "an inalienable and indefeasible right of trial by Jury" which, as a lawyer, he said he did not believe existed in any authentic theory, and certainly not in fact, he proceeded:—

However, he thoroughly recognized the right—call it, if you please, the indefeasible right—not only of every British subject, but also of every subject of the Crown to be as well governed in every way as circumstances would permit; and if trial by Jury was the best form of trial, and if it was available, or, even if not available, if it could be made available, to British subjects without working injustice to others—then, he said, by all means let them have their trial by Jury.

I ask your Lordship's attention to that for this reason. The Europeans claimed a certain right an indefeasible right to have satisfactory criminal jurisdiction. But they are claiming no new jurisdiction. All they say is "leave us the tribunal which we now have, which is a moderately satisfactory one, with all its defects." We have never said that it was perfectly satisfactory, and the full effects of this I see every day of my life. I am referring to the position of Magistrates who combine in themselves Executive and Judicial function. These facts I see every day in my life. Every day there are brought before me in records, instances in which men of the highest honour and integrity have had their minds biased unconsciously, while doing their very best, by the results of secret enquiries. I shall show the Council presently that we do submit to that imperfect jurisdiction, and to more than that on the condition that that imperfect jurisdiction should be exercised by our own class; and having submitted to that on account of representations made of administrative necessities, the European community do ask and implore the Government not to take away from them that which they consider will conduce best to the satisfactory administration of justice to them. And it is upon that that they rely. They say that there is no administrative necessity shown for the proposed change—there is no mention of any administrative necessity except, so far as

in the papers, you will find a talk of some administrative inconvenience in reference to a matter of the very smallest character. None can take place, I say, of any importance; and whether any would take place is very uncertain. It must be remembered, therefore, that they stand upon that, and they say, Don't give us a jurisdiction which cannot be satisfactory to the accused, and which cannot be satisfactory to the class to which he belongs. Don't establish a tribunal the sentences of which will not be received with respect. It is a bad thing to set up a tribunal to try a class of men when you know that that class cannot and will not respect it; and when you know that every conviction of that tribunal will be the immediate signal in nine out of ten cases for an outburst of petitions and indignant letters to newspapers in those matters which tend to set up and aggravate dormant race feelings again. Sir A. Buller went on to point out:—

They referred us to the Penal Code, which in its anxiety to provide for every possible offence drew within its wide definitions acts which men were sure to be frequently committing without imagining that they were crimes; and they showed us that under its provisions, a person could hardly open his mouth or move his hand, or even move the air, without committing an offence punishable with imprisonment. They ask us to picture to ourselves the sort of places which, in small localities were available for imprisonment, and to consider well what sort of punishment imprisonment was to a European, even in the best-regulated Jails. They referred us to the Calender of the Supreme Court, and they showed us that two years was the maximum of imprisonment which that Court thought it safe to award to such persons in this climate; and they implored us not to trust a power so susceptible of abuse to unfriendly or inexperienced hands,

He then went on to say:—

On the other hand, say the *soi-disant* advocates of equality—"Place all alike upon the same footing at once. If the tribunals of the Mofussil are as bad as they are represented to be, they must be equally bad for Natives, though the Natives may not be able to appreciate their imperfections, and why should not all share alike the evil till it can be remedied?" But why should they? Would the evil be in any way the less to the Native if it were felt also by the European? If it were an evil which was susceptible of being increased or diminished according to the surface over which it was spread then he could imagine some reason in the argument. But if we found a certain number of persons subject to an imperfect system which we admitted must be remedied and which we avowed our intention of remedying as soon as possible; and if we found at the same time certain others who, by no force or fraud of theirs, but by our own deliberate acts, and the Acts of the Imperial Legislature, had been especially exempted from it and were painfully alive to its imperfections—upon what principle would we compel the latter to become fellow-sufferers with the former. Certainly, not on the principle of the greatest happiness of the greatest number. Certain-

ly not on the principle of doing equal justice to all. He could imagine our doing so on no other principle than that of doing equal injustice.

After mentioning other arguments, he was of opinion that the great mass of the Natives did not envy or object to the privileges which Europeans enjoy, as regards the constitution of tribunals. He said that the position now was "that now you have equal laws for all." But the Europeans object and say that the tribunal will not be competent with regard to some of them, and they object upon the ground that they will be open to the evil influences of personal prejudice and antagonism of race. The subject was never followed up, because the Mutiny intervened. The Court of Directors took away from the members of that Council the question of the trial of Europeans, but in 1859 the question again cropped up, and in the discussion on this same Criminal Procedure Code, Mr. Harrington, one of the most distinguished members of the Council, gave a most valuable opinion on it. Mr. Harrington said:—"He did not think it advisable, nor had he any wish, that the courts in the Mofussil, when presided over by Natives, should exercise jurisdiction in criminal cases over European British subjects. He would leave them to be tried by European officers only." And Sir Barnes Peacock then said:—"Now the Hon'ble member did not act fairly by him (the Chairman) in trying to hold him to the opinion that British subjects should be amenable to the jurisdiction of our Native Criminal Courts. What he had stated then he would repeat now, *viz.*, that European British subjects should be subject to the courts of the country, but the question was how were these courts to be constituted. * * * * This was said in March 1857, before the Mutinies, and he did not think, even if he had pledged himself to the opinion that the native criminal courts should have jurisdiction over Europeans, that any hon'ble member should hold him to it now.

None of these eminent men were of opinion that it was desirable that Europeans should be tried by Courts presided over by Natives, and Sir Charles Jackson in particular observed:—

With respect to the question now before the Committee, namely, the expediency of giving Native Magistrates power to investigate charges against European British subjects and to commit them for trial he had no doubt that, as an abstract proposition, laws should be made applicable to all classes of the people alike; but that proposition must be taken with certain necessary modifications which the peculiar circumstances of each country might render necessary. In this country there was a small dominant and civilized class, and also a large Native uncivilized population, and without entering into any argument on this part of the question an argument which would raise many questions more or less personal as to the status and character of Native officers, he was

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prepared to say that in the present position of the two races it was inexpedient that a Native Magistrate should have any jurisdiction whatever over British subjects, and if that was his opinion formerly, he certainly had seen no reason to change it since the Mutiny. But he would rather put the argument on another ground. Whatever might be said of the Mofussil Courts, it must be admitted that they were as good Courts as Natives ever had in this country. The Natives are not worse off, but on the contrary, are much better off as to Courts than they were under the Native Governments. The British subjects on the other hand, are subject now to Laws and Courts to which they are, more or less, attached, and the real question was whether European British subjects, should be deprived of their own Laws and Courts, and be placed under other Laws and Courts which were deemed by themselves, and generally admitted, to be of an inferior kind. He never could understand on what principle British subjects could be expected to acquiesce in the justice of such a propositition.

Then, with reference to the Native Justices of the Peace in Presidency towns, he said:—

Before he sat down he would refer to an argument of the Honorable Member on his left (Mr. Sconce), who had referred to the Statute of 2 and 3 Wm. IV as authorising the appointment of Native Justices of the Peace and in fact establishing the principle that they were competent to discharge such duties. But their jurisdiction was confined by those Acts to the Pesidency towns, where they had little power, and where the Press and a large European community would operate as a check, and that restriction on the power of the Government to appoint Native Justices of the Peace spoke volumes as to the intention of the Legislature, and showed clearly that they were not then considered qualified to discharge the duties of Justices of the Peace in the Mofussil.

I mention those in order to show that these arguments as to the difference between Calcutta and the Mofussil was started so early as in 1857, and there never yet had been an agitation yet in which it has not been put forward. The persons who justified the expansion of those powers in the Mofussil say, How can you justify logically this anomaly, that Natives have the power in the Presidency towns and have it not in the Mofussil? My answer is that the Presidency towns and the Mofussil are as different as light and darkness. I was never more astonished in my life than when I heard my hon'ble and experienced friend (Mr. Quinton) inform us of the statement of Lord Napier, that was a statement which he said must satisfy everybody. I say that Lord Napier had no knowledge whatever of the Mofussil, or of Bengal at all events, and I say so because, if he or any other man who has lived in Bengal were to tell me that there was no distinction between the Presidency towns and the Mofussil, that no false charges existed in the Mofussil, he would be telling me something which was monstrous. My Lord, here in Calcutta the systematic fabrication of false charges is a thing almost unknown in the Mofussil it is as rife as ever, and I will point out to them what Sir James Colville said in 1857. He said:—

The Council should consider that the feeling of British subjects who expressed so much alarm at being made liable to the jurisdiction of the Mofussil tribunals in criminal matters, was not so much that of men who felt that persons of any races who committed such crimes as theft or the like would not be fairly tried; but it was a well grounded apprehension of being subjected to those false charges of violence and attempts at violence with which, in regard to Natives, the past history of the Mofussil Courts was so rife; and which constantly arose out of disputes respecting the possession of land. He believed it was notorious that, in almost every case of an affray in the Mofussil, the contending parties, after the chances of the field had been determined, proceeded to fight out their battle in the Courts; that each side charged the adherents of the opposite side, who had never been present at the affray, with having actively participated in it; and that the great contest was to see how many of the amlahs on each side could be convicted or having personally assisted in an affair from which, to judge from their well known nature, they would infallibly have run away. It did seem to him, therefore, that it would be rash to submit charges of affray for trial to a Magistrate who was interested in preserving the peace of the district, and who, in exercising his Police duties, must necessarily be in danger of acquiring some degree of bias against, or in favour of, particular persons within his jurisdiction.

Now these words remain as true, or very nearly as true, now as they did then, and I know many instances to my own personal knowledge. In one instance I had absolute knowledge of the falsity of the charge which I saw brought, and which I heard witnesses depose to, and many more I have come across in my professional experience; and my experience is borne out by the experience of many of my friends. No doubt there are large towns like Patna, which are becoming more and more like Calcutta, and there are certain parts of the country which are more come-at-able, and there are other portions in which there has been improvement. But in the Mofussil, as a whole, I assert that nothing has been done to entitle any one to say, as I understand Lord Napier to have said, that the distinction between the Mofussil and Presidency towns has been destroyed in such a way as to justify any argument that the jurisdiction in the Presidency towns ought to be exercised in the same way as in the Mofussil; and we do not need any proofs of it, because let us bring up all the anomalies as to jurisdiction which my hon'ble friend has read to the Council; let us bring instances and examples of British privilege, every one of which is as great an anomaly, and some of them even greater anomalies, and some of them far more inconvenient than the one now proposed to be done away with. In reading this, you will observe, he pointed out that in the Presidency towns everybody was subject to every tribunal; that no person in the Presidency towns was exempted, by reason of his birth or descent, from the jurisdiction of any tribunal. If this is so, let us put it to the

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test. Is there a man here to-day in Council who would state, as a responsible statement, that the state of the Mofussil in Bengal was such that we may safely apply that principle to it? What, then, becomes of the statement of Lord Napier? There is not, as a matter of fact, any substance in the allegation at all, that the state of the Mofussil was similar to that in the Presidency towns; and, as a matter of fact, the case is that the difference in jurisdiction is justified by the difference in circumstances. I come now to what was the point in these debates. When the Code of 1861 was passed, it did not take away the jurisdiction of the old Supreme Court. The occurrence of the Mutiny had caused a withdrawal of the proposition to take away that jurisdiction altogther, and so the matter went on, leaving British subjects to be tried by the Supreme Court only with certain statutory exceptions.

But there came a time, 1871-72, when there was a revision of the Code, and a later or new Code was prepared by Sir Fitzjames Stephen. I was here in 1872, and can speak from my personal knowledge, because I had the pleasure of knowing the legal Member of Council himself, and I had the pleasure of knowing Mr. Stewart, who ably represented the non-official community; and giving the Council my recollection of the matter, not from any notes, but simply from the general impression produced on my mind, which I think is fairly accurate, the matter stood thus. The great administrative difficulties which had arisen from the carrying down of the prisoner all the way to the Supreme Court still remained, and although communications had become more easy, yet the great increase in the number of Europeans of the working class, and the influx of the Australian loafer, had made the problem more difficult,—in fact, the thing had become an absolute necessity. The European community fully felt that there was this difficulty, and you will see by that debate that that community were moderate and sensible. It was to a considerable extent the same European community which exists now, and I apprehend that this community has not fallen off from the qualities of its predecessor. Now the Bill proposed to subject them to limited jurisdiction of the Courts in the Mofussil, that is to say, a Sessions Judge will have the power to imprison for one year, and a Magistrate to imprison for three months. Now as to Sessions Courts, so long as they were manned by Europeans, they would have little objection to make, because the Sessions Judge, so long as he was an European, was a person strictly confined to his judicial duties, and has no executive duties whatever to perform. But with regard to Magistrates' Courts, they had very strong objections, and they were resolved, if necessary, to make a strong

fight about it,—the distinction I have pointed out, inseparable from judicial and police functions, which rendered an unbiased judgment almost a matter of impossibility. But Sir F. Stephen proposed a scheme of summary trial to enable Magistrates to dispose of cases without any full record of the evidence except such as the Magistrate might put in his judgment; and he was very anxious to pass this on the ground that it would be a great administrative convenience. Now it is evident that the Europeans had a very strong case not to submit to this because they had a right to appeal, a right which could not be exercised if there was no proper record of the evidence, but there was one weak point on which Mr. Stephen could press the European, and that was their well-known rooted dislike to have the criminal law administered to them by Natives of this country, and to have their lives and liberties entrusted to them. There would have been fierce agitation over this, I am speaking of the large bulk of Europeans in the Mofussil. I am not saying whether this feeling is justified or not, but the feeling was there, and everybody knew it; and it was this which formed the basis of the compromise. One the one hand, the Europeans did consent through their representatives, and may point out that Mr. Chapman expressly tells in his speech that the pledge which he had given was not, as has been represented, merely a bargain between the different members of the Select Committee, but was a distinct pledge given to the European community; that to the European community the proposal was communicated through Mr. Stewart, that they were talked over finally and weighed, and when found acceptable to a large number, they were embodied in the report of the Select Committee which was formally laid before the public and the Council. Now when the debate came on there was this extraordinary state of things. The compromise had been come to after the lamented death of Lord Mayo, and when Sir John Strachey was officiating, and certainly before the time when Lord Napier arrived in this Presidency, and that compromise was a wise one. It was thought wise by Sir John Strachey, and it was thought to be wise by the other members of the Select Committee, and then came the debate to which I have alluded, and the real peculiarity of the debate was that Mr. Stewart went into the Council and did not claim his right to speak, as he had been assured by Sir Fitzjames Stephen that they would stand to the compromise, as he had before ascertained that the feelings of the members were that they would do so, and that if they did not, that there would have been a very serious discussion, and there would have been

agitation, and that there would have been feelings aroused, which had been nearly forgotten, of other times. It was for the purpose of carrying that measure, it was for the purpose of obviating the agitation, and of not awakening slumbering feelings, that they entered into this compromise. And this is the explanation, my Lord, of why that debate was such a remarkable one, and the reason why there was such a little statement of the compromise was, and the reason why Mr. Stewart did not speak was for the express purpose of avoiding agitation, and avoiding the making of a statement which would throw a certain amount of discredit upon the administration of justice, and to avoid making the statement that the Europeans, as a body, objected to be tried by Natives, and it was for these reasons that this compromise was entered into. This present agitation is not easy to understand unless you have this light thrown upon it, and I do not think that my hon'ble friend Mr. Ilbert has given what appears to me to be the real significance of that debate or of the action taken by Mr. Stephen, when he said that Mr. Stephen said he could not approve of the principle of a compromise, and it was to be remembered that what he did really say was that he could not approve of a compromise, because a compromise must always be "give and take," and he went on and gave the very best reasons for approving of the compromise. And these were the reasons which my hon'ble friend Mr. Miller has laid before the Council, the desire not to strain the harmony between the Europeans and the Natives in India, with the desire to respect their feelings, and he showed also in that passage which you have all heard, in which he says that from no people less than from the Natives of India should such a claim arise, because they know the value of privileges themselves. My hon'ble friend has told you that in civil cases every body is subject to the same jurisdiction. They are subject to the same jurisdiction, but are they obliged to come into Court? Are their ladies obliged to come into Court? Are their Rajahs not privileged? Why is all this done? It is because we do not wish to wound their feelings, and there is not sufficient administrative necessity to withhold these privileges. This is all and nothing more—no other reason can be given. It is very unfortunate, but we must respect the feelings of the Natives. I know many Natives. I have many friends among them, those whom I respect and esteem, and I believe that the respect and esteem is mutual. But when these matters have to be discussed one is obliged, as Sir F. Stephen observed, to speak fully and frankly with regard to that matter when there are reasons why Europeans object to this jurisdiction. There is one of them which I think all reasonable men

will admit the weight of. The first reason put is that the Europeans consider that they are entitled to have as good justice as the Government of India can afford to give them without injustice to others; that they come of a race and from a country where justice has been administered to them from the earliest period of their history in all their tribunals, and coming from countries where justice was so administered by their own countrymen; they were also, as they considered, entitled to ask for and to have that privilege preserved to them. I think every body will admit that it is a most important thing for a Judge to be able to understand the habits, and manners, and customs, and modes of life of the accused, in order to ascertain and to consider fairly and independently as to whether the accused was likely to have committed the offence alleged or not; and in no country is it more necessary than in this country, because criminal trials almost entirely depend upon oral evidence in nine cases out of ten; and depending upon oral evidence, we have to consider what are the conditions of oral evidence in India. I will not read passages, for I do not wish to give unnecessary offence. I will not read those passages to the Council which are to be found in every digest of Privy Council cases as to the lamentable state of things in regard to oral evidence in the Mofussil in India. We all know it, we all regret it, I do not wish it to be understood that I am conveying any imputation upon the veracity of race as a race. I have known many honourable and high-minded men among the Natives, but there can be no doubt that centuries of mis-government and oppression do leave marks upon any race which are not easily to be eradicted, and further it is to be regretted that the domination of successive foreign conquerors, with alien laws, alien habits of life, alien tribunals and alien Judges, have all had their effects. There can be no doubt that this is a lamentable defect. How the fact has been brought about it is not so material to consider, but true it is and sad it is, that the man who in his own village would speak the truth before the village punchayet, under the sanction of his own religion and custom, will be seen coming into British Courts of justice and supporting falsehood with a fictitious case and false evidence. That being so, the Council will understand how important it is that the Judge should have a general knowledge of the thoughts, feelings manners and customs of the accused, so as to form his judgment on the case, and the Privy Council have pointed out more than once that oral evidence is of an untrustworthy character and worth very little. And how is a Judge to form a real estimate of the probability or improbability of the facts of the case unless he can in some way put himself in the prisoner's place? And it is

to have Judges of their own race, to put themselves into their place and judge of probabilities, it is for this privilege, that is one of the things which they so strongly wish not be interfered with, and which they so highly prize. Planters in a remote part of the Mofussil are people against whom a false charge may be brought, and it is upon these qualities of the Judge that they very greatly relied. And if you take away this they feel helpless—a false charge, false witnesses, an alien Judge whom they feel cannot judge them aright, and they feel lost. Of course it will be observed by every one that in the debates of 1872 it was assumed then that the only question was as to the demands of Native Civilians who had been to England, and it will be observed that even Mr. Ellis did not propose to extend the jurisdiction to native deputy Magistrates on the ground that they were unaccustomed to the habits and manners and customs of Englishmen, and he said upon the ground that these Native Civilians, having been to England, must be considered as having become Anglicised. But this is not so considered by the bulk of the Europeans in the Mofussil. The Commander-in-Chief said:—I frankly accept them as members of the Civil Service because they have become Europeanised." But the people in the mofussil do not frankly accept them, and it must be remembered that there are two other matters to be taken into consideration in judging of the matter. One is race feeling. I have already adverted to that, which does more or less always exist.

Then there is no doubt, as the hon'ble friend Mr. Miller had stated, that there is not that entire confidence as yet between the mass of the Europeans and the Natives which many seem to think there is. The fact that they will not trust the conduct of their business to a native manager is no insignificant fact. There are, it must be remembered, a large mass of the Anglo-Saxon race in India who have strong English prejudices, and who look upon the people of India as an idolatrous people. The mass of the Anglo-Saxon race is bigotedly attached to its own religious notions and habits of thought, and their own standard of education, and who do not appreciate qualities of a different standard. And it does seem a fact that a large number of people look upon the Natives of this country as persons who are unenlightened and idolators, and they do further regard them as persons who are surrounded, from their earliest years, with a number of influences which are adverse to the formation of those qualities which the English most respect and approve, and therefore they do refuse, absolutely refuse, to recognise them as fellow Britons when they return to India after two or three years' residence in England. I have

mel men amongst the Natives whom I fully and thoroughly trusted, but I am merely speaking of the existence of such a feeling. It does exist, and it is impossible to get rid of it by mere lectures. It is no use telling a man that, under a different system of education, man may rise to a high state of morality. Truth and probity there may be in some cases. I have seen it myself; but I do ask the Council to consider the facts before us, and not to think that the feeling which exists is a mere matter of prejudice which is merely temporary and will pass away. And I ask the Council also to consider that, by the introduction of this Bill, they are violating a very strong and intense feeling on the part of a very large body of Europeans. And for the same reason that I respect the unreasonable caste and other feelings on the part of the Natives—many of them which must appear to us outsiders as somewhat devoid of foundation—for the same reason I would ask them to respect the feelings of Europeans.

When this compromise had been arrived at in 1872 things went on very quietly, but in order to illustrate what might have happened I will refer the Council to what Mr. Elliot, the Chief Commissioner of Assam, says, the proposal then being to confer this jurisdiction only upon convenanted Native Civil Servants. He does not think it is likely to exercise any serious opposition on the part of the European community; the feeling which existed ten years ago was, he believed, gradually dying away. These two races separated thousands of years ago, and through these thousands of years the gulf has been getting wider and wider. No doubt that gulf would in time get bridged by the influences of common interests, but not at once; and it is not possible to extirpate prejudices or feelings by Act of Parliament. When the debate of 1872 took place and the division took place, there was another significant matter to which I wish to draw the attention of the Council. His Excellency the then Commander-in-Chief, although in favour of treating these Native Covenanted Civil Servants as Europeanised and considering them as being made practically Europeans, said that he was against Sir John Strachey's main proposition to subject Europeans to the Magistrates of the country. Therefore it was that the Commander-in-Chief moved an amendment which practically carried out Sir Arthur Buller's idea that the jurisdiction of Native Judges over European British subjects should be confined to the sessions courts.

The COMMANDER-IN-CHIEF said:—

He was jealous of the liberty of the European British subject in India because he laboured under great disadvantages.

In places where Europeans are numerous, there is a chance that there may be European witnessss, but in remote places there is every probability that he may be at the mercy of native witnesses.

Then Mr. Stewart who had not spoken on the other motion, said he considered himself bound by the compromise, and H. E. the Commander-in-Chief found himself in a minority of one. Thus it was that the compromise was carried out, and by that your Lordship can see the position. Now that compromise has been loyally assented to by the Europeans ever since 1872. In 1882 no agitation was made to rip up this matter, but actually a further concession was made. The change was this, that they have lost the right to cross-examine the witnesses after the framing of the charge. It seemed strange to say that this was done, but so it was. When a charge was made before a Magistrate he was at liberty to take the witness for examination as he found convenient. During that time a prisoner may cross-examine the witnesses, but up to that time no charge was framed, and the man who was accused did not know, legally speaking, of what offence he was going to be charged. But the law has provided that that man should not have the right to call for and cross-examine any witness after the framing of the charge, unless the witness happened to be present in Court at the time, and I need not tell the Council that when a false charge is fabricated, not unfrequently with the help of the police, the prosecutor and the witnesses would be idiots if they remained in court. Therefore the Council would see that there were really very grave objections to taking away the conditions of the compromise by a separate Act without ripping up the bargain. It was convenient to take away the right to cross-examine the witness after the charge was made, because it was often made the means of obtaining delay; but no people would submit to it unless they had the most absolute confidence in the personnel of the magistrate, and much as the Europeans may grumble at the miscarriage of justice which sometimes arises from the bias caused by the mixing up of executive with judicial functions, they admit that, as far as possible, their own countrymen try to do them justice. The natives do not say the contrary; there is no charge of partiality made against European magistrates in favour of their countrymen. I saw with surprise in a paper the other day that there was such a charge, but when the matter was examined it came to this. It was objected that there was partiality in the law in allowing a difference between natives and Europeans as regard extent of punishment, but no one has ventured to whisper that justice was not fairly and impartially administered. And I put it to the Council whether it is not hard on the European when it is proposed to let the bargain stand, and then to deprive

them of a portion of the consideration. I submit, that if there is to be a ripping up of the question it should be at a general revision of the Code of Criminal Procedure. When there was a general consolidation of the Code, we all know that the Hon'ble Durga Churn Laha opened up a large question by a motion which he then made, but his motion was as respects the privilege of the writ of *habeas corpus*, the benefits of which he wished to extend alike to natives; and I can well understand that such a question was open to the consideration of the Government, and I could have no possible objection to the natives having that privilege or any other privilege which the Government thought fit to allow them. But there were probably reasons why it was inconvenient to give them that privilege, and at any rate it was not attempted to be done. That anomaly was not attempted to be dealt with. The broad principle of subjecting all persons alike to the jurisdiction of the Criminal Courts of the country has not been attempted to be carried out. I am not blaming the Government for the action then taken in the matter because there were strong and sufficient reasons for the course then followed. If it could not be carried, if the Government could not give them the right of *habeas corpus*, what is the necessity for moving in the present matter? The natives do not lose any place of profit; they can be made sessions judges, and there is an express provision in the Code to the effect that if the judge of the sessions court is not a European British subject the case is to be submitted to the orders of the High Court, who will no doubt transfer the case for trial to an adjoining district a few miles off. Cases of this sort do very seldom happen, and no inconvenience is caused thereby; but there must be inconvenience in trying Europeans and bringing them down all the way from Assam for trial in the High Court. That inconvenience is submitted to because it is necessary, but there is no inconvenience which can be compared to that one in this case. Therefore we say, no necessity has been shown for the introduction of the present measure, and that the consideration of this matter should be left to the time when the Code next comes under revision, and that it may be then brought forward with a warning to Europeans that their privileges will be attacked, and that nothing should be left by them in this Code which they are not willing to have administered by alien and unfriendly hands.

I have dwelt at some length on this compromise, because it has a material bearing on the question, and I hope your Lordship and the Council will consider that there is some good reason for the withdrawal of the Bill and for the postponement

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of the question until the next revision of the Code. But it is quite clear that there is strong force on the point which I now take. But real and grave issues lie behind it. There is a strong, intensely irritated feeling that the conditions of the compromise have been violated. The true principle in this matter which we were all obliged to admit, that there should be no distinctions of classes of the community, cannot be carried out, having regard to the anomalous position of the country. I will concede that question of principle to your Lordship, but the propriety of carrying out that principle being given up, it makes very little difference as regards principle whether this Bill is passed or not for the purpose of giving jurisdiction to these few civilians, but it makes a very great difference indeed to European British subjects.

In reading the speech of my hon'ble and learned friend Mr. Ilbert I find it stated thus:—"Before taking any further action in the matter, the Government of India considered it desirable to ascertain the views of Local Governments and administrations 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." When I turn to that circular letter, I find that it was not addressed to the several Local Governments as stated here, but was addressed to the Local Governments excluding Bengal. It may be said that the communication originally came from Bengal, but when I came to examine that communication, I find that it stands in this way. I find that Sir Ashley Eden was on the eve of departure; that he was just about to lay down the reins of Government when he caused to be written the letter in question. After having pointed to the note of Mr. Gupta and stated that it required full consideration, and that it could not be raised at the final stage of the Bil which was then the Criminal Procedure Code of 1882, the letter proceeds:—"Sir Ashley Eden is, however, of opinion that the matter should receive full and careful consideration whenever, on any future occasion, a fitting opportunity occurs." I ask attention to that because, although a little further on you will find a statement that the time has come, he gives certain reasons, none of them of any urgency. These reasons are that the covenanted native civilian may rightly be expected to hold the office of district magistrate or sessions judge. But that contingency was already provided for in the Criminal Procedure Code so early as 1872, and was in the Code of 1882; so that this very contingency was actually foreseen and was deliberately

provided for. It is provided that where the sessions judge is not a European British subject, the case shall be referred for the orders of the High Court, with a view, of course, to its removal to another district. The anomaly was not that the Joint Magistrate should try, but the District Magistrate should try. The anomaly is that the District Magistrate should ever be allowed to try any body. The hon'ble Mr. Quinton said that the District Magistrate is a sort of king in his district; he directs everything; he has to hear all sorts of complaints; to hunt up cases; to give directions for the preservation of the peace, and this Bill is to be brought in to give the jurisdiction to native civil servants. It is an anomaly of the worst dye which we have always complained of, and which no one would submit to except that it is out of the power of the Government for financial considerations to separate the judicial from the executive functions of their officers. If their was a Joint Magistrate, it would be very much better that all criminal cases should be tried by him. And the only suggestion which has been made for giving the district magistrate criminal jurisdiction over European British subjects is that his position will thereby be more respected. If the district officer is a person who absolutely will not be held in respect by his own countrymen, one can only say that the destinies of the Empire are confined to hands which one can hardly think are "altogether satisfactory." I think in the hon'ble member's speech there was a slight ring of regret when he said that, in his opinion, if the natives were admitted into the service at all, they should be admitted fully. The concluding portion of Sir Ashley Eden's letter said that "for these reasons Sir Ashley Eden is of opinion that the time has now arrived when all native members of the covenanted civil service should be relieved of such restrictions of their powers as are imposed on them," and so on. I quite admit that that was very likely to produce in the mind of the Government the effect that Sir Ashley Eden wanted something to be done immediately. But it should be remembered that he was going away, that he was laying down the responsibilities of office, and he wished to have it put on record that he, for his part, was willing that it should be done, and he considered that on the next fitting opportunity the question should be brought up. But that as quite a different thing from an opinion of the Local Government which was given after consultation with the local officers. Such an opinion, given a month before his departure, could hardly be said to influence the matter one way or the other. And I do not believe that Sir Ashley Eden would ever have thought of introducing a legislative project of this kind without consultation with his own officers and with other per-

sons too. Whatever view we take of this letter, it is clear that it is merely the individual opinion of Sir Ashley Eden, and much as I respect him as an administrator and as a personal friend, I should not have been prepared to take his individual opinion on this subject so unreservedly as I would have done on any other subject; because every body knows that in 1857 Sir Ashley Eden went so far as to say that he preferred the mofussil tribunals in their unregenerated condition to the Supreme Court at Calcutta, and he got into hot water with the Supreme Court Judges in consequence, and it may be that it was the memory of this original quarrel that led to the penning of this official letter. I quite admit that this letter is enough to lead the Government of India to take it as the desire of Sir Ashley Eden that something should be done immediately, but, if he had this desire, it is strange that no one had had any inkling of it. But I much incline to think the other way; for surely if he had intended seriously to ask that some immediate steps should be taken in the matter, some one would have heard of it, and therefore I have come to the conclusion, in my own mind, that that is the character of this document. Then I quite understand how it is that the Government was misled, and therefore did not consult the Government of Bengal. But of course I also entirely recognise that the non-consultation of the Government of Bengal has been the result of some misapprehensions or mistake, for I could not for a moment believe that the Government of India would introduce measure of this kind without taking in a regular manner the opinion of the Government of Bengal. When that circular letter was issued on the 28th April last, His Honor the present Lieutenant Governor had succeeded Sir Ashley Eden as Lieutenant-Governor of Bengal, and he can tell the Council whether he or his Government were consulted in this matter, and whether he has had the opportunity of consulting the Judges of the High Court and other officers of Government in the same way as the Government of Bombay and Madras had done. Of course this was an unfortunate oversight, but as far as I have been able to ascertain, so far as an outsider can do, I believe the opinion of the civil servants in the Mofussil, the large bulk of them, are opposed to a measure like this, and so far as I have been able to gather, the Judges of the High Court are also opposed to it, and that for various reasons. My Lord, I submit that the true test of legislation is whether the good which will be produced by a particular measure is greater than the evil which is likely to be caused by it, bearing in mind that the onus of proving the necessity for a measure is upon the legislator, because all legislation must be

taken to be an evil unless it can be proved to the contrary, and in this instance I don't see how my hon'ble and learned friend can discharge that burden. I don't put this burden upon him, I don't mean that he is responsible for it himself, because I know it is a Government measure. But I can well imagine that if your Lordship had known that the opinion of Sir Ashley Eden was not the opinion of the Government of Bengal, your Lordship would, perhaps, have been spared all this lamentable excitement.

There are a few words more which I have to say in regard to the introduction of this Bill. My learned friend stated at the outset that the object of the Bill was the effectual and impartial administration of justice. But nothing has happened since 1872 to justify the statement that this Bill is necessary for such a purpose, except that some of the native civil servants have approached nearer the time when they may naturally expect promotion to the officers of district magistrate and sessions judges. But the number of these gentlemen was small. According to the *Statesman* the importation of the article was stopped, and that respectable journal thinks that they are dying out like the Dodo. But there they were, their number was ten, and I submit that there cannot be any necessity for this legislation now. There are European officers in every district, and I entirely agree with Sir Fitzjames Stephen that the privilege as to the trial of inviduals is not the privilege of the tribunal by which an accused person is to be tried, but of the person who is to be tried. I deny the right of any man to try anybody. His position is that of the juryman; his position is that he shall well and truly try and true deliverance make between His Sovereign Lady the Queen and the prisoner at the bar. And if our Sovereign Lady does not want the arbitrament of any man, or if the prisoner objects to the arbitrament of a particular juryman, I cannot understand any man saying:—"I want to try this man; I know he will object. I know that the whole of his race will refuse to accept the sentence; but it is my right to try him." But where is that right derived from? The Europeans have been taunted with going into very imaginary positions to prove their right. But although this right cannot be asserted, it cannot be denied that the privilege of the tribunal by which a man is to be tried is the privilege of the prisoner and not the privilege of the judge. If you must have special tribunals, let them be such as will effectually and impartially try them and satisfactorily try them—satisfactorily in the sense that the class which is to be tried will be satisfied, and will respect the tribunal which is to try

them. I submit very strongly that nothing can be more fatal to the good government of the country than to set up tribunals which the public will not respect. It has not been stated by the hon'ble and learned mover of the Bill that the tribunal to which EuropeanBritish subjects were proposed to be subjected would be more effectual to the administration of justice. But, on the other hand, a very large number of men say that it will not be effectual and it will not be an improvement. They may be right or they may be wrong, but this one thing all men say, that justice will not be administered to the satisfaction of the class to which the accused belong to the same extent as it is now; that these tribunals, presided over by natives, will not be revered and respected as the tribunals by which they are now tried are. Let this project be tested by the test which my learned friend proposes to be applied to it. He said:—"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." To this I would reply:—"Is justice not impartially and effectually or more effectually administered now? Does any one think that justice will be more impartially administered by a change in the tribunal? No, no one has ventured to say so. But I venture to say positively that it will be less satisfactorily administered than it is now, and I think every body will agree with me.

There is one other point on which I have to make a few observations. The amendment of Sir Barrow Ellis had reference to the appointment of native covenented civil servants. His contention was that they had been Europeanised; they had been taught English manners and customs, and were acquainted with their social habits and institutions. But he admitted that persons who were not acquainted with the habits and manners of Europeans ought not to try them, and his amendment was framed accordingly, and the whole consensus of opinion which was now relied upon went no further, except the opinion given by Sir Charles Aitchson, who proposes to sweep away all distinctions altogether, and to carry out rigidly the old original scheme of having all classes of Her Majesty's subjects subject to one and the same tribunals. With the exception of that one opinion which, I think, my learned friend will hesitate to put into practice himself, most of the opinions given upon this subject go no further than the opinion of Sir Ashley Eden, that is to say, they are confined to the original amendment ot Sir Barrow Ellis that the jurisdiction should be confined to those members of the native civil service, who have been to England, who rise to the position of district judges and sessions judges.

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That is all that has been maintained by any authority. Now what does my learned friend Mr. Ilbert say. He says:—"We should not be justified in reopening this difficult question unless we see 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." He, therefore, considered it not sufficient merely to go to the length of Sir Barrow Ellis's amendment. He said it was eminently desirable to avoid constant tinkering of the law, and he comes to the conclusion that that would be merely tinkering with the question; it would be a mere tinkering of the law; it would be doing a very small thing and violating a very large principle. That, he admitted, would be a fair charge that could be brought to any proposed legislation on the subject. And so my learned friend's measure assumes a broader basis. It does this. The state of the law, as it now stands, is that all European British subjects are eligible to the office of justice of the peace, and no native covenanted civilian was open to the appointment in the mofussil. But, in substance, my learned friend enacts that no European British subject, no Englishman, shall be appointed to that position in the mofussil unless he is a covenanted civilian. Now, my Lord, there are many European British subjects in the mofussil who are deputy magistrates, and many of them, when they are vested with the powers of a magistrate of the first class, are made justices of the peace, and they are now administering justice to European British subjects in several parts of Bengal. I understand that there are over twenty of them. Now, it is actually proposed by this Bill to put a stop to this, and to put these men under a statutory disability for the future. I ask, has any body said that these men did not impartially and effectually administer justice? The test of this measure is that it will be the means of administering justice impartially and effectually. I am a magistrate and justice of the peace at home, but if circumstances should make me solicit an uncovenanted appointment in India, by this Bill I shall be placed by my learned friend under a statutory disability. If I get good pay and less work owing to this statutory disability, I certainly shall not grumble. Now, when you have this deserving and efficient class of men, who may be said to have a knowledge of the habits and feelings of the persons who are brought before them for trial, and against whose judgments no complaints or objection have been made, why is it proposed to put them under a disability remembering that the object of the Bill has been stated to be the effectual and

impartial administration of justice, and whom is it proposed to substitute for these men? Why, the class of statutory civil servants which is justly described in the confidential communications laid before the Council by Mr. Duthoit, in the following terms:—

"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 classes 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."

Fools that Europeans are not to hail with delight such tribunals; how foolish must they be to raise objections to such a tribunal as this? That is the description given of this class of civil servants by Mr. Duthoit. At this conjuncture even the *Statesman* deserts my learned friend, for, on the 15th of February, that journal wrote in respect of this class of the native covenanted civilians:—

"Every body knows what sort of men are now generally appointed to it; and what good can the country, or any section of the community, expect from men, who as far as education and training are concerned, are surely not superior to, and in some cases worse than, the majority of the members of the uncovenanted service, in some provinces at least; and what confidence will the public have in officers of questionable merit, who by accident of family relationship, hold responsible and exalted posts under the Government, placed side by side as they are with uncovenanted civilians admittedly their superiors? Had not the service been created at all the public would have remained satisfied as a matter of necessity, but when they have a choice of judging between the two, the one must fall in their estimation."

The British uncovenanted officer was to be placed under a statutory disqualification, and men who are saturated with caste prejudices and who possess no qualifications are to be appointed in their stead on account of their social position; and this is to be done in the interests of the impartial and effectual administration of justice! This, I submit, is utterly out of the question. I don't mean to blame my learned friend, but somebody must be blamed for it, and I must speak of somebody as the author of the Bill. What I mean is that this matter could not have had that thorough consideration which should have been given to it. Everybody agrees that it is impossible and totally out of the question to carry out this proposal. The Government cannot ask Europeans to

accept justice of the satisfactory tribunals, while they now have the unsatisfactory tribunals proposed. At present the sessions judges must be Europeans. But in time some of the native covenanted civilians who are said to be somewhat Europeanised must become sessions judges, and the objection as regards their knowledge of the habits and feelings of these men are not nearly so strong as against the other class of native civilians to whom I have referred. Although I am not prepared to say that a three years' residence can make a native all that a European is, but still it does make some difference in his thoughts and manners. But what is the proposition? Whereas native subordinate judges, when they show exceptional capacity and knowledge of the law, are promoted to be judges of districts, they are now allowed to try European British subjects, but still it is proposed to give this special class of men, who cannot be said to possess such knowledge, that power, although they may be men who have never had any thing to do with Europeans—men who stick most rigorously to their customs and caste prejudices, and between whom and the European in the dock there will be no common tie in thought or feelings or in any other way. Before a judge can effectually and impartially administer justice, not only has he to put himself in the prisoner's place, but he has to consider the provocation and temptations to which he has been subjected, and he has to award such a measure of punishment as will not shock the feelings of the community and will not make them believe that justice has not been done. We know in England how that stands—that if a criminal trial sometimes goes wrong the whole of England vibrates over it; we know that criminal trials produce a very different effect from civil cases. The outside public do not care what the Court of Chancery decided in any particular case. But if there is any serious criminal charge brought against an individual, the whole community takes a strong interest in the matter. It is, therefore, most necessary that the sentences passed in criminal cases should commend themselves more or less to the feelings of the community who are practically the recipients of the sentence, and it is the more so in this country because in the Penal Code the punishments range over a most extraordinary range It is the opinion of many in England that the sentences passed here are of excessive severity as a rule, and therefore this circumstance has also to be considered. I myself knew a man who was brought up on a false charge of stealing a cow; he was a respectable merchant altogether incapable of committing such a crime, and this charge was false to my own knowledge. But all the witnesses swore to the com-

mission of the offence. Now what does a Brahmin subordinate judge of the habits and feelings of such persons as this? It is quite possible he may think that it is the custom to such persons to steal cows to provide for their dinner, but this is a state of things which has been rendered possible by the provisions of this Bill. Therefore it is a fact that many natives themselves think that such subordinate judges will not be able to judge properly accusations brought against Europeans. That has been openly said, and that is what will be said. Now, of course, I am open to the retort that I have drawn a heavy indictment against our fellow countrymen and the tables may be turned against me, and I may be told that if you consider this now, how can you understand and justify natives being tried by European tribunals? I understand this, that we have done our best. Mr. Serjeant Spankie says:—

It is a Government which rules over an innumerable people of a different religion, of different characters, of different habits, as different in mind as in body, from ourselves. They are placed under our rule, with nothing but power and opinion to protect us. We have claims to the allegiance of the people and to their support of our Government, as better than the Mahomedan usurpation which it has superseded.

Under the British Government they dare openly to be rich, a thing which is almost unknown in other Asiatic countries; we have given them an administration of justice which for fairness and impartiality they have never had before; we have given them the best we can, and this is a convincing proof that, very curiously, you find every day applications made by natives to have their cases transferred from the files of native judges to the files of European officers, a thing which would not happen unless they were satisfied that they would thereby secure to themselves the more effectual and impartial administration of justice. I admit that it would be better for the natives if their judges more perfectly understood their habits and feelings, and I should be glad that they should do so. But the fact that we have only been able to give them imperfect justice is, I submit, no reason for making an equality of injustice or imperfect justice by giving defective tribunals to the Europeans.

There are only one or two other matters with which I shall have to trouble the Council. The present agitation is one which, as I have said, is the most earnest and determined and unanimous opposition which has been known in this country, and on that account the more likely to last. I have heard of many oppositions made to various measures of the Government; like the agitation, for instance, which was raised against what was known as the Black Act in the time of Macaulay. At that

time the question was as to the civil jurisdiction over Europeans by native judges, and did not refer to any question of criminal jurisdiction whatever. Now the difference between matters which touch the person and those which only affect property is very well known. It is as old as the hills, and that a very keen observer of human nature, Satan, knew when he suggested the last trial upon the patience of Job. It has always been the case that there must be a greater amount of feeling aroused in any proposed innovation upon the personal liberty of the subject than in respect of questions of property. And with regard to the present occasion what was said was this:—"Let the native judges take away your liberties in order that they may be educated." But to this the Europeans said with one voice:—"Educate them at the expense of our purses, and not of our persons." To show the difference between the two cases, I will read the Council the description given of the agitation which took place at the time of the introduction of the Black Act. It was to be found in Trevelyan's life of Macaulay:—

"The motive for the scurrility with which Macaulay was assailed by a handful of sorry scribblers was his advocacy of the Act, familiarly known as the Black Act, which withdrew from British subjects resident in the provinces their so called privilege of bringing civil appeals before the Supreme Court at Calcutta. Such appeals were thenceforward to be tried by the Sudder Court which was manned by the Company's Judges, all of them English gentlemen of liberal education, as free as the Judges of the Supreme Court from any imputation of personal corruption, and elected by the Government from a body which abounds in men as honourable and as intelligent as ever were employed in the service of any State."

A literally fair description as regards the civil service; and, however much one might differ as regards defects of machinery one cannot but wonder at what they have done under the most trying difficulties. Mr. Trevelyan went on:—

"The change embodied in the Act was one of little practical moment, but it excited an opposition based upon arguments and assertions of such a nature that the success or failure of the proposed measure became a question of high and undesirable importance * * * * The draft of the Act was published, and was as I fully expected, not unfavourably received by the British in the Mofussil. Seven weeks have elapsed since the notification took place. Time has been allowed for petitions from the furthest corners of the territories subject to this Presidency. But I have heard of only one attempt in the Mofussil to get up a remonstrance; and the Mofussil newspapers which I have seen, though generally disposed to cavil at all the acts of the Government have spoken favourably of this measure. In Calcutta the case his been somewhat different, and this is a remarkable fact. The British inhabitants of Calcutta are the only British-born subjects in Bengal who will not be affected by the proposed Act; and they are the only British subjects in Bengal who have expressed the smallest objection to it. The clamour indeed, has proceeded from a very small portion of the

society of Calcutta. The objectors have not ventured to call a public meeting, and their memorial has obtained very few signatures."

Then Macaulay suggested that the origin of the outcry was that the barristers and attorneys of the Supreme Court wanted to keep their practice to themselves, and that it was an agitation by a small body of men. They set to work vilifying him, and a paragraph appeared in the newspapers suggesting that natives might thereafter be appointed to the Sudder Court. Then Mr. Trevelyan said:—"The firmness with which the Government withstood the idle outcry of two or three hundred people about a matter with which they had nothing to do was designated as an insolent defiance of public opinion." My Lord, there was agitation in both these cases, but here the resemblance very nearly ended. The position of affairs was perfectly different. There is no profession here which can be suggested as in the smallest degree affected by the proposed change. It is the fact that the people are loudly protesting at the proposed withdrawal of a venerated privilege; that they are backed up by their fellow countrymen, many of whom have a strong interest in the Mofussil, and have good reason to support them. All over the country the feeling is the same.

I beg your Lordship to consider that it is a serious thing to impose a tribunal upon a race which is practically unanimous in its rejection, and which as your Lordship knows, I have shown, that the Bill cannot be possibly worked or passed in its present shape. It will have to be reduced, by confining it to the native covenanted civilians or to give it the form proposed by the *Statesman*.

If you do not do that you must fall back upon the proposal of Mr. Ellis, and then it would stand convicted as a piece of patchwork, and the natural effect will be to give, for the purposes of establishing a principle, to these ten men, the power to try the cases of men who do most sternly object to be tried by them, and who will not be likely to accept their decision. And consider how one decision, such as that in the case of Meares, who was convicted upon what was considered very unsatisfactory evidence, would give rise to. That when that case came up to be tried by the High Court, two judges differed in opinion, and they had to call in a third judge; one of the two was a most able and experienced civilian judge, who stated that he did not believe the witnesses and would not convict. The other two judges said, that as Mr. Smith, the committing magistrate, believed the peon, that they would not interfere with his judgment. There was then an outcry in Calcutta,

and a petition was sent to Government. I beg your Lordship to consider what would have happened supposing the man had been tried by either Messrs. Gupta or Dutt? The outcry would have been something frightful; the newspapers would have been at each other beyond what you have seen as to the existence of this animosity. Now it must be admitted, I think, that it will be unwise to throw about these periodical apples of discord. I do think that it does appear that the Bill cannot be worked in its present form, and that there is a very strong and unanimous feeling against it from my own observation and from what I have been told, I do think that the agitation is getting worse every day. There are organisations being got up for the purpose of going on with it, and, as my hon'ble friend Mr. Miller thinks, the agitation between race and race will go on from this to the cold weather. Constant irritation on both sides. Expectations one side that the other side is going to be defeated and so on, and defiance and preparation on the other side, together with a large number of exaggerated letters and articles in newspapers and so on until the cold weather, when these things will be dragged out again. And then again there are a large number of valuable measures which are of the utmost importance, and which will become obstructed or overlooked, for your Lordship cannot doubt that when people are so angry as they are now, they will care very little what the fate of those measures will be, and will involve all in one common ruin. I ask your Lordship to consider the effect of the exasperation of race upon Local Self-Government. It does seem to me that it will be impossible to work the scheme of the Local Self-Government without sincere, close, and cordial relations between the two races. That cordiality was gradually growing up, and I think that if the excitement is now allayed it would, in time, disappear, and people would return to their ordinary avocations and forget all about it; and although I cannot say that a great deal of misehief has not been done already, I think that mischief is small as compared with that which will result if this Bill is persisted in. On the other hand, it is said that now that the mischief has been done it is better for the Government to go on with the measure. It is said that this matter must come on sooner or later I will read an extract from the speech of my hon'ble friend Mr. Ilbert on the Rent Bill. He said:—"Sufficient for the statesman if he can grapple with the problem of to-day; for the distant future he must leave posterity to decide." What I ask your Lordship in this case is that, seeing that there has been a mistake in not having consulted the Government

of Bengal; seeing the state of public feeling; seeing that the Bill itself is not one which can be proceeded with in its present shape, or in any shape; seeing also what I pointed out with regard to the compromise of 1872, that it is not fair to rip up that compromise except at a time of a general revision of the Criminal Procedure Code: taking all this into consideration I do ask your Lordship if there has been, and there has been, no doubt, a great deal of irritating language, of wild and alarming language, not to pay any attention to it. But to consider the broad and true interests of the two races, to promote concord between them, and to rise to the highest and noblest courage—the courage of admitting a mistake.

The Hon'ble Mr. THOMAS said:—My Lord,—The hon'ble and learned member on whom, by force of his position, has devolved the duty of being the Mover of this Bill, has stated emphatically, and reasserted it on behalf of the Government, that the only object of its introduction is "to provide for the impartial and effectual administration of justice." It is a high claim,—a claim so high that every Briton is predisposed, without a thought, to bow to instinctively, for a love of impartial and effectual justice is ingrained in him. Impartial and effectual justice is just what is in the very nature of every Briton to give to every one within his power the wide world over. There is a danger, therefore—a serious danger—that heralded with so high a claim this Bill may be accepted without sufficient examination, and for that very reason it is the more desirable and necessary that it should be strip of any adventitious advantage it may derive from such heraldry. For we all love justice, and an equal love of justice will surely be conceded to those who, like myself, may venture to traverse this Bill. Presuming that so much will be conceded, we shall commence our examination of the Bill on more even terms, and bearing in mind that the test by which we are invited to try this Bill is that its object is "to provide for the impartial and effectual administration of justice" I will ask first what in prosaic business detail,—what are the actual particulars in which the dispensation of justice to British subjects is to be improved, so that it shall be more effectual, more impartial, than it has been heretofore, and what the means by which it is to be effected. The answer is supposed to lie in the Bill; there we find that it is by the entrusting of it to natives of Hindustan that it is to be better done than when it was entrusted to Englishmen. Natives of Hindustan, foreigners, and strangers,—strangers in great part, some more, some less, some altogether strangers to

the social customs, the nice ideas of chivalry and honor, the thousand and one Western strains of thought and surroundings which underlie the springs of action of the British subject, some only partially acquainted with the very language of the Englishman—men who, at best, and but limitedly, have mixed only with one class of European, the educated and more refined class—they are to be entrusted with the trial of Europeans, the majority of whom are likely to come from classes of which they know even practically nothing, whose only English, too, is an English sufficiently different from anything they have seen in a book or heard from the lips of any educated European,—sufficiently different to throw them out completely, to utterly prevent them getting sight of the point which shall show them the animus which is its gist, the depth and tenor of the provocation which is its justification or its palliation,—men who, from want of converse with them, are incapable of appreciating the weight to the individual of the punishment they are called on nicely to apportion; men who have never been on board a ship in their lives; men Brahmins for instance—whose very religion makes it a sin for them to experience a sea voyage, a sin for which they will be excommunicated; men who are under every possible disadvantage in forming any adequate conception of the necessity for crew and passengers and cargo that the commander of a vessel leagues at sea, without police or court within months of him, the necessity—the absolute necessity—that his word should be law; men without a conception of the hardships of the sea, of the numerous petty means of tyranny open to a captain,—how can such men weigh rightly the use and abuse of power at sea? How can such men judge rightly between rough men of few words—rough captain and rougher seamen, using, too, a nautical jargon that is worse than Greek to them. And yet we are invited to pass this Bill in the expectation that the administration of justice to British subjects will, in the hands of such men, in the hands of natives, be more effectual, more impartial than if it is left, as hetetofore, to Englisnmen.

All this, I may be told, applies equally to the trial of natives of this country by Europeans as it does to the trial of Europeans by natives. But, I venture to say, it does not, Europeans in India are compelled to learn the languages of the country; they have to learn them before they are even appointed in England; they have to still further qualify in them in this country before they can be promoted; the natives who are to try Europeans are not so compelled. It is specially provided by statute that the great and increasing majority of them are to be appointed without such examination. Again, Europeans in this country pass their lives among the classes they have

to try, the criminal classes, of all shades, the laboring classes, the agricultural classes, as well as the better classes learning their patois, their habits of thought and their religion or their superstition,—learning everything that underlies their springs of action; walking his fields with the farmer, the jungles with the junglemen; listening to their tales of joy and grief; sympathising and laboring for them; present at their festivities; leading their combined action for any good-hunting, shooting, fishing with them; carried by them by day and night in travel; even accessible to them in camp or court, speaking direct as man to man with them caring, aye, and exerting himself to the sacrifice of health and even life for them in famine and walking daily amongst them; seeing to their village sanitation and the provision of medical treatment; when they are dying around him of cholera, making it one object of his life to sympathise with and work for them. Such, my Lord, is the life of a district officer. By such means does he qualify himself to enter into the case of the natives committed to his care. It is no fancy sketch. I have been through it myself, and it is being gone through every day in India by hundreds. Such are the means by which Englishmen have qualified, and continue to qualify, themselves to do justice to the people among whom they live. Will any one assert the same, or anything approaching the same of the natives of this country that are to be entrusted with jurisdiction over British subjects? Have they lived among captains and seamen, soldiers and mechanical engineers and engine-drivers, surveyors, planters and merchants? What have they in common. They are absolutely a sealed book to them, and will be, for they shun them. Only the better class of Englishmen do they know anything about—only the educated official whom they have to meet in business. Of that class only, from whom will never come the subjects of trial, have they any knowledge at all; and even that knowledge is very superficial, and is only what the European chooses to give them, not what they search for for themselves, as we do among them. They do not court knowledge as a duty with a view to be in a position to do justice as the European does; they do not throw open their house to us as we do to them. Their very religion forbids it; their very religion disqualifies them for ever having an intimate knowledge of the inner life of the European; and if the fact is so, even with the better classes of Europeans in all but the Presidency towns, and to a large extent even there, it is still more so in connexion with the classes of Europeans from whom criminal cases are likely to come. For that class of Europeans they studiously avoid not only on religious grounds,

but also because they are afraid of them. The courteous Asiati does not understand their rough ways; and there is no reason why they should ever understand them, for there is nothing to bring them into every day contact with such men. They do not seek to know anything about them, and yet they wish to try them. It is surely irrational. And apart from not seeking as a duty, to comprehend the habits of thought of the classes they may have to try, there is nothing accidental even to throw them together. They have no subjects of common interest.

But I will withdraw the statement that, disqualified though they are, and in accordance with all their preferences will continue to be, they irrationally wish to ignorantly try Europeans,—I will withdsaw it because it is not mine, but an imputation of their own conntrymen—an imputation cast by a very few, who grasp at power—an imputation that I believe to be utterly without foundation among the masses. My belief is, and I speak from some little experience of Mofussil life, that the very great majority of native officials in the Mofussil—and it is only the the Mofussil that the Bill deals with—the very great the almost unexceptional, majority would infinitely prefer not to have the white elephant that the Bill proposes to give them. It is only just to say that they are conscious of their disqualifications; to try British subjects, and do not want to have to do what they cannot do to their own satisfaction; they are conscious that the Englishman is far more competent to try his fellow rightly, and they would infinitely prefer to leave the difficult task to him; they are content to be left to try only their own countrymen whom they do understand.

But we have not yet got to the bottom of the incongruity; there is still a lower depth, and one that touches Englishmen, as indeed touches all manly men very home—I allude to the wives and daughters of our land. If the native, who is to try has but a very partial knowledge even of the better classes of Englishmen with whom his business compels him to mix outwardly, and a much less, if any right, knowledge of the lower class to Englishmen from whom he is fain to keep away, still less has he any knowledge of the ladies, of the wives and daughters of their families. And yet he is to try them; for the term British subject, be it remembered, include both sexes, and the English lady as well as the British sailor and the British soldier is to be subjected to the jurisdiction of Asiatics. A false complaint lodged by her ayah, or Indian lady's maid,—by her tailor that sits daily in her verandah, by any one of the household servants, grooms, or coachmen, whom, as mistress of the house, she has to order on her husband's behalf,—a false complaint by any

irrepressibly obtrustive hawker, who comes unbidden into the very varandah in which she is sitting and will not leave it,—a false complaint by any outside petty cobbler who has been paid his due, but thinks to get twice his due by means of vociferating clamour amounting even to menace, in a manner quite inconceivable to those who do not know this country,—a false complaint by any of these may any day subject English ladies and English women to be tried by foreigners. These are no ideal pictures. They are every day circumstances of middle class Mofussil life—unexperienced, perhaps, by the well-to-do, but well-known to their poorer unofficial brethren. Patience outlives the provocations, and nothing comes of them because there is the certainty of a fair trial in the background, and the court is the court of a countryman. But when it comes to be known, as it will be known if this Bill passes, that any of them can summon an English lady before a native, and that, right or wrong, she will in 99 cases out of 100 pay any fine rather than have to appear, and that even if she does appear and answer to the charge, the complainant has more than satisfied himself with the sweets of the annoyance he has caused,—when this comes to be known, there is hardly room to doubt that complaints of this sort will become distressingly numerous. The position of English ladies and English women, left alone in their houses while their husbands are in court, or camp, or office, or workshop, will be very distressing even in the bare contemplation. The security, and the feeling of assurance of security, which they now have, in trial by a British magistrate, will be gone from them, and they will be subjected to the jurisdiction of Asiatics. And why, let me ask for Britons, as they will ask —why are they to be thus subjected? Not on account of any necessity of the case, not because it cannot be helped, not because the natives wish it, but because—yes, that is what we are asked to expect because the justice thus provided through the medium of the Asiatic will be more impartial, more effectual than that displayed by the Englishman himself: that is what the proposal comes to, that is what the Bill says in effect, and my business is with the Bill, the people to be tried by it, the people to be empowered by it. The only object of the Bill is to provide for the impartial and effectual administration of justice, and that is the test by which I am invited to try it. If it be said that I rather overstrain the argument by applying the claim of impartial and effectual justice to the people to be tried by the Bill, and not, as was meant, to the magistrates and judges who are to administer it, then I plead in answer that such words should never surely be said with reference to any but the persons who are to experience

in their proper persons whether the Justice meted out is or is not impartial and effectual; that they have no applicability to any one else, least of all to the mere machinery, the judges and magistrates who only give life and existence to the Bill, and are merely the means by which the more impartial and effectual administration of justice is to be provided.

Whatever may have been said elsewhere on the other phases of the Bill, as it affects natives, by removing an anomaly and a stigma, it cannot be that the claim by which we are invited to try the Bill, that of providing impartial and effectual justice, can have been put forward with reference to anything but the quality of the justice administered to the people who sought it, that is, to the complainant and accused.

The question of anomaly and personal stigma is perfectly distinct. We shall come to that separately hereafter, but at present we have only to do with the claim that the Bill provides for the impartial and effectual administration of justice.

To the Englishman at home, who knows not this country, it may even seem that it does so provide; but when the Bill is examined in the light of the experince of those who have spent their lives in the study and the service of this country and its people, who can throw upon the Bill the light of actuals rather than of theories, it is then that it becomes apparent that the circumstances of the position afford no real foundation for the expectation that the administration of justice to British subjects will be either more effectual or more impartial for being entrusted to foreigners and strangers rather than to fellow-countrymen—to natives rather than to British subjects.

But this, I may be told, is my idea—only my idea. Let the native speak for himself. I shall quote, my Lord, from *Madras Native Opinion*, a newspaper edited by a Brahman of considerable culture, a native who has the interests of natives, the interests of his country, very much at heart. He writes in a leading article of that paper, dated 14th February 1883—"Let us take, for instance, the case of a deputy magistrate of the first class who is called upon to try a case between two Europeans, one say a covenanted civil servant, and the other a merchant or a planter. The case may be one of assault or defamation, and have arisen out of some episode at a ball, a club-room or a dinner party. Now, if the deputy magistrate happens to be a Brahman (as almost all of those on the Madras establishment are) who has not been in Madras, and whose knowledge of English is but limited, what a predicament the poor man is sure to be in? He cannot possibly understand the allusion, which will be made, and the conventional terms used

in such a case, and he cannot very well engage an interpreter to explain what is meant! We leave our readers to imagine what the result will be, and what satisfaction the magistrate's decision is likely to cause, to the litigant parties." And in a subsequent issue the same native editor says: "We must not lose sight of the fact that, while nothing is easier than for the European to obtain evidence or information on such matters in native society as he might not know, the native magistrate is very differently placed. The *Munshi* and clerks of an Anglo-Indian magistrate are natives of the country, and if they are not able to supply it themselves, they can easily obtain for their master any information the latter may need in connexion with the disposal of cases. Now to whom can the native magistrate turn, when he has an Englishman brought before him?"

And this native editor is not alone in his opinion of the unfitness of his countrymen to try British subjects; but I must revert to the objection that, if it is right in theory for Europeans to try natives, it is right also for natives to try Europeans, and again I will say that, in my humble opinion, it is not so, because the case is not parallel. It is not as if Englishmen were asking to have authority to try natives, as natives are asking for jurisdiction over British subjects. The whole history of our law-courts in India shows the fallacy of such an argument. Englishmen have no desire to try natives because they are natives. Indeed they would never have tried them at all if they had been capable of trying themselves, and our whole aim ever since we came to this country has been steadily in the direction of fitting them to try their own countrymen, and as we have found them more qualified, so we have gone on extending their jurisdiction over their countrymen, or, in other words, resigning to them more and more of the judicial work in connexion with their own countrymen that we had in earlier years to do for them.

Thus falls to the ground the argument that if Englishmen try natives, so, in fairness, ought natives equally to try Englishmen; for, as we have seen, the Englishman does not want to try natives, and is getting rid of the duty and consigning them to their countrymen as fast as he legitimately can. The native also, with a few exceptions, does not want to try Englishmen, and is not qualified to try them even if he wished to.

Once more this same history of our legal dealing with India, if examined a little closer, will fully explain the seeming anomaly of British subjects being exempted from native jurisdiction, the seeming anomaly of which so much has been made. When we came to this country, did we find equitable law-courts

in which Englishmen and natives could alike obtain equal justice; did we upset them and introduce this anomaly in favor of our countrymen? No. We found Suraja Dowla, and the Black Hole and the like of that. There was no such thing as Law and Justice. The land was a land of violence; of systematic and periodical marauding, of constant blackmail, of daily uncertainty of life and property, in short, of all the many forms of anarchy, and misrule and lawlessness which I may not stay to dwell upon. It is matter of history, and it still lives in poverbs, customs, castes, tenures, structures, which point to the then every day existence of a state of things for which there was no remedy but to sweep it clean away. It was for us, a mere handful of strangers, to introduce law and order and to import into this country as much justice as was possible under the circumstances. We were too few in number to give to every native with our own hands as good justice as we were accustomed to in the land from which we came, but we were enough to mete it out to our own countrymen, from whom there probably was not more than a case or two in a decade; and not only were they entitled to have no less a scale of justice than we were able to give them, but in the earlier days it was more, perhaps, to the interest of the native than of any one else that Britons should be tried by Britons who had both the courage and the mind to enforce law and order on their own countrymen, and to put down with a strong unwavering hand any disposition to take advantage of being members of the dominant race. Other than Britions there were none in the early days, because all other Europeans were deported. Thus it came about that Britons in India have till now been under the jurisdiction of Britons, and there was and is still *no necessity* for their being under any other jurisdiction.

With the natives, however, the necessities of the case were very different. It was impossible that the few and far between Englishmen should, in their own person, try all the teeming millions of nations over such wide areas. The attempt would have been too extravagantly quixotic. They did the closest they practically could do it.

In short, they aimed at the same thing for both; they aimed at giving them, as they gave their countrymen, the very best justice in their power to give; and while they gave the Briton the same as he had been accustomed to in the land of his nativity, they gave the natives of India a very great deal better than he had ever seen or dreamt of before. And this they did by keeping the graver cases in their own hands, by deciding the intermediate cases on reports accompanied by the record, and

leaving only minor cases to the decision of natives. Then they fostered education, and they imposed examinations on candidates for public service, and subsequently they enhanced the scope of those examinations; and as they gradually qualified the native for the right exercise of power, they entrusted him with more and more of it till now we have natives on the High Court Benches. I confess it puzzles me, my Lord, to see how any one can say that the tendency of legal administration in India has not been uniformly and without anomaly in the simple and single direction of giving the best form of justice possible in the circumstances to all classes, Briton and native alike. With the Briton we started at the top because from the paucity, of their numbers, it was possible to do so. With the native this was impossible, because of their countless numbers, and their unmanageable areas, compared with the mere handful of Englishmen that have governed this vast empire. So we started as near as we could to the same point, and, keeping it ever in view, progressed steadily as circumstances allowed, always towards the same end. The progress has ever been upwards and the principle uniform. There has been no anomaly whatever, and there is no anomaly now in the sense urged in favor of the Bill. But to turn round now and progress downwards by placing the British subject under a tribunal of less competency to do him justice than we already enjoy, and we have readily at command, and to do that for no better reason than to remove a fancied anomaly, that would be an anomaly indeed.

"The anomalous nature of present arrangements" is one of the reasons put forward for the introduction of this Bill. Rightly examined, the anomaly lies not in natives having less jurisdiction out of Presidency towns than they have in them, but in their having jurisdiction over British subjects anywhere. The anomaly lies in having made an exception of Presidency towns. The anomaly lies in having in presidency towns departed from the simple principle on which we had uniformly proceeded of ever giving to both races the best justice practicable in the circumstances, in proceeding downwards instead of upwards. Remove that anomaly and the position is logical and clear. But to set up that anomaly and to base on it the claim to surround it with so many more anomalies that it shall cease to stand out singly as a marked anomaly, is to lead us blindly into a maze of anomalies in which we can never see our place to stop.

If we must needs turn aside to such trifles as anomalies and legislate on what I will take leave to call such very sscondary grounds, then, to be consistent, we ought rather to wipe out this first great anomaly, have done with the whole side issue

and revert to first principles, logical principles. But there is no need for this, and all I wish to say on this point is, do not let us bring the existence of one anomaly forward as a reason for justifying the creation of more.

I submit, my Lord, that if we want to avoid anomalous positions and preserve logical action in the future, there is no point at which we can so safely call a halt as where we now are. The hon'ble learned Mover of the Bill, in summing up the principles which have guided the framers of the Bill, says, and I cordially agree with him in the principle, "that, if this question is re-opened, it ought to be settled on a permanent and stable foundation." I agree with him because it is a corollary that if it cannot be "settled on a permanent and stable foundation" it ought not to be re-opened. I submit, my Lord, that there is no landmark that can be called permanent about the position which the Bill takes up. It gives natives the same jurisdiction over British subjects as Englishmen exercise over the same class, if criminals, but that is not the same jurisdiction as is exercised over natives; it is a modified quantity of jurisdiction amounting only to show in the Mofussil, and while the distinction in the quantity of punishment awardable to British subjects and natives is maintained, it cannot be said that the Bill has brought us to the point to which it is claimed to have brought us, that of impartiality of the removal of race distinction and specially of finality. Sir Ashley Eden, though I doubt whether he used the words advisedly, certainly does use the words "full powers," and that means the powers of life and death, or transportation for life, imprisonment for 14 years. When the native Judge in the Mofussil exercises such powers over the British subject, then we shall have removed "race distinction," then we shall have arrived at impartiality and finalty. But not till then. If the advocates of the Bill are not prepared to go as far as that, then, admittedly, they are not prepared to conduct us to what alone will justify the re-opening of this question, a settlement "on a permanent and stable foundation."

Again, there is no element of finalty that I can trace about the persons selected for the exercise of jurisdiction over British subjects.

There is no such self-evident case as can stand as a landmark, why others should not equally be selected. Indeed, for my part, I think a Deputy Magistrate who has been for years associated with Europeans; who has had a long magisterial training as a tahsildar Magistrate; who has his judgment mellowed by years; who at the very outset of his career, had to

pass qualifying examinations, and who has eventually been promoted for tried efficiency is eminently better qualified to exercise such powers than a young man under 25, appointed without like examination, without trial and without magisterial training or converse with British subjects,—and such are the native civil servants constitute under the statutory rules. If, then, the native Deputy Magistrates who are in hundreds all over all the Presidencies are obviously perferable to one of the classes named in the Bill, it follows that the settlement made by the Bill is not "on a permanent and stable foundation." I do not see how any one, be he native or European, can well think that this will be a final settlement. On the contrary, every one outside these walls seems to look upon it as a mere beginning, as the opening of a door, as the introducing of a principle, and that is why there is so much agitation and anxiety about it, and that is why I for one, my Lord, have indented so largely on your Lordship's patience. What I feel is that this Bill will lead us into a hazy, illogical position with no distinct landmark to stop at; whereas if we stand where we are, we have defined a line and a reason for it in Presidency towns. If once we leave them and go half way down hill on the road to inferior justice for British subjects, we can never stop till we reach the bottom—and that bottom, where is it? It is deeper down even than our own native courts. It carries us into native courts in Foreign States. When once we have admitted that in our own courts natives are to try Britons, we can no longer insist that in foreign courts Britons shall not equally be tried by natives, and so we shall have created another anomaly that will have to be wiped out. We shall not have arrived at finality; we shall have to go on and rescind the Act not so long ago enacted, by which Britons were exempted from native jurisdiction in foreign States.

Once more the same hand that sweeps away anomalies and partialities so as to lead us to a settlement that shall be final, introduces by the same stroke of the pen an incongruity and a piece of race partiality that is more glaring than any which it removed. The effect of the amendment of Section 443 by the elision of the word "and an European British subject" is not only to admit the native to jurisdiction over British subjects, but by race distinction to bar the Briton so that if, for instance, the learned Hon'ble Member to my right—distinguished member though he is of the Calcutta Bar—if the Lord Chief Justice himself, were to elect to offer their services gratuitously for the trial of their contrymen in Calcutta or elsewhere in India, as they might do and as so many do in England, they would find that,

by the Bill we are asked to pass, they would be legally disqualified by reason of their race. In spite of their having the highest possible qualifications, in legal knowledge, in knowledge of the classes to be tried, to wit their fellow-countrymen, they would be legally barred by race distinction—barred solely because they are Britons – barred in the interests of the more effectual and impartial justice to be administered by natives, stigmatised – if we are to use such a poor argument at all—stigmatised in order that no stigma may be cast on natives; and this, we are told, is an element of finality. The barring of the Briton is to be final.

But casting to the winds such very secondary ideas as legislating for a stigma, neither is it convenient in practical every day work that every Briton, simply by reason of being a Briton, should be barred from jurisdiction over Britons. At certain ports, far distant from the seat of any Magistrate, it is convenient that the Master Attendant should have jurisdiction in trifling cases over the seamen frequenting the port. That will not be possible when all Britons are legally disqualified by the proposed amendment of Section 443.

As the word stigma has been forced upon us, and which we are called on to consider in the course of this discusssion, let me take the opportunity. before parting with the word, to say that, in considering their circumstantial disqualifications for trying Britons, I cast no manner of stigma on natives—no more, in fact, than if the Commander-in-Chief there were to stigmatise me as unfit to command a brigade, or even a company. And even if it were a sort of fancied stigma not to be allowed to try a class of cases you were not calculated to be exactly the best man to understand—even if it were a hardship equal to being tried by a man who was not calculated to understand your case, and the hardship on both sides being equal, which, of course, they are not and never can be, we were cast on the horns of a dilemma and had to choose between them, there still need not be a moment's hestitation about the choice for the persons affected by hardship are in thousands if not tens of thousands; whereas those affected by the other fancied hardship numbered on the finger. On the principle, therefore, of the greatest good of the greatest number, there should not be a moment's hesitation about abandoning a Bill that legislates for the few against the many. To sum up the above objections and apply them to the Bill. Not only does this Bill not "contain in itself," as is claimed for it by the Hon'ble and learned Mover, "the elements of stability and durability," but it is pregnant with exactly the opposite elements, and therefore by the corollary of

that very proposition, this question ought not to be re-opened.

Looking once again at the reasons given for the re-opening of the questions. I find it is commended to us on the ground that "the time has come."

It is a set phrase the time has come; but there may be two views about its applicability. The time when we are doing all we can to induce English capital to come to this country seems scarcely the time to scare it away with inferior justice to the Englishman. Tell the English capitalist who is prepared to send his sons and his money out to this country to be large employers of labor in coffee, tea or cinchona estates; in gold, iron and other mineral; in cotton or jute mills and so forth: tell him that if any one of the several hundred men, women and children employed by his son lodges a complaint against him "the time has come for his son to tried by a native,—I have a shrewd suspicion that he will have very different ideas about the time. He will not stay to ask what like the native is, whether qualified or not. He will be apt, I think, to have strong opinions—some might call them prejudices—which we will have to put up with if we want him to bring his capital, for in that, at least, he is master of the situation. He will turn his back on us and send his sons and his capital elsewhere. And in the main he will be in the right; for whether the planter gets justice or not at the hand of the native Magistrate is rather a secondary consideration; the mere fact of his having, on some trifling charge, had to appear before and be tried by a native magistrate, of the same caste and family, perhaps, as one of his own writers or contractors, will so lower him to their own level in the eyes of his two or three hundred coolies, that he will not be able to command their respect any more. It can answer no useful end to judge of these things by Europeans ideas; we must take them as we find them in this country, and such, I am convinced, would be the effect on the mind of the Indian coolies and their maistries. I am convinced of this because I have moved not a little amongst planters and their laborers, and made it my duty to acquaint myself with their position, as much as with that of any other farmers and their men; and now it is equally my duty to represent their interests here to the best of my ability, for their interests are the interests of the country, and it will be a dark day, indeed, for India if British energies, British intelligence, and British capital leave it in disgust. In a less degree, also, it will be an evil day for India if British energies, intelligence and capital are discouraged from continuing to flow

into it. It is a consideration of no small moment that the planters of Assam, of the Nilgherris, of the Wynaad and other places, with the lakhs of rupees that they bring into this country, should not be discouraged, which, I am convinced, they will be if this Bill passes. I specially allude to planters because, settling, as they do, in isolated positions, each a lone man among a hundred, they are specially trusting in, and specially entitled to, the best justice we can give them, a style of justice that shall give them a feeling of security.

One word more about the time having come from another point of view. If any of the above reasons for not subjecting Britons to native jurisdiction have any weight, and had weight to sway the majority in 1872, surely they can only have *increasing* weight as the number of British subjects in the country increases, and in that sense the time, instead of having come, is, if any thing, more remote than it was in 1872.

When this matter was discussed in 1872, there were no native gentlemen in this Council. Now there are four Hon'ble Members, and they are called upon to decide with us on the liberties of the British subject. The appeal to try this question by "impartial justice" is addressed to them as well as to us; there is a side of the case which specially addresses itself to them. They are better able, perhaps, than we are, to appreciate the value to them of the special concessions made to them,——concessions made some of them in the very face of Western notions of justice—concessions simultaneously denied to our own countrymen.

I will touch with a word only, lest I should offend, such things as dancing girls, child marriage, child widowhood for life, plurality of wives, exemption on account of rank from appearance in court, exemption on account of sex from appearance in court—exemptions that we do not accord to our own Princes and our own ladies. Natives are the best judges of the value to them of these and like privileges; and accordingly they have been allowed to be the judges; their voices have ever prevailed; their wishes have ever been scrupulously guarded, the only test applied being, will it do any positive injury to any one else to concede these privileges? If it will not, then, by all means, let us liberally concede them. This has been the principle that has guided the concessions to natives. Is it not fair to let the same equitable principle govern the grant of concessions to Europeans? Britons are the best judges of the value to them of the privilege of being tried by Britons,—a privilege of which they seem to think so much; and if it will not do any positive injury to any one else

to let them have the privilege, then, by parity of treatment, by all means let them have the privilege. This view of the case will, probably, commend itself to the minds of natives as an impartial one. Again, what would natives think if, with the cry of justice to a class amounting to one-half of India, the down-trodden females, in the interests of morality or any such like cry, which an English philanthropist might raise, we ran a tilt at their time-honoured institutions? I imagine they would say at once that was legislating for an idea, was uncalled for and provocative. By parity of reasoning, the great mass of Englishmen look upon this attack on their privileges as equally uncalled for. If the attack is not justifiable in one case, neither is it, I submit, in the other. Far be it from us to disturb the mind of the Asiatic with even the breath of a suspicion of any interference with his time-honored, valued, privileges that do no positive injury to any one else. By parity of treatment, far be it from him to deal by us otherwise than as we have dealt by him.

While I have contended above that trial of Briton by Briton is only a natural sequence of the impartial effort to give Briton and native alike the best justice in our power here, I have called it, for argument's sake alone, a privilege, and even as a privilege have shown that it has a claim to be honored, a claim to be based strictly on the very test by which we are invited to try the Bill—that of impartiality.

But what I have said above has been simply comment on the reasons given for introducing the Bill. The reasons for not going on with it, though few and simple, are, to my mind, more forcible.

The first reason of itself is enough to throw out any Bill. It is not vanted. With the exception of a fanciful few, fidgetting impatiently after an idea, nobody wants the Bill. Nobody, European or native, wants the Bill for any practical good that it will do him.

On the other hand there are very large numbers who—whether rightly or wrongly, is a secondary matter here are nevertheless, as a matter of fact, vehemently, aye vehemently, opposed to the Bill; and they come of a class, too, on whom all the best interests of India are immeasurably more dependent than they are on any other class. It is an obvious fact of which we cannot but take count, and their vehement feeling in the matter has lead to the rousing and bringing prominently forward of the very feeling which the Bill was meant to lay—race antogonism, feeling given expression to in the native

Press, and thus disseminated—in much more violent and provocative language than Britons have indulged in now that it has been unmistakebly seen that the Bill has roused and keeps on intensifying the very feelings it was meant to allay, the Bill, if it is to be consistent with its aim, ought, I submit, to be withdrawn.

That it is wanted for adminstrative convenience, as has been alleged, is a mere loose statement which five minutes reference to the criminal statistics of the country would conclusively falsify. Theoretical positions may be set up, but so absolutely is fact against theory in this matter that I will not waste time on it. Though I have urged above that in effect the Bill did not give what it professed to give I never meant to imply that in theory and in the minds of the framers it was not honestly, generously intended and expected that it should and would give it. Who would doubt it? Not doubting it I venture to urge that the same soul of honorable, generous, impartiality which lay behind that idea, that prompted the Bill, should equally impel the advocates of this Bill to abandon it, is unmistakeably clear that the Bill will not forward but will positively thwart their liberal intentions. I am not one of those who admit honorable, high-minded, intentions in those who think differently—nay, rather, I venture to make an appeal to those very intentions which they all honor. If it is manly in an individual to admit a well-intentioned error, and he only rises in our estimation for the generosity of the admission, and none but the mean-spirited will impute it to weakness, may not a Government, also conscious of its strength, do the same with advantage—advantage both to its own credit, and to the interests of the great country committed to its charge. By the introduction of this Bill the Government has made it abundantly plain that it entertains the most liberal intentions towards the nations of India; that it has placed beyond a doubt, that surely will henceforth be accepted on all hands without a question, and that having been demonstrated, surely the Government is in the best position for saying in effect, if not in word, to the peoples of India:—Though we entertain these unquestionable sympathies, yet in the course of the ventilation which this Bill has undergone, we have come to know that the passing of the Bill will not compass for you the advantages you had aimed at, but will on the contrary, injure you seriously by arousing a deep feeling of race antagonism in a class on which all your best interests are immeasurably dependent for justice, intelligence, capital, energy, progress in civilisation, commerce, agricultural and all the material elements of peace, plenty and health. Though in an infinitesimally minor degree

the Government itself also is not without indebtedness to the martial loyalty of the class that strengthens Her Majesty's forces in India by the supply of some ten thousand Volunteers of all arms. We have accordingly resolved, in the best interests of the very people for whom this Bill was introduced, to abandon it.

If the Government can do this of its own motion, it will, I submit, take a high stand, indeed, in the calmest judgment of posterity; and it can well afford in its conscious strength to think cheaply of any such petty charge as having yielded to clamour, for, in the eyes of the wise and generous, it will be judged to have yielded not to clamour itself, but to the light cast by the expression of feeling elicited by the ventilation of the Bill, or, to speak more correctly, not yielded a jot, but adhered, under the new light thrown, to its own previously expressed intent of allaying race antagonisms.

If the Government can do this, not in Council here, but of its own motion, then a thousand times *bis dat qui cito dat*. The sooner it does it, I submit, the better. If the Bill is understood to be only postponed till November, then the deplorable, the very deplorable, feelings that have been roused on both sides will only smoulder deeper and wider till the November discussion fans them again into flame; and then if the Bill is carried by the Government voting as a Cabinet, and not individually as on the discussion of this point in 1872, the feeling will not pass away with the passing of the Bill, but will sullenly live and burst out afresh for years to come whenever a case in point arises. I hardly like to dwell on the depth and growing intensity and breadth of the feeling of race antagonism that has been raised. I only feel bound to touch the warning note that it is a matter worthy of the gravest consideration of Government. The Government has only very recently taken additional steps for the better ventilation of Bills with the avowed intention of availing themselves, in the interests of the country, of the better light shed by such increased ventilation.

Here, then, in the deep and widespread agitation and vehement expression of strong feelings, is the very light they have courted. Will they cast aside the very light they have courted on the very first exhibition of it. Will they not rather recognise that it is the very light they courted, and in consonance with their own previously expressed policy, rather use it in the best interest of the country. Surely they are in an advantageous position for doing so without risk of being misunderstood.

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Both in respect of having unmistakeably demonstrated their liberal intentions towards natives, and in respect of having expressed a desire for the public good, to obtain and be guided by the views of the people legislated for, and also in respect of both acts being quite recent, the Government are surely in the best possible position for promptly withdrawing this Bill of their own motion. Indeed if they do not, they will now seem to stultify their own professions.

Yet another course is open to the Government, a medium course that will probably satisfy the moderate minded on both sides, giving the native the coveted brevet rank, and still practically retaining to the Briton his freedom,—a course also that will lead us into no illogical positions—that of making the jurisdiction proposed to be given to natives permissive only, on the Briton positively waving his right to be tried by a Briton. But in such case it would have to appear on the first summons that the Briton had the right, and he would have to endorse his election to appear or not to appear before a native, and the jurisdictiou should not be extended beyond the cases now contemplated. But this is only suggested as a compromise not without dangers; and the much more satisfactory and manly course would be to abandon the Bill.

Having taken upon me to tender this my humble opinion of the best course to be pursued with this Bill, I wish to submit that it is in no spirit of factious opposition to the Government; Indeed I knew not till very recently that the Bill was to be regarded as a Cabinet measure, if indeed it is to be so regarded; and herein I must plead my newness to the rules of this Council. I thought it was put forward as an important measure on which the Government were anxious, as in 1872, to obtain the unfettered opinions of everyone present, and if I have erred in too candidly submitting mine, I trust it may be recognised that I have been influenced by no spirit of factious opposition—far from it. I have said what I have said only in true loyalty to the Government. Being called here, I felt bound, on a point of such vital interest to the country, to place my views, for whatever they might be worth, at the service of Government. If they were worth nothing the labor was mine only, and they could be cast aside. If they were a worth anything and served by a feather's weight even to influence the decision of Government, then I should rejoice indeed to have spoken freely, as I feel earnestly, in behalf of what I humbly believe to be the best interests of the country in which I have spent my life, and which I have as truly at heart as the liberal-

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minded framers of the Bill. In this light, and aiming in effect at the same final ends as do the framers of the Bill, I shall trust, though a seeming opponent, to be eventually recognised as a true coadjuter.

The Hon'ble Mr. REYNOLDS said :—My Lord,—I shall not detain the Council with more than a very few remarks, but I wish to take this opportunity of expressing my cordial approval of the principle of this Bill. That principle is clearly explained in the Statement of Objects and Reasons, and has been further explained to-day by the Hon'ble Member in charge of the Bill. It is simply this, to do away with all judicial disqualifications which are based upon mere distinctions of race. What we have to look at in a Judge or a Magistrate is not his colour, but his character, not his pedigree, but his ability and his integrity. I was a member of the Select Committee last year on the Bill to amend the Code of Criminal Procedure. The question of the exceptional position of European British subjects under the criminal law was raised in the course of the discussion upon that Bill ; but it was brought before the Council in a form, and at a stage of the proceedings, which precluded us from taking it into consideration, except at the risk of deferring the passing of the Bill to another sessions, and thus delaying the introduction of those useful reforms which have now become law in the Amended Code of Criminal Procedure. But a promise was then given by the Government that the matter should not be lost sight of ; and I presume that the Government had this promise in mind when it was determined to introduce the present Bill.

I not only accept the principle of the Bill, but I entirely approve of the system on which it is proposed to carry that principle into effect. This is a Bill for levelling up, not for levelling down. It does not take away from Englishmen the cherished right of being tried by their peers, but it declares that a Magistrate shall not be precluded from being deemed the peer of an Englishman merely because he happens to be a native. In the criticisms which have lately been poured out upon the Bill, it has been confidently asserted that this is a measure for removing a mere sentimental grievance for dealing with a difficulty which may arise at some future time, but which has not yet assumed a practical shape. The authors of those criticisms must have been imperfectly acquainted with the facts of the case. In August last Mr. Romesh Chunder Dutt, a Covenanted Civil Servant, was appointed to officiate as Magistrate and Collector of Balasore, and he has now been again appointed to officiate as a Magistrate and Collector of Backergunge. Mr. Dutt is an officer of some distinction in the

service to which I have the honor to belong. He stood second in his year at the final examination in England ; he is a barrister-at-law.; he has filled subordinate appointments with credit ; and he has written ably and successfully on economic questions in Bengal. It is something more than a sentiment-grievence that such a man who is thought competent to hold the chief executive charge of a district should remain under a legal disqualification for exercising the powers of a Justice of the Peace. Such a disqualification hampers the Government in the selection of its officers, and weakens the hands of justice, and I should rejoice to see it removed from the statue book. If therefore, the motion before us to-day, instead of being merely a motion for the publication of papers, had been a motion t o refer the Bill to a Select Committee, I should have had no hesitation in voting in favour of it. I do not say that I am entirely satisfied with the provisions of the Bill. I feel considerable doubt whether the first section has not been too widely drawn, and whether it would not have been better to restrict the operations of the measure to officers, whether Covenanted Civilians or not, who might be actually appointed to be Sessions Judges or District Magistrates. But points of this kind do not touch the principle of the Bill, and the Select Committee would be the proper place for their consideration. It is, of course, a further question whether in view of the determined opposition which this measure has encountered, it would be prudent in the Government to make any further attempt to pass it into law. It appears to me that this is primarily a question for the executive, but I imagine it is quite within the competence of this Council, as a Legislative body, to say that though the abstract principles of a measure may be equitable and right, it would be impolitic and inopportune to make them part of the law of the land. That, however, is not a question which we are called upon to consider to-day. If the present ferment should subside, if the passions which have been aroused and the misrepresentations which have been made, should disappear before a calm consideration of what Government really propose to do, and what the effects of its legislation are likely to be, I should gladly give my vote, when the time comes, for passing into law a measure based upon the principle of this Bill. But if on the other hand, postponement and reflection should intensify the feeling which undoubtedly exists to-day,—if it should be made clear that the deliberate verdict of the European community in India is opposed to any such legislation as this, if the appeal to Philip sober, which is now to be made, should be dismissed on the merits of the case, the

Government would undoubtedly incur a serious responsibility by asking this Council to pass the Bill.

The Hon'ble DURGA CHURN LAHA said:—My Lord,—This Bill, in my humble opinion, is a move in the right direction, and I deeply regret the feeling which it has evoked.

It seems too absurd to suppose that the native officers who were deemed qualified to hold the responsible post of Magistrate and Judge, and to sit in judgment upon millions without distinction of rank, were not competent to exercise jurisdiction over European British subjects in criminal matters.

As to race prejudice, which has been already referred to, I for one think that it has little or no existence in fact. With the progress of English education and increased intercourse with Europeans, I am glad to say this feeling has no place in the minds of educated natives, and that any apprehension as to failure of justice in their hands appear to me wholly groundless.

What is this change, after all, that the Government propose to introduce? It is to give the same powers to a few selected native civilians that Englishmen holding the same position already possess. These native gentlemen have had to pass the same examinations, and are considered by Government competent to perform the same executive duties as their brother civilians. If we refuse to put them on an equality as regards judicial powers, we shall, I maintain, be casting an unnecessary slur upon them, and lower them in the eyes of the people whom they have been deputed to rule. Much better, I say, not have introduced them into the service at all than, once having done so, impugn their probity by saying "You shall perform all the duties belonging to the office of an ordinary civilian, except that of having judicial powers in criminal cases over any European." We must remember that it is only proposed to invest those native civilians who have proved themselves to be of unexceptionable probity with the power in question, and, looking at the safeguards that are to be maintained against any possible failure of justice, can any Englishman honestly say that he is afraid that his countrymen will run any greater risk of being unfairly treated at the instance of a native Judge than they will at that of a fellow-countryman. A native civilian would naturally be always most careful and anxious to see that no injustice should happen in the case of a European, as he would know that he would be accused of race hatred or incompetence should any fault be found with his judgment.

It has been said that the passing of the amendment will prevent the introduction of British capital and enterprise into

this country. I cannot bring myself to believe that anything of the kind will ever happen. The same arguments was employed when Act XI of 1836, bringing our European fellow-subjects within the jurisdiction of the Mofussil Civil Courts of the East India Company, was passed, and we now see how the predictions then made have been wholly falsified.

The Government of this country has, I am aware, my Lord, been of a most liberal and lenient description for many years past, and all educated natives are, I am sure, deeply sensible of the great debt of gratitude they owe to the English nation for the conciliatory spirit which has been shown by the rulers of this country when they might, with impunity, have acted in so very different a manner. The aim and object of the English Government has, I believe, been to make the people of this great empire loyal and contented subjects of our most gracious Queen, and this object has hitherto been gained by the wise policy pursued by your Lordship and your predecessors, of treating all her Majesty's subjects, whether natives of this country or Europeans, as far as has been possible, with equality.

Mr. CROSTHWAITE read the following speech for the Hon'ble Syed Ahmud Khan, who cannot speak English:—My Lord,—As this is probably the only opportunity which I shall have of expressing my views on this important measure, I am anxious to offer a few observations. I am aware, my Lord, that this Bill has been the subject of much discussion by the public Press, and has given rise to excited agitation among the non-official section of the European and Eurasian community, who feel that their liberties are imperilled by the proposed law. I have not the smallest wish to assign unworthy motives to the agitation; and far be it from me to say that the views which that agitation represents should not be duly considered by the Legislature. Never has the Indian Legislature been more anxious to consult the views and feelings of the public regarding legislative measures than the present Government of India. With every wish that the views put forward by the European and Eurasian community should be duly considered, I confess, my Lord, I cannot help feeling deep and sincere regret at the attitude which the agitation against this Bill has adopted. Vehement and somewhat unmeasured language has been used by the agitators against my countrymen. I sincerely deplore this circumstance, as much for the sake of the leaders of the agitation themselves, as for the sake of the feelings of my own countrymen. And here, my Lord, permit me to express a sincere hope that my countrymen will in no part of India follow the example of those who think that the vehemence of

public demonstrations is the best way of submitting arguments and claims for the consideration of the Legislature. The people of India, strongly as they feel in favour of the justice, the wisdom, and the expediency of this Bill, need no demonstration in favour of the measures; and if I know the views of the leaders of of the native society, I cannot be far wrong in prophesying that the people of India will not resort to any public demonstrations in support of this Bill. They are content to leave the measure to be decided upon its own merits. As a native of India myself, with every wish for the success of this Bill, I hope my countrymen will adhere to their present determination to watch the progress of this Bill with calm and respectful silence.

My Lord, it is not unintelligible to me that the non-official European and Eurasian community, separated as they are by the distance of time and space from those influences which secure the progress of political thought in England, should in the circumstances of India attach exaggerated importance to distinctions of race and creed; that they should upon such occasions emphasise the fact of their belonging to the ruling race; that they should claim for themselves especial provisions in the general law of the land. My Lord, all this is intelligible to me; but at the same time I cannot help feeling that a good deal of the opposition offered to the Bill arises from inadequate information in regard to the history of Indian legislation in matters of a similar nature, and from a misapprehension of the small change which this Bill proposes to make in the existing law. My Lord, I do not claim to be an authority on questions of constitutional law; but I may safely doubt the legal accuracy of the contention which has been put forward elsewhere against this Bill, that the European and Eurasian subjects of the Queen Empress in India have any such constitutional rights as would place them above the jurisdiction of the Indian Legislature. As an humble member of the Indian Legislature myself, I would repudiate any such limitation. We derive our powers from the great Parliament of England; and so long as we do not exceed those powers, it seems to me erroneous to doubt the legislative authority of this Council in all matters connected with India. History repeats itself, and we have in the present agitation against this Bill a repetition of the arguments and sentiments employed by the alarmists of many years ago, when native Judges presiding in the Courts of the East India Company were empowered to try civil suits to which Europeans and Eurasians were parties. My Lord. I hope I may, without fear of contradiction, say that the exercise of civil jurisdiction by native Judges in cases to which Europeans

are parties has not given rise to any injustice, not even to complaint on the score of national differences. The truth is that the fears of the alarmists of those days were unfounded, and their prophecies were bound to prove false. At this moment throughout British India native Judges exercise civil jurisdiction over Europeans in a manner which certainly is not open to a charge of being influenced by race distinctions. But then, my Lord, it is sometimes urged that civil jurisdiction is vastly different to criminal jurisdiction, that the former affects property only, but the latter affects personal character and liberty; and that whilst the European and Eurasian community may be willing to subject themselves to the civil jurisdiction of native Judges, it does not follow that they should do the same in criminal matters. My Lord, I confess I am unable to see the reason upon which such distinction is based. The decrees of civil courts can reduce a man from opulence to poverty, and there are some branches of civil jurisdiction which not only relate to personal relations, but include the power of personal arrest, and, in the interests of justice, authorise a procedure similar to that provided for criminal courts. The process at arriving at conclusions as to the facts of civil cases is much the same as in criminal cases. The same law of evidence in India regulates the investigation of truth in civil and criminal courts. The judgments of civil courts may stain the reputation and ruin the character of parties nearly as much as sentences passed by criminal courts; and it seems to me that there is no substantial foundation for drawing a distinction in principle between judicial powers of the two classes of courts; or for attaching greater importance to one class of jurisdiction than to the other. If probity, justice, and absence of race bias are found among native Judges in civil matters, it is difficult to perceive why the same qualities should not mark their administration of criminal justice in cases in which Europeans and Eurasians are concerned. As I understand the existing law, all native Magistrates already exercise jurisdiction in criminal matters in cases in which Europeans are complainants and seek redress from the courts as injured parties. I have never yet heard that European British subjects have any objection to resort to native Magistrates for redress; indeed, they do so without any hesitation. If this is so, there seems no reason why the same confidence should not be shown to those tribunals in cases in which complaints are brought against Europeans British subjects. Counter-charges are not uncommon in criminal cases. Magistrates competent to give redress ought to be competent also to award punishment; and it seems unreasonable and unfair for any section of the community to say we will go

to native Magistrates for redress, but we will not submit to be tried by them. Indeed, my Lord, it is hardly necessary to say that even under the existing law, natives of India exercise a good deal of criminal jurisdiction over European British subjects. Even outside the Presidency towns, I believe, it is not a rare occurrence that European British subjects, appearing as defendants before native Magistrates, waive the exceptional privilege accorded by the existing law. There is no judicial disqualification based on race distinction in the powers of the native Judges of the High Courts and Magistrates in Presidency towns; and I need have no fear of contradiction in saying that native officers, when entrusted with criminal jurisdiction over European British subjects, have performed their duty with honesty and efficiency, and without any bias arising from distinctions of race or creed. Indeed, my Lord, in educated minds, employed in the solemn and sacred duties of administering justice, the claims of humanity at large to the protection of law and the dictates of conscience leave no room for any other considerations. In the neighbouring island of Ceylon, which forms a part of the vast Empire of Britain, I believe I am rightly informed, native Magistrates and Judges exercise criminal jurisdiction over European British subjects. Judicial disqualifications, based on race distinctions, are unknown in that country. Yet British capital and British commercial enterprise, far from being driven from that island, have had considerable scope in that colony. The interest of coffee planters in Ceylon is, so far as I know, in no sense inferior to the interest of indigo-planters in Bengal; and the people of Ceylon are in no sense less Asiatic than the people of India. Nor would their staunchest patriot in Ceylon claim for his countrymen a higher position in the scale of civilisation than he would concede to the people of India. Yet the existing law of British India in regard to criminal jurisdiction over European British subjects is behind the law of Ceylon, and, my Lord, I do not think it unreasonable for the people of India to feel that the time has arrived when the necessity of improving the law has become urgent.

So far, my Lord, I have endeavoured to show that the proposed law is no innovation in principle, that the fears of the opponents of this measure are exaggerated and ill-founded, and that the example of Ceylon furnishes a practical illustration of the argument that the removal of judicial disqualifications, based entirely on race distinctions, will not be attended by any injury to the sacred cause of justice. And, my Lord, I may here repeat that the scope of the Bill seems to have been

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greatly misunderstood by the promoters of the agitation against it. As I understand the Bill, it does not propose to invest every native Magistrate with power to try European British subjects. It is only in the case of those natives of India, which recognised probity and ability have enabled them to achieve positions in the judicial service, equal in rank to English officers of the higher order, that the Bill proposes to remove judicial disqualifications based on race distinctions. The number of such Native officers is very limited; and the Bill cannot, therefore, in any reasonable sense, be regarded as precipitate or calculated to cause any serious practical change in the present machinery of the administration of justice.

But, my Lord, putting aside these considerations, it seems to me that there is much fallacy in the argument which attaches so much significance to race distinctions. What the people obey in countries blessed with a civilised Government is not the authority of individuals, but the mandates of the law. So long as the law is just, impartial and humane, so long as the proper administration of that law can be secured, the nationality of those who carry out the law should be of no consequence even to sentimentalists. What requires respect, submission, and obedience is the authority of the law and not that of individuals, and even those who regard the people of India as not entitled to equality with themselves might, if they only consider the question calmly, feel that native Magistrates are only the servants of the State, charged with the duty of carrying out the behests of law. It is the duty of the State to provide for the proper administration of the law. To secure this object, the State has to choose the best available agency, and it seems a somewhat untenable and unjust proposition for any subjects of the State to insist that in the choice of officers Government shall confine itself to any particular race or section of the community. The whole question raised by the Bill, in my humble opinion, practically amounts to what I have just said. It is a matter the principle of which requires no new decision. The question was discussed and it was decided, and decided nobly, when the magnanimity and justice of England accorded to the people of India rights of employment in the service of the States on the same footing as Englishmen themselves. That noble decision has, in recent years, received practical effect, and administrative expediency requires the moderate change which this Bill professes.

But, my Lord, this Bill has in its favour considerations of a higher order than even administrative expediency. I allude to those noble principles of freedom, justice and humanity

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which have their home nowhere as much as in the bosoms of the nation which first came forward to release the slave from his thraldom; which first announced to the people of India that in matters of constitutional rights, distinctions of race and creed should have no place in the eye of the law. Never in the history of the world has a nation been called upon to act up to its principles more than the British in India. The removal of disabilities under which certain sections of the community laboured in England in regard to constitutional rights sinks almost into insignificance in comparison to what England has already done in India. The history of Indian legislation is the history of steady progress, of well-considered reforms, of a gradual and cautious development of the noble principle that between British subjects the distinctions of race, colour or creed shall make no difference in legal rights; that whilst, on the one hand, the British rule enforces submission, and expects loyalty and devotion from the people of India, on the other hand, it accords to them rights and privileges of equality with the dominant race. My Lord, I am convinced that it is on account of these noble principles, remarkable alike for their justice and for their wisdom, that the British rule has founded itself upon the hearts and affections of the people,—a foundation far more firm than any which the military achievements of ancient conquerors could furnish for the domination of one race over another. History teaches the lesson that nothing is more destructive to the prosperity of a country than that race distinctions should be maintained between the rulers and the ruled. No one can be more anxious than myself that friendly feelings should grow even more than they have already done between the English nation and the natives of India. Providence has thrown the two races together in a political and, I hope I may also say, social union, which will grow firmer and closer as time goes on. My Lord, if I believed that the legislative measure incorporated in the Bill will prove destructive to the growth of friendly feelings between the two races, I should have deprecated introduction of the measure. But I can take no such view. I am strongly convinced that so long as race distinctions find a place in the general law of the land, so long will there exist obstacles to the growth of the true friendly feelings between two races. The social amenities of life arise from political equality, from living under the laws, from being subject to the same tribunals. The caste system in India would, perhaps, never have held his ground so long, if the legislators of old had not framed one law for the Brahmin and another for the Sudra. Whatever the exigencies of former times may have been, I hope, my Lord, that a century and a

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half of British rule has brought us to that stage of civilisation when there is every reason for minimising race distinctions, at least in the general law of the land. My Lord, I for one am firmly convinced that the time has come when the entire population of India, be they Hindu or Mahommedan, European or Eurasian, must begin to feel that they are fellow-subjects; that between their political rights or constitutional status no difference exists in the eye of the law; that their claims to protection under the British rule in India lie not in their nationalities or their creeds, but in the great privilege common to all,—the privilege of whose reign has brought peace and prosperity to India and made it a place suitable for commercial enterprise, and for the pursuits of the arts and sciences of civilisation. My Lord, as this is probably the last occasion on which I shall ever address the Legislative Council of India, I cannot conclude my observations without saying that your Lordship's administration is to be heartily congratulated upon having brought forward a measure, which I am convinced will go a great way to remove invidious race distinctions and ultimately promote good feeling, mutual respect and sympathy between the rulers and the ruled in this land of many races and many creeds.

The Hon'ble W. W. HUNTER said:—My Lord,—After very careful consideration, I feel constrained to support this measure. In doing so, however, I hope that I shall not disregard either the expressions of disapproval which have reached us from without, or the arguments which have been so skilfully arrayed against the Bill in Council to-day. I agree with the opponents of the measure, that there is a body of personal law peculiar to European British subjects in this country,—a law which accord to them certain highly-prized exemptions and privileges. I agree that there is likewise a personal law peculiar to certain classes of our native subjects,—a law which is equally valued by them. I agree that as we have respected the exemptions and privileges secured to our native subjects by their personal law, so we are bound to respect the exemptions and privileges enjoyed by European British subjects under their personal law. I am prepared to go further, and to maintain that, in the early days of English Rule in India, the personal laws of the various classes formed the main body of law administered in our courts. The history of Anglo-Indian legislation is the history of absorption of these personal laws peculiar to classes, into a common system of law applicable to all. By this process of absorption, the personal law of each class has been gradually but steadily curtailed. It is this process of absorption which supplied what the Marquis of Wellesley termed the "active principle of continual

revision," that struck him as the salient feature of the Bengal Regulations in 1805. During the last 80 years the process has gone on at an accelerated pace, until the special privileges now left to the natives of this country, and the peculiar exemptions still claimed by European British subjects residing within it, are a mere fragment of the privilege and exemptions which those classes severally enjoyed when Lord Wellesley delivered his discourse. At each important stage in the process, there has been an outcry from the class whose personal law it has curtailed. Indeed, no class of men can be expected to part with their special privileges without opposition. It seems to me that a Government is bound to listen with great respect and sympathy to such an opposition, and that it ought to refrain from such changes except when they are clearly demanded by the common weal. But when such a change becomes really necessary for the better administration of the country, then I hold that Government is bound to make it, however much it may regret that it has to purchase a benefit for the whole body of its subjects, at the cost of the natural resentment of a section of them.

The curtailment of class distinctions which this Bill will effect is no isolated act. It forms one of a long series of measures, absolutely inevitable, in moulding the laws of the various races, from which our administration of justice in India started, into a common body of law applicable to them all. Permit me for a moment to remind the Council how this process has affected our Hindu and Mahomedan subjects. The Charter of 1753 expressly exempted suits between natives from the jurisdiction of the English tribunals, then styled the Mayor's Courts.* The Governor General guaranteed in 1772 their own laws to the natives, and provided that Maulvis and Brahmins should attend the Courts to expound those laws.† By the Statute‡ of 1781, the British Parliament secured the Hindus and Mahomedans, not only in their law of inheritance, succession, &c., but also in "all matters of contract and dealing between party and party." The same Statute guaranteed to them their domestic law of the *patria potestas*, and the punitive sanctions of caste. It provided that no act done, and therefore no penalty inflicted, in consequence of caste rules should "be held and adjudged a crime, although the same may not be justifiable by the laws of England."

* Charter of George II granted in 1753.

† Plan for the administration by Warren Hastings, 1772, Rule 23, afterwards incorporated in the first Bengal Regulation, dated 17th April 1780.

‡ 21 Geo. III c. 70.

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I shall not detain the Council by a further enumeration of the guarantees granted to the natives of this country; or of the legislative process by which those guarantees were one by one infringed. The natives still retain a large portion of their domestic law and certain privileges, such as the exemption of women of position from appearing personally in Court. But in the ordinary business of life they have been brought under English-made law. The Maulvi or Brahman assessor has no longer a place in our Courts. For native law and usage in dealings "between party and party," we have imposed the Code of Civil Procedure and the Contract Act. We have weakened the *patria potestas* by curtailing the punitive powers of the head of the family, especially in regard to the female members. We have undermined the sanctions of caste by treating as offences the graver penalties inflicted for breaches of its rules, notwithstanding our express pledge to the contrary. We accepted the system of the Mahomedan criminal law; we have substituted for it a system of criminal law of our own. Special classes have had their ancient privileges curtailed in a special degree. The Hindu law accorded to the Brahmans a status which enable them to exercise spiritual powers, yielding lucrative temporal results. We no longer permit the employment of these spiritual powers for compulsory purposes. If a Brahman erected a *kurh*, and some credulous old woman killed herself thereon, our Regulation Law tried him for murder. If he enforces debt or extracts a charity, by fasting outside a man's door, the English Magistrate locks him up in jail. We have deprived the sanctity of Brahmanhood of such of its pecuniary value, and subjected its spiritual terrors to the Penal Code.

In all this the Government has done wisely and well. In doing so, however, it has had again and again to encounter a clamorous but quite natural opposition from those whose ancient privileges or personal law it curtailed. I shall not cite instances where the gain to the community at large was beyond question, but one in which the necessity for a change seemed doubtful to many. There are no branches of the native law more solemnly guaranteed to the Hindus than those which deal with marriage and inheritance; and there is no principle more clearly established than the deprivation of rights to family property, in the case of a Hindu becoming a convert to another religion. Yet a series of *Lex Loci* Acts, initiated in 1832 and ending within our own experience, have repeatedly interfered with the most cherished feelings of the natives in these matters. In each case since 1842, the natives have struggled against the change. With them, inheritance is not a mere question of gain or loss in

this world, but involves the safety of their ancestors, and their own happiness or misery in the future life. They have pleaded Parliamentary guarantees, the solemn declarations of the Indian Legislature, the established usage of a century of British rule. With one temporary exception, they have pleaded in vain.

The personal law and exemptions, peculiar to British European subjects in India, have undergone scarcely less important curtailments. The legal status of the non-official Englishman in India commences, for practical purposes, with the Charter of 1813.* During the preceding half century, the English non-official in rural Bengal had passed through various stages, as an interloper, a licensed adventurer, a subordinate agent of the East India Company, and a partner, recognised or unrecognised, of its servants in their private trade. He might execute a bond making himself amenable to the Company's Civil Courts, and after 1787 he had to do so before he was permitted to reside in the interior. In criminal matters he was subject only to the Supreme Court and Her Majesty's Justices of Peace in Calcutta. He practically, therefore, remained outside the company's system of administration, as an unmalleable unit of sturdy independence and growing importance in whatever District he settled disliked and often unfairly treated, but difficult to reckon with. In matters of criminal jurisdiction he is under the surveillance of the rural police, instead of being amenable to the rural Courts. As late as 1827, a Regulation was passed requiring the police to submit yearly to the Magistrate of the District a list of all Europeans residing within it. Indeed, until the Government passed to the Crown, each police inspector had to report the arrival of every non-official European who came within his circle. The Charter of 1813 threw open the Indian trade to private enterprise, and at the same time created a jurisdiction over the Europeans who embark in the business. It provided that every British subject living at a distance of more than 10 miles from the Presidencies should be amenable to the Civil Courts of the East India Company in like manner as natives of India.† It also empowered the Governor General to appoint Justices of the Peace from among its covenanted servants, or other British Residents, with petty criminal jurisdiction over British subjects, not exceeding a fine of Rs. 50; or in default two months' imprisonment. As the number of Europeans increased in India, the powers of the Justices of Peace were extended by a Statue of George IV‡. All powers, whether civil or criminal, were exercised only by Europeans,

* 53 Geo. III. c. 155.
† 53 Geo. III. c. 52.
‡ 9 Geo. IV. c. 74. Sections, 92, 97, 113, 121, 124.

because, at that time, the natives of India had been excluded from the higher judicial offices which they held in the early days of the Company, and had not yet been incorporated as branch of its uncovenanted civil service. But when the Company withdrew from its trade after 1813, it set itself to the task of improving its rural government, by a series of measures between 1821 and 1836, it increased the powers of native Judges, and admitted the natives of India to a large share of the civil judicial administration. It followed that if natives were to do the staple work of civil justice, they must exercise jurisdiction over the whole body of inhabitants within their District. By a series of laws in 1836, 1839, and 1843, their jurisdiction was therefore extended over European British subjects. It was enacted in comprehensive terms that, thenceforth, no person should by reason of place of birth, or by reason of descent, be in any civil proceeding exempted from the jurisdiction of any of the Company's Civil Courts.

The European community bitterly resented these laws, and opposed every effort to bring them under the jurisdiction of the country tribunals, as distinguished from the Supreme Court in Calcutta. The most important of them they stigmatised as the Black Act. "The Black Act," writes an eye-witness, Mr. William Tayler, an eye witness not likely to favour Bengal officialism, "was the cause of an agitation which may fairly be said to have convulsed Indian society for a time. Several barristers took the lead; public meetings were called; scurrilious articles filled the columns of the daily journals. One impassioned orator hinted that Mr. Macaulay [the Legal Member of Council] ought to be lynched at the very least." My Lord, it marks the difference between Englishmen in India at that time and at the present day, that although their feelings on questions of class privilege remain equally strong, the articles in the public journals are no longer "scurrilous;" their public meetings cannot fairly be described, in Mr. Tayler's words, as "fierce and uproarious;" and their resistance is not now confined to Calcutta, but, with the extension of British enterprise, is diffused over many Districts. The jurisdiction of the rural Civil Courts and of the native Civil Judges, which Englishmen so loudly opposed 50 years ago, has done more than any other series of administrative measures to protect British capital, and to render British enterprise possible in rural India.

During the same 50 years the special privileges of European British subjects in matter of criminal jurisdiction have also been curtailed. Perhaps the most important attempt

under the Company in this direction was that of Lord Dalhousie's Government. In 1849, it prepared a draft Act declaring that all British subjects, resident outside the towns of Calcutta, Madras, and Bombay, should be thenceforth amenable to the Magistrates and Criminal Courts of the East India Company; save, only, that no such Magistrate or Court should have the power to sentence any of Her Majesty's natural-born subjects to death.* It made no provision as to the Magistrate being a Justice of the Peace. On the contrary, it expressly stated that "the word Magistrate, as used in this Act, shall be understood to mean every officer, however styled, who has power to exercise any or all of the powers of a Magistrate."† I need hardly point out that the Bill now before the Council has a very much narrower scope. Lord Dalhousie approved of the proposed extension of the criminal jurisdiction over European British subjects, but thought that the measure should be postponed till the amending of the criminal law was effected by the Penal Code. His view prevailed. Shortly after the country passed to the Crown, the Penal Code became law, and the question of jurisdiction could be considered on its own merits. This was last done on the revision of the Code of Criminal Procedure in 1872. Before that year, the natives of India had been admitted, by open competition in England, into the covenanted civil service; and, in the natural course, would rise, as Magistrates and Judges, to the highest posts in the administration of criminal justice in their respective Districts. The question which had to be decided in 1836, with regard to granting civil jurisdiction over European British subjects, came up for consideration in 1872 with regard to criminal jurisdiction. The Legislature then determined to give a substantial jurisdiction over European British subjects to full power Magistrates, being Justices of the Peace, and to Sessions Judges, provided that such Mofussil Magistrates and Sessions Judges were themselves European British subjects. By a narrow majority, the Legislature abstained from giving these powers to the native members of the covenanted civil service. How narrow the majority was, may be estimated from the circumstance that, if a single one of its members had voted the other way, the minority would, by the President's casting vote have become the majority.

My Lord, I think that the Legislature decided wisely in 1872; but that we should decide wrongly if, in 1882, we supported its decision. The circumstances of the country at large and of the special classes of public servants to whom jurisdic-

* Draft Act read for the first time in Council, the 26th October 1849, Section 1.

† *Idem*, Section 6.