LORD RIPON'S POLICY.

OBSERVATIONS

ON THE

CRIMINAL JURISDICTION BILL.

BY

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ETC.

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I suppose there is not one amongst us who has not, during the last few months, read numerous speeches and articles on the Bill for the amendment of the Indian Code of Criminal Procedure. Many of these have contained reckless and severe remarks, directed not so much to the present question as to the general impugning of the policy of Lord Ripon in India. It has already excited so much controversy both here and in England, that almost every day the columns of Indian as well as English journals teem with correspondence, in which this subject is discussed with all the vehemence of excited party feeling. This mischievous agitation evidently appears to be of a sudden growth, springing from a party not far-sighted enough to discover that the policy which the present Viceroy seeks to inaugurate will not diminish, but rather strengthen the foundation of British rule in this country. This state of affairs will now remain unchanged for weeks to come until the next step—advance or regress—is taken.

With some temerity the enemies of Lord Ripon have too often succumbed to the corrupting influences of untruthfulness. I do not doubt for one moment that the popular mind of England at present lies literally steeped in misapprehension—concerning things about which it is essential to that nation to know the truth. Far above all other allegations of mis-statement that have been made to mislead the English public, let me take for the present what Lord Lytton and Mr. Bartlett have said in

the Houses of Lords and Commons respectively, in reference to the condition of India. In the opinion of these political theorists and crotchet-mongers, the present condition of India is more critical than it has ever been since the Mutiny of the Company's sepoys. They think the Criminal Procedure Bill tends to destroy the fundamental principles of British rule in India. With regard to this, it is enough for me to say, that, whether the proposed legislation *be passed as it stands* (*as it ought to be*), or amended, or shelved, no one in India would ever venture to credit such scandalously false statements, and it is absurd to suppose that British rule, or its fundamental principles, will be ever brought into such a critical condition.

It is much to be regretted that European subjects, and others claiming European descent, should have unluckily not only run into collision with the Government, but have placed themselves in a false position of antagonism towards the Natives of the country. The noisy section of non-official Englishmen in India, and their advocates in England, are carried away by imaginary fears, in supposing that the liberty of European British subjects in India is in imminent danger; and it is no wonder that, labouring under such wrong notions, they should toil and mail to protest against the Bill. Nor is this all: vigorous oppositions have been organized, "Defence Associations" have been formed, subscriptions started, and memorials forwarded, with a view to oppose the Bill passing into law. But what appears to me really surprising is, that these men, who are in the habit of taking liberal views of things in their own country, and who generally preach the higher and nobler sentiments embodied in Christianity, should so forget themselves, in vain excitement about a mere shadow.

In writing these pages, I am not going to assume the position of an apologist, or an advocate of a cause which is desperate and hopeless; for I know for certain, that the wild agitation lately raging among the infuriated

Britons, is nothing but an empty cry based on purely sentimental grounds. It is not surprising, when reason and interest are at variance, that the advocates of interest should argue on the principle of *argumentum ad hominem*. The European community in India have wantonly and wilfully placed themselves in the wrong, by their intolerance, violence and malevolence. I am sorry to observe that, in a fit of madness, the Europeans have irritated and roused the feelings of the children of the soil; but when reason returns to them, they will, I am sure, feel convinced that they cannot carry on their grand colonization, or further their interest, by placing themselves in a hostile position to the people of the country. Seeing the advantages that are derived from India, the present moment seems to be the most favourable opportunity for considering the matter with calmness and impartiality. English capitalists can never get on well, unless and until they co-operate with the children of the soil. There are many reasons which demand that the interests of European settlers and Natives of India should become identical, and it will only be then that the united efforts of both will prove highly useful to the cause of improvement and reform in India.

I do not pretend to take pride in an extravagant attachment to any party, by following the pernicious example set by the opponents to the proposed judicial reform, who calling themselves Englishmen, are not ashamed to resort to the language of sedition, calumny and malice. I would leave to the taste of the heroes of the "Calcutta Pandemonium," to indulge in that sort of vain glory. But, as for myself, being no more than a loyal subject of Her Gracious Majesty, and having only a common citizen's interest in the advancement of that truly liberal policy, which will hereafter be regarded as the only safe measure for increasing the stability of British rule in this country; and being moreover interested in the welfare of India, I venture to come forward to attempt the solution of this problem.

Every reasonable man must admit that equal law and equal justice must rule the country. And it is high time for our rulers to surrender the last lingering traces of race antipathies, and to introduce slowly but steadily the constitutional freedom of justice and equality. The success of the English Government in India is mainly due to the civilizing effect of making self-interest subordinate to the constitutional principles that suit practical exigencies. I shall feel satisfied, if I only succeed in cutting away the thick weeds and undergrowth, which arrest the progress of a policy which is simply a legitimate and logical outcome of that progressive policy which has characterized Her Majesty's rule in India, and which, in principle, is upwright, just, sound, and honest. I, in common with my countrymen, and other well-wishers of India, take a deep interest in a progress which cannot now be retraced.

At the same time, I wonder how I can avoid feeling indignant at the unparalleled insults, and at the volleys of abuse, that have been fired by the opponents of this Bill against my countrymen. Reckless misrepresentation of facts, calumnious stories, more or less fictitious, scandalous assertions advanced in language worthy only of Billingsgate —these have been the weapons which the rude and rough planters, and miners, and their echoes, have put forward for the purpose of defeating this just, righteous, and above all, absolutely necessary political measure.

In the course of my exposing the hollowness of the flimsy arguments on which the violent opposition to this Bill is sought to be justified, I should indeed be very sorry if I were to make use of a single expression which might unnecessarily give offence to any class of Her Majesty's subjects, and more especially to our European fellow subjects. For I am not only conscious that violent and abusive language is the surest sign of a wrong cause; but I am also confident that it is a matter of great importance for the future prospects of India that the European settlers and the

Natives of India should try to live in peace, and on terms of friendship and equality. None can regret more than myself that this question has been made the subject of party strife. Even now I think that I may trust myself to write about it in no spirit of hostility to those whose ill-fate has led them to take such rash and ill-advised steps.

Our Viceroy, the Marquis of Ripon, deserves the heart-felt thanks of all who wish to see an improvement in the affairs of India. His administration has been signalized already by the introduction of some very useful and very important measures: such as, the reduction of the salt duty, the abolition of the import duties, the repeal of the vernacular press act, the closing of the Afghan war, the introduction of the scheme of local Self-government, the innovation of the policy of purchasing stores locally, and, lastly, the Criminal Procedure Bill. All these innovations and changes are in accordance with that line of policy, the foundation of which was laid by his lordship's excellent predecessors, Lords Canning, Lawrance, and Mayo, whose names brighten Indian history. And, indeed, happily for us, since the removal of the double Government after the political death of the East India Company (the pages of whose history are full of many a memory of injustice) nearly all our Governor-Generals, with the exception of Lord Lytton, have been destinguished administrators. I can say unhesitatingly, that no two statesmen could be more dis-similer in public policy as well as in personal character than the sixth and seventh Viceroys of India. No man in India, no matter of what politics, will arrive at the conclusion that Lord Lytton was every thing that a ruler ought not to be. On the other hand, it is no exaggeration to say, that Lord Ripon is everything that its ruler ought to be. This can be ascertained from the fact that Lord Lytton's recall was received with the liveliest satisfaction by the people of every province throughout the peninsula; whereas the people from all parts of India are soliciting Her Most

Gracious Majesty, the Empress of India, for the extension of Lord Ripon's viceroyalty. Remembering all these things, public curiosity was excited at Lord Lytton's speech, the other day in the House of Lords, accusing his successor of attempting to destroy the fundamental principle of British rule in India. The policy of distruction Lord Lytton discovers in the Local Self-government Bill, and the Criminal Procedure Bill. Fancy a statesman, "who had no scruples about deceiving the Ameer of Cabul," and whose "unfitness to rule India" remains a decided fact, declaring a vote of want of confidence in Lord Ripon! However, it is pleasing to observe that the British peers were wise enough to treat his ungenerous and biased motion with the contempt and indifference which it richly deserved. For the present, I dismiss Lord Lytton, and before I lay down my pen, I shall not forget to tear into shreds the flimsy arguments advanced by our ex-viceroy.

Mark the solid a foundation on which the real test of statesmanship is to stand. It surely consists in capacity to foresee all administrative difficulties and emergencies, and to adopt useful reforms so as to neutralize evils by timely legislation. This capacity is in a high degree possessed by our noble Viceroy, Lord Ripon, the representative of a peaceful and reforming ministry. This liberal statesman, I am quite sure, is determined to introduce into India measures of reform, slowly and tentatively, whenever there is a genuine necessity for them. His scheme of Local Self-government for India is a measure in every way unquestionably sound. When he finds the Natives of India willing and capable to administer their own affairs, it is nothing but just and reasonable that they should obtain administrative rights. Could any one refuse the extension to mofussil towns, of municipal institutions similar to those which have worked admirable well in Presidency towns? or object to the endeavour to empower the Local Fund Committees, which have been in existence for years past,

with control over the work and expenditure, for which they are virtually responsible? If the political opponents of Lord Ripon were to throw off the mask of ignorance and prejudice, they would have no reason to question the propriety of this, as well as other measures. It is a well known fact, that the British Government in this country professes to rule its subjects by just and equal laws. It is the cardinal maxim of English jurisprudence laid down by Herbert Broom, that:—"Our criminal law is, then, to be made to bear alike, and equally on all." All subjects and foreigners are alike, and bound to obey the law, for the law speaks to all *"Uno ore."* It is not only so: Her Majesty's subjects in India are not only equal in the eye of the law, but they are repeatedly told that the law recognizes no distinction of race, creed or colour, and more particularly in respect to criminal law.

With all this, it is painful to observe the existing anomaly in the criminal law which ignores the sound principles of English jurisprudence, and nullifies the generous intentions of our rulers. The same Penal Code and the same system of Criminal Procedure are applicable to European and Native alike. But under the existing law, Native Magistrates of vast experience, and the highest position, are not permitted to try European Criminals in the Mofussil. An exception to this is allowed within the Presidency towns, under Acts II of 1869 and IV of 1877. It is difficult to conceive anything which is more impolitic and more harmful to the prestige of the native Magistracy, and more diametrically opposed to the avowed policy of the British Government of India. To remove this standing disgrace, the present Legal Member, the Honorable Mr. Ilbert, has made a start in the path of progress by introducing into the Legislative Council, in February last, the Bill to amend the Code of Criminal Procedure, so for as it relates to the exercise of jurisdiction over European British subjects. The following is the text of the

Native Jurisdiction Bill, which is reproduced here for the perusal of those who have not seen it before:—

Section 1 amends section 22 of the Code, and makes the following persons, being Magistrates of the first class, eligible for the office of justice of the peace; viz, convenanted civilians, members of the Native Civil Service constituted under statutory rules, Assistant Commissioners in non-regulation provinces, and Cantonment Magistrates.

Section 2 makes Sessions Judges and District Magistrates *ex-officio* justices of the peace.

Section 3 repeals in section 443 of the Code, the words, "and in European British subjects."

Section 5 repeals the provision in section 444 of the Code barring jurisdiction over European British subjects, of a Judge not being an European British subject.

Section 5 repeals section 450 of the Code, and the last sixteen words of section 459 of the Code.

(In) rest of the Bill formal right to mixed jury, and to summary application for release, and all other safeguards under Chapter 33 preserved

After all, this is a small, but very important, improvement in the right direction. Practically speaking, the jurisdiction will vest for the present in about a score of Native civilians of vast experience, who are scattered here and there over India; and yet the hue and cry raised by a noisy section of ignorant British subjects, would seem to imply that their liberty is in immediate danger, and that the measure will have the effect of banishing them from India! Nothing could be more anomalous and insulting than the fact, that while Natives of India are admitted to the covenanted civil service, and are held competent to discharge the highest judicial duties, they should be deemed incompetent to exercise jurisdiction over common European criminals, outside the Presidency towns. Mr. Ilbert's Bill proposes to remove the present bar by investing a very select portion of Native civil servants, with the same powers as are enjoyed by their European colleagues. In short, it aims at removing from the wretched Stephen's Code every judicial disqualification which is based purely on race

distinction. The millions of India, including the majority of enlightened Europeans, welcome the change entirely. Few lament it, but all admit its necesssity on the grounds of political reasonableness.

It must not be forgotten that it is the possession of India that has elevated England in the eye of other great powers, and it is this vast empire which gives to those small islands and to their population, the name and power and authority of the kingdom of the globe. It is all very well now to say that India was obtained by the sword, and it must be kept, and can only be kept, by the sword. But it still remains an open question whether India was obtained more by force than by fraud and forgery, for on this point the most eminent historians differ. Is the treatment of Omichund forgotten? Is the tragedy of Nundcomar buried in oblivion? It is simply absurd to suppose that India can be ruled by force. It is not force that keeps the 250 millions of people, (composed of many warlike races, who inhabit the Indian soil), obedient and loyal to Her Majesty; *but it is chiefly due to the wisdom and popularity of Her Majesty's rule in India.* To satisfy the vanity of those that argue on this line of policy, let me draw their attention to the Dalhousian period. When attempts were made to govern India by force, the result was the Mutiny. The early history of England affords similar examples of this kind. Sir James Stephen, Lord Cranbrook, and Lord Lytton, may labour under the delusion that a vast people can be safely ruled on the principle of "might is right"; but the Englishmen who actually rule the empire cannot cherish such ideas for one moment. The removal of race distinction will not weaken but strengthen the British rule in this country, by bringing the alien rulers and the native subjects nearer to each other. It is truly said in the Queen's Proclamation:—"*In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward.*"

Forgetting this noble declaration, our European fellow-subjects are holding indignation meetings in different parts of the country, running down the Government and the people, and threatening to appeal to the Imperial Parliament. Even the Volunteers in the upper parts of India have threatened to lay down their arms. It must be understood that in India, volunteer regiments are not composed of Natives, but of East-Indians, an "inferior mixed race" and a few Europeans. The whole strength of this skeleton militia throughout India is not more than 8,000 heads. Hence, we need not be afraid of their disloyal spirit inspired by prejudice and superstition. And above all, the Anglo-Indian ladies, instead of minding their domestic affairs, which would have made them useful wives and daughters, they too have been mixed up in this broil, and threaten to act as a sort of protest committee in regard to Mr. Ilbert's Bill.

The result of the agitation against the Jurisdiction Bill has been the establishment of a Defence Association at Calcutta, to watch the movement of Indian legislation, and to oppose its progress if it should appear hostile to the interests of the Anglo-Indian community. There are other objects too besides political; they have benevolent and economic reasons for mitigating Anglo-Indian grievances. With respect to this association, I cannot help saying that its formation is good, but its immediate object is bad and unwise. If I am not wrong, this association, which is the outcome of the present agitation, will collapse with the downfall of the agitation.

To my mind, if ever there was a time for making such legislation, in order to remove at once and completely all race distinctions, surely the present is the fittest time for it. We are at the present moment enjoying as much peace and tranquility as we can ever hope to enjoy. In addition to the liberty of the Press, the boon of local self-government has been extended to us. There are no secret societies in India inspired by hatred and discontent, such as exist in

Russia, that our rulers need hesitate to introduce a reform, as the Czar was hesitating to celebrate his coronation.

With a few exceptions, the opponents of this Bill are invariably guilty of suppressing the truth on the one hand, and of exaggeration and falsehood on the other. I will not, however, waste time in preliminary observations that may be considered unnecessary, and the more so, because the field I have to traverse is a wide one. I must ask the patient favour and kindness of my readers, which alone can enable me to attain the end I have in view—namely, that of submitting with fulness and clearness both principles and facts drawn from history and philosophy, in order to substantiate and justify the introduction of this righteous measure, and, at the same time, expose the plausible and sentimental grounds advanced by its opponents to check its progress.

Now, before I endeavour to pass in review the numerous—I might say the numberless powerful arguments, to prove that the proposed legislation is based on sound principles; I hasten to state briefly the origin and history of this administrative problem; the study of which may prove useful to those Englishmen who have been led to believe, that Lord Ripon and Mr. Ilbert are resolved to force upon India a scheme of judicial reform for which there was no demand, and which is calculated to damage the British supremacy in India, and to endanger the lives and property of English settlers. However, it is edifying to observe that those who oppose the Bill dare not question its propriety or equity. The London *Times*, for instance, with all its blind partisan spirit, and violent opposition to the measure, cannot fail to admit the existing anomaly in the Criminal Law of India. But its imperfect knowledge of this country, combined with prejudice, has animated the leading journal of London to put forth a parcel of nonsense. The following is a specimen of the argument:—"So long as the population of India remain what they are, (?) there

must be anomalies." I cannot help adding, though I am unwilling to quarrel, that the writer in *Times* knows about my country as much as "the man in the moon." Let us turn to examine whether there are any good or valid reasons for supposing that the present Viceroy is pressing upon India a legislation for which there is no necessity, and, if passed into law, will have the effect of withdrawing English capital, and driving English adventurers "bag and baggage" home.

In the first place it will be observed, the Native Jurisdiction Bill is not the invention of Lord Ripon, or his Ministry, or is in any way due to the initiative of the Hon. Mr. Ilbert, the legal member of the Viceregal Council; but it is the outcome of the avowed policy of the Crown and British Parliament, brought about by generously throwing open the "Competitive Civil Service Examination" to all Her Majesty's subjects without distinction. The question of equal jurisdiction is a movement which dates from well-nigh fifty years ago. Sir Charles Grant, then President of the Board of Control, in one of his speeches on this subject says:—"Whatever might be the immediate regulations of the Governor-general, he thought the House would agree with him that ultimately it should be laid down *as an inflexible rule that no European should enter into that country, unless on the condition of being placed under the same law and tribunals as the Natives.*"

Lord Cranbrook in a despatch, to the Government of India, dated 7th of November 1878, writes as follows:—"*The broad policy was laid down by Parliament so long ago as 1833, that no Native shall by reason of his religion, place of birth, or colour, be disabled from holding any Office; and Her Gracious Majesty's one safe-guard is the power of supervision exercised by the High Court over all the Courts below.*" When there is the High Court to examine and scrutinize the proceedings, and hear the appeals, and order any further enquiry which it may think fit, what probability

is there to suppose that Native magistrates would act in an unjust manner in trying a British-born subject? Notwithstanding this, the British-born subject, under Section 416 of the Code, has the special right of appeal in all cases, whether the term of sentence be only one hour, or the fine only one pie. But a Native gentleman, of whatever position and rank he may be, cannot appeal against a sentence of imprisonment not exceeding one month, or a fine not exceeding Rs. 50, passed by the Sessions or District Magistrate or other Magistrate, of the 1st class; and in certain summary cases, in which a magistrate is empowered to act under Sec. 260, he can pass a sentence of imprisonment even for three months, and a fine of Rs. 200. The magistrates in these days, under the sanction of the law, can commit any amount of oppression on Natives without being discovered. A Native has no legal remedy of appealing in summary convictions. The magistrates have the fullest advantage of absolute powers entrusted to them, and the helpless people have been groaning under this cruel law for the last twelve years.

I need not describe how bitterly the Natives hate this Code; in fact their hatred goes so far that they do not mention the name of its author without displeasure. Ask any native of India, whether educated or illiterate, either in the town or in the moffusil, or open any native newspaper, and what do you hear, and read? Accounts of magisterial quibbles! There is a Native sent to jail for having spoken the truth. There is a guru (native priest) fined for having done what is right. Here, a native is imprisoned for having done nothing. There, is a man imprisoned, whereas he ought only to have been fined; again there is a European acquitted whereas he ought to have been transported. There is scarcely a day passes in India, without some sort of offence against the public peace committed by independent Britons on poor Natives. Whenever John Bull is provoked on any trifling

matter he is apt to give sway to his passions rather than reasoning. He often commits a crime which does not stop at simple hurt or brutal assault for it has frequently ended in homicide and murder. In nine out of ten such cases he is not only screened by the partial Code, which places him beyond the reach of easy justice; but his country doctors prepare a loop-hole to let him off, by pronouncing the victim to be suffering with diseased spleen and the agressor labouring under temporary insanity! Is it not apparent from this that though India is under the benign rule of Her Gracious Majesty the Queen of England, still, the disastrous effects of this wretched Code place the Natives in a "reign of terror!" Besides this, an Englishman has the option of appealing to the Sessions Court, or to the High Court at once, without being interrupted. This privilege too is not accorded to a Native. I cannot recollect one instance to show, that India under Mohamedan conquerors was ever subjected to such partial and selfish, and, moreover, shameful legislation. Though some of them no doubt proved to be cruel and despotic, still they never had one law for a Mohamedan, and another for a Hindu. Let the opponents of Mr. Ilbert's Bill calmly consider this historical fact, and take a lesson from it.

There are many privileges enjoyed by Englishmen in India under the sanction of the law which are denied to a Native. The only one which is now proposed to be altered is that which relates to the race qualification of the judge. Though the Bill be passed into law, the arbitrary code will still grant to an Englishman the right of trial by a mixed jury, or by mixed assessors, half the number of jurors and assessors being his own countrymen. Under the *Habeas Corpus Act*, he will have the special right to apply for release from illegal custody. All this will remain unaltered for the present. There is no doubt that the term "European British subject," as defined by the C. P. C. sec. 4, is vague and artificial. It includes persons who are

neither European nor British, such as mixed abstractions of Negroes, Yankees, Paryahs, and tattooed cannibals? &c. It is really ashame to retain such extremely arbitrary and meaningless definitions in the statute.

Also, in 1854, the question of equal jurisdiction came under the consideration of the Indian Law Commission, presided over by Lord Romilly. I must say that Lord Romilly was one of the most distinguished members of the Council of the India House, a man of grave character and large experience. Besides this, he was an excellent lawyer, and seeing he found Native Magistrates competent to try Europeans at that period, it would be utterly groundless to say now that the new Procedure Bill is premature. I am indebted to Mr. Cross, M. P. for the following passage taken from the papers presented to Parliament by the Indian Law Commission in 1856.——"*We assume that the special privileges now enjoyed by British subjects are to be abolished, and we therefore make no provision for such exceptional cases. In the system which we propose, all classes of the community will be equally amenable to the criminal Courts of this country.*"

At a moment like this, it is quite impossible to overrate the momentous nature of the Great Charter of 1858. The question of race privilege was settled when Her Majesty, on assuming the Government of the country, proclaimed that "*her subjects of whatever race or creed would be freely and impartially admitted to Offices in her services.*" In obedience to this rule, Natives have been appointed to hold many high offices of position and emolument. In these days we have Native law-makers, I mean the Native Members of the Legislative Councils, and Native Magistrates and Judges occupying high seats; some of whom have risen to be District Collectors or Session Judges; and we have even Natives as High Court judges; and there has been no outcry by Europeans against these appointments. Natives have often sat as jurors in trials over Europeans, and there

has been no grumbling. In the Presidency towns, Native Magistrates have tried thousands of cases concerning European criminals, and there has been no apprehension. In civil matters, Europeans have been subjected to the jurisdiction of Native Judges for the last half century, and there has been no dissatisfaction. The question of the race or nationality of the officer administering the law was completely settled by the Queen's Proclamation. The pledges contained in this Charter conclude with these solemen words:—"*By the blessing of Almighty God, we shall faithfully and conscientiously fulfil these obligations;*"—therefore it is imperative on the part of Her Majesty's Government to carry out these noble sentiments. Once more I say, that if the British nation has any dignity as a Christian nation, it must always bear in mind the force of such obligation. It is, in truth, the "British India's Magna Charta." Unlike the Great Charter of England, extorted from a cowardly tyrant, this was freely granted to us by our Gracious Sovereign.

Now, is it not clear by the authorities quoted above, that the policy of equal jurisdiction is not a policy of yesterday, a policy of Lord Ripon's invention; but that it commenced many years ago, and has been undergoing the process of evolution? It has been slowly working its way since 1836, first in civil jurisdiction, and, subsequently, in criminal, and has been strongly supported by two Commissions which have sat on questions of Indian law. Whenever it has been proposed to subject Europeans to Native jurisdiction, the greatest alarm has been manifested, and the greatest fears shown. But past experience justifies the remark that in none of these instances was it proved true, and I do not hesitate to say that it cannot be justified now. The feeling shown by Europeans against the Criminal Procedure Bill, is in many respects of a sentimental character, and I do not beleive for one moment that it will have any weight in preventing the Bill obtaining the support of Parliament, or at all events, of Her Majesty's Government.

Next, it is asserted with much emphasis, that there was *no demand* for the proposed legislation. First, I shall point out that it is a matter of absolute political necessity. Any one looking at this question from a practical point of view, cannot help seeing that the existing law gives rise to grave administrative inconveniences. It was only the other day that a European coffee planter at Coorg was charged with culpable homicide not amounting to murder. As a privileged subject of Her Majesty, he could not be tried by the Sessions Judge of that district, and so had to march 300 miles, to Madras to appear before the High Court; and was escorted by one highly paid European Inspector and five constables. This is only one instance among many of almost daily occurrence. Does this not imply administrative inconvenience? Not only this, but it puts suitors and witnesses concerned in the case to a considerable amount of unnecessary hardship and difficulty. They may have to go about as camp followers for hundreds of miles at their own expense, neglecting their own affairs. In India there are many thousands of poor people who live from hand to mouth, and there are cases in which a family is supported by the earnings of one individual; and if such a man happen to be a witness in a case, and is dragged away from place to place in this manner for months together, till the case is disposed of, what is to become of this poor man's family? Can any sane man say that it is not a matter of necessity that this disgraceful Code should be amended?

There are equally weighty reasons which demand the change *now*, rather than a certain number of years hence. Of those Native gentlemen who have been to England, and passed the competitive Civil Service examination, Messrs Tagore and Dutt have already risen high on the judicial ladder, and there are many more who are likely to follow. Though, for the present their number is moderately small, there is every prospect of its becoming large in course

of time. Under Lord Lytton's system, one-sixth of the covenanted Civil Service members will in future consist of Native gentlemen. These men, it must be admitted, are selected from the tip-top of Native Society. No one can deny that Native members of the Covenanted Service have been appointed Justices of the Peace, in pursuance of the power given by Section 3, Act II of 1869. Now, the Native Covenanted Civilians may shortly be expected to become District Magistrates or Session Judges, and as a matter of administrative convenience, it is highly desirable that they should have the power to try all classes of Her Majesty's subjects brought before them. If the power of trying European subjects be withheld from a Native member of the Civil Service, the irregularity may be presented of a European joint magistrate, who is subordinate to a Native District magistrate, being empowered to exercise jurisdiction which his immediate superior cannot exercise. Hence the anomaly of anomalies.

Again, it is asserted with great earnestness that the Natives did not call for this change, and that they do not care for the Bill. It is perhaps not very easy for those Englishmen who are carried away by party excitement to ascertain the true state of Native feeling on this subject. I could cite several instances, in which, for a long time past, the intelligent and enlightened classes of Natives, who represent the whole mass, have desired a change in the direction in which Mr. Ilbert's Bill goes. In 1833, the Native inhabitants of Madras presented a memorial to the Court of Directors of the Honorable East India Company, in which the question of equal jurisdiction was forcibly and temperately expressed. The result of it was the introduction of the "Black Act" of 1836. The name has no reference to colour, but it was so called on account of its unpopularity. Under this Act, Englishmen residing in India, either in the Mofussil or in the Presidency towns, were deprived of their own law, and their own courts, in civil matters. Irrespec-

tive of their colour and creed, all subjects of Her Majesty were equally subjected to the jurisdiction of Civil Courts presided over by Native Judges. 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 was first enacted in what used to be known as the Black Act of 1836, and has remained ever since then.

A Native Judge has the same Civil jurisdiction over a European, as over a Native. He can send a European to jail for debt; and can punish him for contempt of Court. Some ten years after this, one of my countrymen, the late Mr. Ram Gopal, published a very able and excellent pamphlet in English, on this subject, in which he exposed the lame objections of the narrow-minded Englishmen in India to the then proposed legislation of equal jurisdiction in respect to Criminal Law.

On the representation of the Natives, a Bill in its present form, was introduced in 1872, but its progress was frustrated by a small majority of seven to six, but the minority contained the distinguished names of the late lamented Viceroy, Lord Mayo, the Commander-in-Chief, Lord Napier of Magdala, and Sir Richard Temple, the Lieutenant-Governor of Bengal, and Sir Barrow Ellis. When the Criminal Code was in revision last year, Sir Jotindra Mohun Tagore, one of the native members of the Legislative Council, asked permission to introduce a Bill in the direction in which Mr. Ilbert's Bill goes. But he was given to understand that this subject would be considered by the Government of India. Besides this, when the revision of the Code was still pending before the select committee, officials interested in the administration of the Criminal law were invited to give their suggestions. The then Chief Magistrate of Calcutta, a Native gentleman of vast experience, advocated the removal of such existing rights and privileges of European British subjects as are neither

just nor expedient. On the same occasion, the "British India Association" drew the attention of the Indian Legislature to this question, with great force and ability.

Here I must not forget to mention that while the revised Code of Criminal Procedure was in consideration, the attention of the Government of Bengal was called to the matter in a letter dated 30th January 1882, by Mr. Bahari Lal Gupta, a native member of the Covenanted Civil Service; and in the following March, Sir Ashley Eden referred the question to the Government of India; and this has led to the proposal to amend the Code of Criminal Procedure. There is no doubt that at the beginning, when the Bill was introduced, Natives regarded it as a change in the right direction; they were not inclined to be very enthusiastic over it; for in fact they did not anticipate any mean opposition. But when the violent opposition arose inspired by race prejudice and bigotry, to defeat a principle of immense importance, the Natives could not but meet their opponents boldly in the field. Fortunately, reason and power are on the side of the Natives, and they will have no difficulty in getting a favourable vote of the House of Commons.

Mr. Gupta, in his letter, ably pointed out that as the Code now stands, no Magistrate, or Sessions Judge, except in the Presidency towns, has jurisdiction to inquire into a complaint, or to try a charge against a European British subject, unless he is a Justice of the Peace, and himself a European. This partiality, if maintained, would give rise to an invidious distinction based on race and not on capacity, and to many practical inconveniences in the case of those Native *competition-wallahs* who in the course of time expect to attain to the position of a District Magistrate or Sessions Judge.

The present law is certainly invidious. In the Presidency towns, a Native Magistrate is held compe-

tent to try Europeans as well as Natives. But out of the Presidency limits, his power to try European Criminals is taken away from him. This is well seen in Mr. Gupta's case. He officiated for some time as Presidency Magistrate in Calcutta, where he had, of course, full powers over European British subjects even in comparatively intricate cases, and exercised them with satisfaction to the government and the public. But when he was promoted to the position of a District Magistrate or Sessions Judge in the Mofussil, he was unable to deal with the most ordinary cases affecting the humblest European loafers.

In submitting Mr. Gupta's note to the Supreme Government, Sir Ashley Eden, the then Lieutenant-Governor of Bengal, and one of the most experienced and eminent of Anglo-Indian administrators, gave it as his opinion that the time had arrived when at least Native Covenanted Civilians, who have attained the position of District Magistrates or Session Judges, should have entrusted to them full powers over all classes, whether Europeans or Natives, within their jurisdiction. The course adopted by the Government of India upon the receipt of Sir Ashley Eden's communication, seems to be a very sensible one. The new Code of Criminal Procedure was to come into operation in January 1883, and if reforms in the law were inevitable, it was obviously desirable to make them at a time when the entire machinery of the Criminal Administration was being put upon an improved footing. Taking this view of the matter, Lord Ripon obtained, in a confidential manner, the opinions of the different Local Governments upon the suggestion thrown out by Sir Ashley Eden; and these opinions fully and perfectly justify the change in the law as directed in Mr. Ilbert's Bill. In Madras, their Excellencies the Governor and the Commander-in-Chief, could see no reason why a covenanted civilian of Native birth should be put on a different footing in respect of Criminal Judicial powers from his European colleague. H. E. the

Governor of Bombay, after consulting the higher judicial and magisterial officers in the Presidency, found that the preponderating opinion was, that the desirability of Native Judges and Magistrates, in respect to the jurisdiction in question, should certainly be removed from Native District Magistrates and Sessions Judges. The Lieutenant-Governor of the North-Western Provinces and Oudh, and the Lieutenant Governor of the Punjab, after having consulted several officers of experience serving under them, reported to a similar effect. The latter especially (Sir Charles Aitcheson) would even go further, and make the powers and jurisdiction of judicial officers entirely depend upon personal fitness, whether they belong to the Covenanted Civil Service or not. The Chief Commissioner of the Central Provinces would make no distinction between European and Native members of the Covenanted Civil Service. The Chief Commissioner of British Burmah takes the same view. The Chief Commissioner of Assam would limit the change to Native Civilians appointed by competition in England; whilst the Resident at Hyderabad would extend it to all Native Officials whom the Local Government deem fit to exercise it. Mr. Sandford, the then acting Chief Commissioner of Coorg *alone* among the heads of departments consulted, would leave matters as they are. He had a taste for writing long and elaborate judgments, and he might have surely done justice to himself and to the cause he advocated, by advancing some positive arguments in support of the law as it now stands, rather than display a mere jacobin sophistry with which his minute is garbled.

It will thus be seen that reason and an array of overwhelming official opinion are on the side of the Bill. The opinion of these able and experienced men, and high officials, some of whom have lived half a life time in India, and all of whom have had ample opportunities for arriving at a correct conclusion in this matter, is entitled to more respect and consideration than the fulminations of news-

paper articles, and speeches by violent partisans, many of whom know no more of India than the meagre information derived from a rapid glance at Blue Books, or from the fabricated reports of the Calcutta correspondent of the London *Times*.

Now we come to the last stage of Mr. Ilbert's Bill. On the receipt of the opinions of the Local Governments, Lord Ripon, in a Despatch, No 33, dated the 9th of September, 1882, informed the Secretary of State for India, that the Government of India proposed to amend the existing law, by removing the present bar, by the investment of Native Magistrates in the Mofussil with powers over European British subjects. The then Secretary of State, Lord Hartington, after carefully considering this question in Council, intimated his approval, and sanctioned the introduction of the Bill. Accordingly, the Legislative department was instructed to frame a Bill, and the Bill when framed was placed in the hands of Mr. Ilbert, the Legal Member of the Council. Now let any man say if he can that Mr. Ilbert is the author of this Bill. Again, is it not as clear as daylight that the charge of undue haste laid against Lord Ripon, is worthless as an argument. Reader, remember, that the Conservative Viceroy, who made himself famous in this country by his political chicanery and financial deceit, when he forced the "Arms Act" and the "Vernacular Press Act", measures devoid of any moral and civilized principles, in spite of universal protest, he neither gauged public opinion, nor allowed a moment's notice!

On the 9th of March, a lengthened debate of unusual interest took place in the Legislative Council on this Bill, which lasted for full nine hours. The Bill was warmly supported by a majority of the most distinguished members of the council which being so strong in acknowledged ability and high reputation ought surely to be sufficient to win the confidence of the British Parliament.

For the Bill.—The Hon. Lord Ripon, The Hon. Mr. Ilbert, The Hon. Mr. Quinton, The Hon. Dr. Hunter, The Hon. Sir Stewart Bayley, The Hon. Mr. Gibbs, The Hon. Sir Donald Stewart, The Hon. Kristo Dass Pal, The Hon. Mr. Reynolds, The Hon. Durgo Churn Lal, The Hon. Syed Ahmed Khan.

Against the Bill.—The Hon. Mr. Miller, The Hon. Mr. Thomas, The Hon. Mr. Evans, The Hon. Mr. Wilson, The Hon. Rajah Siva Prasad.

I am not going to discuss the merits and demerits of the speeches for or against the Bill, for they speak for themselves, But I must not fail to observe the most extraordinary way in which, the Hon. Siva Prasad buttresses his arguments by a confused jargon of mystical sentences wanting in balance of thought and Judgment. However it is immaterial whether the great grandson of the illustrious Jugget Sett supports the measure or not. Because every school boy knows that Jugget Sett was one of the *three loyal subjects* of Suraja Dowla, who invited Robert Clive to Murshedabad and helped him to ruin the Mahomedan Raj. His loyalty to his master can be well compared to the attached devotion and loyalty of Judas to his Master Jesus. This is an historical fact. I need not go further than say "what is bred in the bone comes out in the flesh"

Now I enter on the most important part of the task, and that is, to discuss and expose as rapidly as possible, some of the arguments which have been advanced in the memorials of the independent Britons to the House of Commons against Mr. Ilbert's Bill. There are about a score of memorials of this kind, all of them occupied with the same matter. But for the present, I take two important memorials, one ushered from the Defence Asssociation, Calcutta, and the other from the Chamber of Commerce, Madras. The former, especially, is drawn up on a gigantic scale. It is as long as an ordinary book, and contains as much reading as would

occupy three full hours. It consists of about thirteen closely printed royal demy folios.

These memorials, however skilfully drawn up and carefully worded, cannot be read by any liberal-minded man without pain and surprise. For their authors, professing to be civilized Christians, would never have fallen into such low bigotry, race pride, and antagonism of feeling to the children of the soil, if they had taken the slightest pains to consider the subject calmly, as every right-minded man should do. The inevitable result of this appeal to Parliament must be the same as happened to the petition which the British residents in India presented for the abrogation of the Black Act of 1836. Then, as now, it was alleged that the effect of the proposed legislation for placing Natives and Europeans on a footing of equality, would be to drive English adventurers from India and withdraw English capital from the country. In spite of this alarm and outcry, the Black Act was enforced. The result was the remarkable increase in the number of European settlers, while the amount of English capital has been immensely augmented. I can see no other arguments in these memorials than the same stock arguments which have been repeatedly torn to pieces, so I shall have less difficulty in reviewing and analyzing them *seriatim*.

1. That your Memorialists are British-born subjects of Her Most Gracious Majesty, the Queen Empress of India, residing in that part of British India, which is subject to the Governor and Council of the Presidency of Fort St. George and its Dependencies, and possess by right of birth, all liberties of English freemen in the constitutional relations of the subject to the Crown. *

Surely there was never such a barefaced puff like this, since the time of the last renewal of the East India Company's Charter, under which Europeans were permitted to settle in India. In the first place, let me ask who these "memorialists" are, who have grown so indignant in claiming "by right of birth, all the liberties of English freemen"?

* Madras Memorial.

One who has the slightest acquaintance with the non-official portion of European residents in India, can tell at once that a majority of them belong to the lower classes of society in Europe. Not being able to earn their bread in their own country, they intrude upon India to live upon its fat. Some have come here as planters and miners, and others as hawkers and pedlars; besides these there is a still lower set, of Bacchanalians, such as returned sailors and soldiers. On the whole, there might be about five per cent of genuine Englishmen whose fancied privileges have induced them to declare a crusade against Mr. Ilbert's Bill. Opponents of this kind can be respected, because no class of men can be expected to part with their special privileges without grumbling. But what *locus standi* have "others residing in India"* to take part in this question? Properly speaking, Portuguese, Jews, Armenians, and Danes have no manner of right to be heard on a question which does not concern them. It is merely a farce that these outer barbarians should cry, "*Romanus civis sum?*" I protest most emphatically against the Portuguese beggars, homeless Jews, Armenian hawkers, and other half-castes (who are the moving monuments of British vice in India, and whose exact nationality no one can determine), from taking part in this silly agitation.

The Eurasians, instead of being ashamed of their origin and situation, also claim by right of birth, the laws of England. One of the greatest follies of this mixed race, is an over-sensitiveness on the subject of their extraction, which produces an attempt to conceal it as much as possible, and their affecting to despise the Natives, and assuming the style and tone of Englishmen. Their tendency towards the latter seems to rise and fall very much in proportion to depth of colour and wealth. To create a claim to the privilege of British-born subjects,

* Calcutta Memorial.

most of these *Kutcha Europeans* cannot correctly trace their pedigree very much higher than their father. There is hardly a doubt that, under the existing law, these foolish Asiatics can be tried by any ordinary Native Magistrate, just in the same way as he can deal with any Native *budmash*. It is really amusing that these Eurasians, who have neither a country nor a nationality, should take a prominent part in this hollow agitation, forgetting that this privilege is not theirs. I am desirous of pointing out, that ninety-five per cent of the signatures contained in memorials against the Ilbert Bill are made up from this Eurasian community. This vile fraud has been purposely perpetrated to mislead the House of Parliament, and more especially the English public and the English Press. I wish to call the particular attention of my readers to this patent fact, which appears to me a point of great importance, in order to depreciate the value of these memorials. In short, the bulk of the signatures contained in them are not worth the paper on which they are written.

2. That amongst the most ancient and most cherished liberties of Englishmen is the privilege, reserved to them by Magna Charta, that the Sovereign shall not exercise judicial authority over a freeman of England "*nisi per legale judicium parium suorum vel per legem terræ.*"*

I will now enter on the question of the "Magna Charta." The plea based on the Great Charter is utterly vain and groundless; as far as I can understand, it is unnecessarily introduced. This is a matter which I am not going to assume, but one which I shall prove presently. The most important provision of this Charter, which is now adduced as argument, is that "*no person shall be tried or punished but by the lawful judgement of his peers, or by the law of the land.*" With the highest esteem for that solemn Charter, which is the foundation of English civilization, I must say most emphatically that it remains in full force, so far as it relates to the United Kingdom of Great Britain and Ireland, and other Colonies, and has no force or validity

*Madras Memorial.

in India. As a proof of this, we may refer to the islands of Jersey, Sark, and Alderney, formerly belonging to the Duchy of Normandy, and united to the Crown of England by the first prince of the Norman line. Even to this day they are governed by their own laws, being mostly the ducal customs of Normandy, and are not bound by Acts of the British Parliament. The "Magna Chartâ" is of no force there. If I understand rightly, the British Colonies are of three kinds, according as they have been acquired by the right of occupancy, by conquest, or by cession by treaty. When an unoccupied country is discovered and peopled, it is only then that the laws of England are enforced without restriction. But in conquered or ceded countries, the laws of the land are maintained, and they are subjected only to occasional changes for the better. I shall not be going wrong if I assert that India is not a colony; and hence it is clear that the Great Charter remains a dead letter, so far as India is concerned. Therefore the only "British India's Magna Charta" is the Queen's Proclamation of 1858, to which the friends and enemies of Mr. Ilbert's Bill have to look, and to appeal. By this Charter, I maintain that any difference of Judicial power ought to be based on capability and not on race distinction. It is a fact very deplorable, but not the less true in this instance, that men at times are not guided by reason but by passion. The special privilege "*nisi per legale Judicium parium Suorum*" is still granted to a *pucka* European British subject, under Chapter 33, Section 451 of the Code. In fact, the allusion to "Magna Charta" is an irrelevant method of *argumentum ad populum*, to excite public feeling, and prevents people from forming a dispassionate judgment on the question at issue. This is a favourite weapon of seditious demagogues, which the opponents of the C. P. Bill have imitated. Granting that every Englishman possesses the right to be tried by the lawful judgment of his peers, I ask, does he carry this to all parts of the world? Certainly not.

3. That your Memorialists are entitled to the full benefit of these hereditary privileges, of which the accident of the residence in India should not in any way be permitted to deprive them.

4. That from the date of the establishment of the British power in India, your Memorialists have enjoyed these privileges; inasmuch as, by the laws in force in India, no European British subject could be arraigned for any offence whatsoever save before a Justice of the Peace (himself a British subject), nor could a British subject be tried for any offence involving any greater punishment than a fine before any tribunal except a Judge of the High Court and a jury of his fellow citizens in the Presidency towns.*

Here I must point out, that the history of Anglo Indian legislation in India is the history of the conciliation of personal laws peculiar to classes, to a system of common law applicable to all. Whenever a change in the law is felt necessary for the better administration of the country, I maintain that Government is justified in introducing it, however much it may regret the displeasure of that section of the community whose special privileges have to be set aside for the benefit of the whole body of its subjects. Under this shearing process, Europeans as well as Natives have suffered equally.

The special privilege and peculiar exemptions now left to Europeans are mere fractions when compared with those privileges and exemptions enjoyed by them some 80 years ago. It is not necessary for the present to picture how this has operated on Hindu and Mahomedan subjects of Her Majesty. But it is indispensable that I should state the changes and curtailments in the special privileges of European British subjects. The legal status of the non-official Englishman in India commences with the Charter of 1813, which abolished the Company's monopoly of trade with India. Prior to this period, Europeans were looked upon as interlopers or licensed adventurers. It is incorrect to suppose that Europeans ever brought to India with them the rights and privileges which they enjoy as freemen in England. To clear any doubt on this point, I shall refer the reader to Section 43, Chap. 85, William IV,

* Madras Memorial.

which distinctly and explicitly empowers the Government of India to make laws and regulations *"for all persons, whether British or Native, foreigners or others."* The idea of a European settlement in India was first condemned by the Court of Directors, but on the recommendation of Lord William Bentinck, the Court thought fit to impose certain conditions on the admission of Europeans to the privilege of trading with India, and holding lands in it. Sir Charles Grant, the then President of the Board of Control, a minister of the Crown, and not a representative of the East India Company, said that European settlement in India might be allowed *"provided they were subject to the same laws and institutions, and were placed on the same footing as the Natives."* It must be remembered that it is on this condition alone that non-official Europeans are allowed to settle in India. Besides this, all the witnesses examined, in 1830, before the Committee of the "House of Lords," on the question of European settlement, entertained strong apprehensions. The evils they anticipated were, *"that many of the Europeans of the lower and, perhaps, even of the middle classes, would then settle in India, would ill-use and oppress the Natives, violate their social and religious prejudices, from ignorance and contempt, degrade British character by drunkenness, misconduct," &c.* And finally, several of these witnesses considered *"the necessity of subjecting the European settlers to the local criminal courts, especially if their numbers were greatly increased."* How prophetic are the above words! It will be seen that during the last 50 years the constant aim of the Government has been to improve the laws and elevate the Courts, so that when the European settlers increased they might be easily subjected to the jurisdiction of the same courts as the Natives. Besides this, the advantages of a liberal education, intercommunication, and other circumstances, have raised the status of Native Judges on a par with their European colleagues. Notwithstanding this, the number of European

settlers has considerably increased. On these grounds I am bold to say, that the time has fairly arrived when the measure of equal justice as proposed in Mr. Ilbert's Bill, should be introduced in the interests of common justice.

5. That in the year 1869, an Act was passed by the Legislative Council of India, authorizing the various Local Governments to appoint "*any persons*," to act as Justices of the Peace within the Towns of Calcutta, Madras, and Bombay; and that under this Act, certain Natives have, since that year, been appointed Magistrates of Police and Justices of the Peace within the Towns of Calcutta, Madras, and Bombay; and that under this Act, certain Natives have, since that year, been appointed Magistrates of Police and Justices of the Peace within the three Presidency Towns, and have exercised jurisdiction over the European British subjects; but only within the local limits of the said Towns.

6. That a Bill has now been introduced into the Supreme Legislative Council of India, the object of which is to extend jurisdiction over European British subjects residing in India, to all Magistrates of the first class, whether European or native, and in any part of the country. *

Not only do Native Judges in the Presidency towns have jurisdiction over European criminals, as described in para 5 of the Memorial, but it must be remembered that the jurisdiction of the High Court is unlimited. No person is disqualified from becoming a Judge of the High Court by reason of race or place of birth. Native Judges of the High Court and Native Presidency Magistrates, under the existing law have full powers over Europeans, and have exercised them with satisfaction to the Government and the public. Past experience shows that Native Magistrates may, with benefit to the State, and without injury to any one, take cognizance of criminal offences on the part of British-born subjects. Europeans have also been subject to the jurisdiction of civil courts, presided over by Native Judges in the Presidency towns, and in the Mofussil, for the last 50 years, whose jurisdiction may affect not only their property, but also their person and reputation. This appears to me much the strongest argument in favour of the Bill. It is a mistake to suppose that every Native civilian who is a Magistrate will be permitted to try Europeans; but only those who by long experience and proved capacity are considered fit by

* Madras Memorial.

the local Governments. Moreover, he must have risen to the rank of District Collector and Sessions Judge, after 13 to 25 years standing. Why, then, should it be thought that Native Magistrates, in the position of District Collectors and Sessions Judges, should be less competent to administer *criminal* justice to Europeans in the Mofussil? Singalese magistrates in Ceylon, and Negro magistrates in the West Indies, exercise jurisdiction over independent Europeans (who claim by right of birth "*parium suorum*,") with as much credit and efficiency as do their European colleagues. Will it then be contended by any reasonable man that Native civilians, of ancient lineage, high attainments, and good moral and religious principles, are less worthy to try Europeans than Negros and Singalese?

7. Your Memorialists submit that the existence of Native Magistrates possessing jurisdiction over Europeans within the Presidency Towns, afford no valid argument in favor of the extension of this jurisdiction to Native Magistrates in the Mofussil. The Presidency Magistrate exercises his functions in the midst of a numerous and vigilant European population by whom any mistake on his part would be instantly detected. His Court is frequented by the Reporters of the Daily Press. It is thronged with legal practitioners and a European Magistrate sits in the adjoining room. All these cautions would be wanting in the case of a Native Magistrate exercising jurisdiction over a European in the Mofussil.*

Admitting that Native Magistrates impart fair and impartial justice to Europeans in the Presidency towns, the opponents of the Bill marshal a reasoning which might have been considered valid some twenty years ago. They say that in the Presidency towns, Native Magistrates exercise their function under the very eye of the High Court, with a vigilant bar and free press, which prevents any miscarriage of justice; but that these conditions would be wanting in the Mofussil. The analogy is indeed very defective. As a complete answer to this argument, I quote the following passage from Dr. Hunter's speech, which contains facts and figures which no man can dispute :— "I, for one, read with pleasure the telegrams which have poured into *The Englishman* during the past month, from

* Madras Memorial.

every part of Bengal where Englishmen reside. Those telegrams show that Englishmen in the interior have now the means of expressing the public opinion of their class, with such promptitude and with such force, as to constitute the strongest possible guarantee against the abuse of Magisterial powers, whether vested in European or in Native hands. Since 1872, the length of railway opened in India has increased from a little over 5,000 to close on 10,000 miles. The number of private telegrams sent has increased from 600,000 to 1,337,526. The number of Post Offices and letter-boxes has, during the same period, multiplied from under 5,000 to more than 11,000; and the number of letters, newspapers &c., from 89 millions to 158 millions. Districts formerly isolated have now speedy and constant communication with the capital. Nor is it too much to say that English public opinion in the remote Province of Assam can now be brought to bear, as powerfully and as immediately upon the Government, as the English public opinion of Calcutta could, twenty years ago."

8. That your memorialists are justified by the past in fearing that the infringement of their hereditary rights now contemplated, cannot long remain limited to the class of Magistrates to whom it is now proposed to entrust enlarged powers. The same reason which has been adduced as necessitating the grant of jurisdiction over European British subjects to Native Magistrates of the first class can equally, and your memorialists doubt not will in time, if this Bill be passed, be applied to all classes of Magistrates; and similar arguments will be urged for an extension of the jurisdiction thus granted to Native Magistrates, until it may come to pass that Europeans may hereafter find themselves subject to the penalty of death at the hands of a Native Sessions Judge in the Mofussil.*

I am glad to observe that these "memorialists are justified by the past" to judge of the distant future, and express the bright hope that the jurisdiction contemplated in this Bill will in time "be applied to all classes of Magistrates." Indeed, it is quite a logical inference! It will only be then that we shall have reason to rejoice at an impartial and equal administration of justice to all classes of Her Majesty's subjects alike; until then there must be a gulf between

* Madras Memorial.

the saying and doing. And I hope it is not impossible, that the progressive policy which has already distinguished Her Majesty's rule in India, will in time to come remove all such invidious distinctions as are based on pride of race superiority.

9. That the only reason adduced for depriving your Memorialists of their hereditary right of being tried by one of their own race, is that this privilege constitutes an invidious distinction between European and Native British subjects. It is admitted that in practice the privilege has not operated to the prejudice of the administration of justice throughout the Indian Empire.*

It is an unwarrantable presumption to suppose that the only reason adduced for introducing equal administration of justice is "that this privilege constitutes an *invidious* distinction between European and Native British subjects." It is not so, but it is one of the strongest arguments urged in favour of the Bill. Truly speaking, it is intolerable that a difference of status should be observed between the Native and European members of the same service. It is unquestionably a breach of promise that a Native should be admitted as a member of the "Covenanted Civil Service" and yet not be entrusted with all the powers which his European brother officer wields. It is in fact casting a slur on the educated Native civilians, some of whom have successfully competed with Europeans in a foreign language and in a foreign country, to say that they are not fit to try Europeans. Or else it indicates want of confidence in the Native Magistrates, which I hope is not the case. Most certainly, the existing anomaly is calculated to lower the honour and prestige of Native civilians. What is more shameful than for a Native civilian to be held competent to try European criminals in the Presidency towns, and to be disabled from exercising the same powers when promoted even to higher appointments in the interior! Nothing could be more disgraceful and dishonouring to a Native gentleman in the position of a District Magistrate or a Sessions Judge, of high attainments, respectable family, and noble Indian

* Calcutta Memorial.

blood, than that he should be precluded from discharging those duties which his immediate subordinate can discharge because he has some drops of English blood in his veins.

10. That your Memorialists regard with anxiety and alarm this attempt to deprive them of rights which they and their predecessors in this country have enjoyed since the foundation of British rule in India.*

I have already sufficiently pointed out that the system of Anglo-Indian legislation has tended to the curtailment of class distinctions. It is a fallacy to suppose that European British subjects have enjoyed the same rights "since the foundation of British rule in India," without any infringement. Their special rights and peculiar exemptions, based on old ignorance and prejudice, have to a great extent been swept away in proportion to the enlightenment and advancement of this country. The precautions and safeguards which were considered necessary for retaining special privileges for Europeans some ten and twenty years ago, are quite unnecessary now, because not only has the law been regulated, and courts improved, but we now live in a time when the metropolitan towns of India exchange, in the course of a few hours, telegraphic messages with the metropolis of England; added to this, the railway has brought every interior city in such close proximity to the Presidency towns that it is of the highest importance that the improved system of equal legislation should be substituted in the place of intolerable anomalies.

11. That the existing distinction between European and Native British subjects, which is now termed invidious, is entirely consonant with the invariable custom of the British Government to recognise and respect all the peculiar privileges and of the numerous different races which compose the population of this empire. Your Memorialists may be allowed to cite, as one example, the privilege accorded to that section of the population which preserves the custom of secluding its female members from appearance in public. In their case the Government has provided that such female members shall be exempted from the ordinary processes of law which secure the attendance of any member of the community to give evidence in Courts of Justice. Your Memorialists may further cite the special privileges conceded to Brahmins when subjected to imprisonment in the jails of the country. In order to preserve their caste privileges, such Brahmins are allowed special arrangements for the preparation of their food, and for other observances connected with their caste customs; and are further exempted

* Madras Memorial.

from such forms of labour as would be contrary to their caste prejudices, although the offences for which they have been sentenced may be of a class for which the law has provided the penalty of imprisonment with hard labour, as ordinarily exacted. Such concessions, of which many other instances could be given, are manifestly a recognition of distinctions between one class of the population and another.

12. Your Memorialists therefore contend that in claiming for European British subjects the continuance if the special privilege of being tried by men of their own race, they ask no more than is daily conceded, in various ways, to other races in India; and therefore that the charge of invidiousness is not fairly applicable to the distinction which your Memorialists seek to preserve. So long as differences of race and social customs are recognised and observed by the Government of India your Memorialists may fairly claim that this special privilege to which their class attaches peculiar importance, should, in equity, be also observed.*

Yes, Native ladies are exempted from personal appearance in Civil Courts because they are *purdahnasheens*. Native women who are not kept in seclusion, are not excused from personal appearance in public courts. If the European ladies choose to take the *purdah*, I have not the slightest doubt that their claim would be recognised as just as good as the *purdahnasheen* ladies of India. But it must be remembered that this privilege is not allowed in criminal courts, and only rarely in civil; so the analogy in the present instance is very defective. The exemption of personal appearance is not confined to the Native ladies of India, but is generally granted to all those nations that keep their women in seclusion, such as Turks, Arabs, Afghans, &c.

Next, the memorialists have cited as an example that when Brahmans are imprisoned in the country jails, special arrangements are made in order to preserve their caste privileges. Surely there is no truth in this statement, because in the first place, when a Brahman is sent to jail, his sacred thread is removed and his head is shaved. This is quite enough to break his caste, and when released, it must be borne in mind, that he is considered by the community to be socially and religiously dead. There are innumerable cases even in which wives, in deference to their caste, despise their husbands, when they happen to be jail-birds. By enumerating such exaggerated and inaccu-

* Madras Memorial.

rate statements, the memorialists may perhaps try to mislead the English public unacquainted with Indian affairs, but they cannot throw dust in the eyes of those who possess a ripe knowledge of this country.

13. That your Memorialists have further good reason for deprecating the proposed alterations in the law. Your Memorialists are most anxious to avoid any remarks which may appear to disparage the capacity or integrity of their Native fellow-subjects; but it is impossible to overlook the fact that the social customs and the domestic life of Natives of India, are widely dissimilar from those of Europeans—that few Natives, especially in the Mofussil, can have any opportunity of assimilating European forms of thought, or of acquiring any accurate idea of the customs and daily life of Englishmen—and their powers of observation, examination and judgment must be in great measure influenced by the customs and prejudices of their special castes; and that, for these and many other reasons, the Native cannot be held to possess such common interest with the European as is contemplated by the legal maxim that an Englishman is entitled to trial by the judgment "*parium suorum*,"—and is therefore unfitted to exercise judicial authority over the Englishman.*

Here it is alleged "that the social customs and the domestic life of Natives of India, are widely dissimilar from those of Europeans—that few Natives, especially in the Mofussil can have any opportunity of assimilating European forms of thought, or of acquiring any accurate idea of the customs and daily life of Englishmen." It might, perhaps, be sufficient to adopt here the *tuquoque* style of argument, and say that if there is good reason to doubt the judgment of an educated Native of proved ability because of his imperfect knowledge of European customs and habits of thought, how much more reason is there to impugn the conclusions of English judges, when trying Native cases, seeing that the interior life of Natives is almost a sealed book to them. I must repeat once more that the Bill requires only those Native civilians, who by long experience and proved capacity have risen to the rank of District Collectors or Sessions Judges. Now it is evident by this arrangement that all inferior European as well as Native Magistrates will be excluded from exercising jurisdiction over European British-born subjects in the Mofussil. Considering the high attainments and long experience and vast train-

* Madras Memorial.

ing that Native Civilians have to undergo to attain the rank of District Magistrates or Sessions Judges, I have not the slightest hesitation in saying that they will be in every way fit to exercise jurisdiction, equally with, or even better than, any European in the same rank. I may as well say, that Native Civilians, more especially "competition-wallahs," possess such a sound knowledge of English literature and English philosophy, that they are in no way inferior to many of the graduates of English Universities. As to obtaining an accurate idea of the customs and daily life of Englishmen, it is easy and plain, seeing that much of it can be acquired by an acquaintance with current literature, even in its lightest form, which depicts English life, high and low, in its true colours. In this matter Natie judges are much more likely to understand Europeans thoroughly than European Judge to undersand Natives. The life of Europeans may be minutely studied in the numerous histories, biographies, and novels, that issue daily from the European press. The Englisman has no such advantage in his study of Native character. On the contrary, the majority of European civilians with unlimited judicial powers, come to this country as thorough strangers, totally ignorant of manners customs, and private life of the various nationalities over whom they are sent to rule, and whose knowledge of the native languages is but imperfect. It is further alleged that Native Magistrates and Judges are likely to be carried away by their caste prejudices, in the decision of cases against Europeans. If such be the case, how do Native Judges dispose of thousands of cases every day in civil matters, where the parties concerned are Europeans or Natives? Hundreds of divorce cases occur every year, in which Europeans are concerned, and which are tried by Native Judges, and though the idea of divorce is against the principles of their caste and the custom of their country, there is not a single case in which a charge of injustice has been brought home to a

Native Judge. There are Hindu, Mahomedan, and Parsee Judges and Magistrates, who try cases in which the parties who appear before them are of different nationalities, and professing different creeds, and yet there has been no charge of unfairness.

There are many cases on record in which British subjects, at their own accord, have taken their trial before Native Magistrates. Does not this show the result of impartiality in the Native Magistrate's decision? Therefore I flatly deny the charge of "caste prejudice" laid against Native Civilians. The right of an Englishman to be tried by his "peers," simply mean that a European Criminal must be tried by a Judge who is competent enough to understand the prisoner properly, to ascertain the degree of his crime. In this respect, Native civilians are in every way better qualified than majority of Europeans are to try Natives.

14. Your memorialists would further point out that, owing to the presence of numerous Missionaries scattered throughout Southern India, some and possibly many of the casses affecting Europeans, which, if the proposed Bill become law, will fall to be tried by Native Magistrates, must be cases concerning to a greater or less extend the religious prejudices of the Natives. They submit that it would be a very doubtful boon to any Native Magistrate to require him to try a case in which he cannot be a disinterested arbiter; where, even if he can succeed in divesting himself of the prejudices of hereditary descent, early training, and daily custom, he must be aware that, if his honest decision be opposed to the social prejudices of his caste fellows his verdict will inevitably imperil his social comfort for the rest of his life.*

I am quite prepared to prove that this plea is simply an absurd one. I doubt whether any Christian Missionary, who keeps the ten commandments sacred, would ever venture to take part in movements guided, not by reason, but by a begotted partisan spirit. If there is one class of English society in India more useful than another as the pioneers of Indian civilization and in bringing rulers and ruled nearer, and in connecting India and England by a noble bond of union—I must point to the true Chistian Missionaries; not clergymen of the State Church, but members of private Societies. It is the missionary who freely mixes with all shades of Native society, and studies their

* Madras Memorial.

language, religion, and private and public life, not for the sake of an idle curiosity, but to pick up the scattered gems of truth contained in the various systems of Indian religion It is the missionaries who have been the instruments of dispelling the thick impenetrable clouds of disaffection and dissatisfaction that have prevailed in this country, by representing India in its true colours. If Natives love Englishmen, they love missionaries more. It is insinuated with a mean spirit, that a Native cannot be a disinterested arbiter when a case is brought before him by a missionary, of course affecting religion. I ask, why may not the same apply to a Christian judge? And more particularly to one of the Romish faith—who is taught to believe that his Church is the Church of authority, and that to act against it will inevitably imperil his social and religious comforts for the rest of his life, as well as in the world to come. It is a fact too well-known to be mentioned, that no judge can prevent any man from embracing a foreign religion on his own option, provided he be not a minor, and that he possess a sane mind. As for inheriting family property, it is clearly established by certain *Lex Loci* acts, that a Hindu becoming a convert to another religion, he does not forfit his right to ancestral property. This provision, though strictly against the principles of Hindu law, has been enforced in spite of solemn pledges, and universal protest of the Hindu community.

15. Your Memorialists are also reluctantly compelled to refer to the very prevalent custom in India of preferring false charges. No Judge who has ever sat upon the Bench in India will deny that false charges and false evidence are matters of daily occurrence in Indian Courts. Your Memorialists cannot but fear that to deprive them of the right of being tried by their countrymen will be but an invitation to the ill-disposed to practice against Europeans the same custom of malicious accusation which the Natives of the country so commonly practice against each other. Even under the existing law such cases have occured, and charges affecting the lives of Englishmen have only broken down under the searching investigation of an English Bench and an English Bar.*

It is argued that false charges are matters of daily occurrence in Indian courts, and that, in the absence of

* Madras Memorial.

"an English bench and an English bar," it would be utterly impossible for a Native magistrate to impart justice to Europeans. And it is further said that this malevolent practice is common among the Natives of this country. I regret to observe that the opponents of this Bill should have thought it proper to pass such scurrilous remarks so recklessly on the whole nation. Such wrong notions spring from a self-conceited and uncharitable state of mind. Let me point out here that such illogical inferences are drawn from a careless method of induction. For instance, a Native gentleman during his stay in England, to compete for the "Civil Service Examination," is cheated by his English servant; does it follow that *all* Englishmen are cheats and robbers? And because a few of the hangers on of law courts in large towns do not speak the truth when brought before a court, is it not a faulty induction to say that 253 millions of human beings are perjurers? Granting, for the sake of argument, that perjury prevails in India, it is questionable how far it does not operate on Europeans when tried before Native judges in civil matters, and also in criminal cases, before Native magistrates in the Presidency towns, without any apprehension of miscarriage of justice? If a European magistrate can explode false evidence in the mofussil without legal assistance, a Native magistrate will be able to do it much better, because he has more opportunities for knowing the ways and means of his countrymen than a foreigner.

16. That although the numerical strength of your Memorialists is not great when compared with the teeming masses of the other races in British India, it yet remains an undisputed fact that your Memorialists represent almost exclusively the most progressive arts and manufactures in Southern India, as well as a very large proportion of the capital employed in commerce, planting, and other industries.*

Taking the memorialists at their own word, that their numerical strength is not great "when compared with the teeming masses of India," it is indeed desirable and politic that the legislature should remove the ex-

* Madras Memorial.

isting anomaly that favours the few for the benefit of all of Her Majesty's subjects. There is no doubt that European settlement has done much good; but, on the other hand, it is calculated to impoverish India day by day. I have fully illustrated this in my last publication, entitled, "Mysore as it is." Enough for me to say here that no country can remain rich unless its produce is spent within its limits. Unfortunately this is not the case with India. This is the simple truisim of "Political Economy". This is the secret that makes India poorer every day. Here I must frankly admit that Lord Ripon's Government seems to have discovered this great truth, which is apparent by his lordship's resolution as to the purchase of stores locally. If every Englishman in India were to try this in his own sphere India would soon recover its former wealth and position. But as the matter now stands there is a constant flow of gold and silver from India to England, and in return, it gets leather and bottles. "Fair exchange is no robbery" but can exchange in the present instance be called fair ?

17. That the removal of the prerogative of race would also remove the principal source of the confidence with which European British subjects have acted as pioneers of civilization and braved the dangers of a residence in outlying regions, where they were either altogether isolated or members of a numerically feeble community. With the destruction of the bulwark of their liberty, the subordinate ranks of European British subjects in India will no longer be prepared to run the risks of residence in lonely places where they, their wives, and their children, will labour with all the disadvantages of the alien, without the one compensating advantage which they have hitherto enjoyed.

18. That the inevitable consequence of such a change in the condition of European subordinate *employés* in India will be the withdrawal from the Empire of much European capital, and a severe check to the progress of the material prosperity of the Empire.*

This is the old story again. The same feeble cry of alarm was raised in 1833, 1836, 1850, 1872, against the then proposed legislatious to place Natives and Europeans on the footing of equality. It was urged then, as in the memorial under review, that the abolition of race superstition would tend to check the material prosperity of India.

* Madras Memorial.

But past experience has shown the contrary. The argument as to the withdrawal of English capital and English settlers, has so completely broken down, that I need not touch it again. Those who are aware of the outcry of British residents in India, when the change in the Civil Procedure Code was introduced, will concur with me in thinking that the present agitation is only a shadow of the past one. The prognostication of all sorts of calamities to follow, was pictured in hideous colours. Every one of them has been falsified by past events, and there is no doubt that the predictions contained in the memorials against Mr. Ilbert's Bill, *will meet with a similar fate.*

That your Memorialists may not be deprived of any of the liberties enjoyed by English freemen under Magna Charta.

The argument based upon "Magna Charta" has been repeatedly employed, and regarded as a very sound one. After all, it is so weak that it does not seem worthy of a reply. Does an Englishman enjoy the liberties under "Magna Charta" wherever he goes? Certainly not. In countries not far away from England, such as France, Belgium, Denmark, &c., an Englishman as we have seen, is subjected to the laws of those countries, and his "peers" there are not his countrymen but Frenchmen, Belgians, Danes, &c. Therefore I understand the correct definition of the "peers" to mean, not men of his own country, but of his own social position. Originally it had no reference to "commoners" at all, but to literal *peers and barons.*

That if uniformity of Legislation be considered so great a necessity, such uniformity may be obtained by repealing the anomaly created by Act 2 of 1869, whereby the appointment of Natives to exercise jurisdiction over Europeans in the Presidency Towns is authorized.*

The "Memorialists," in conclusion, pray for the abrogation of Act II of 1869, which empowers Native Magistrates to try and punish European British subjects in the Presidency towns. When an extensions of jurisdiction is proposed on the experience of the past fourteen years, it is really a farce to ask for the curtailment of the existing jurisdiction.

* Madras Memorial.

In fact it is a stupid argument not worth paying any attention to.

I must not fail to notice, why the protests come most vigorously from Indigo, Tea and Coffee Planters against Mr. Ilbert's Bill. Of course, these estate owners are very influential men, and they employ a large number of Indian coolies. The law as it stands, helps them to keep the coolies in subjection by most violent means. That is to say, when a coolie is aggrieved, he cannot easily get a warrant against his outrageous *Sahib*. Those alone who are intimately acquainted with life on "estates" know of the many deeds of lawlessness and oppression practised by planters; who act too often as though their labourers had neither the feelings nor the rights of men. The homes of native coolies are invaded and acts performed which are nothing less than invasions on the most sacred rights of home life. The native coolie may only have a hut for his home, but it is his home, and that, and the family residing in it, should be respected by the European master as though it were the home of an English villager: as a fact it is not. It is easy to understand what a revolution the presence of an upright Native Magistrate would cause in this respect in a planting district. At certain seasons, when they cannot get a sufficient number of coolies for planting purposes, they have recourse to most violent measures of extracting forced labour from poor ryots in neighbouring villages; and even keep these ryots in wrongful confinement, which frequently engender assaults, affrays and even homicides and murders. Such deeds of cruelty rarely come out into public light, or if so, always too late. If the proposed legislation be passed into law, it will curtail a good deal of the lawlessness of these violent planters, and place hundreds and thousands of coolies in reach of law and justice. On the whole the present agitation cannot be justified on grounds either of justice or of reason. The opponents of the Bill, professing to be the followers of Christ, whose doctrine is the love of

mankind, cannot maintain their present attitude without bringing discredit on the whole of Christendom. It is high time for our European fellow subjects to quench the fire of ill-feeling, ignited by selfishness, pride, prejudice, and superstition.

I believe I have fully and satisfactorily touched upon almost all the arguments advanced against the Criminal Jurisdiction Bill. It is true, that a small but bigotted section of Independent Britons in India, in pursuit of their fancied rights and privileges, have applied to the "House of Commons." Our cause is based upon the declared policy of the Crown and British Parliament. The wise and righteous policy of Lord Ripon is in itself so strong that it requires no outward support at all. I cannot conclude without expressing, with great pleasure, the deep debt of gratitude felt by the 253 millions of Her Majesty's Native subjects to the Government, and the Government of India, for the support they have given to the proposed legislation, based on the noble principles of equal justice. If a retrograde course be adopted in deference to the opposition of a small clique of narrow minded Englishmen in India, it would involve the Government in discredit and loss of influence. Let not the moderate claims of the Native community, preserving an attitude of wise calmness be taken advantage of by the Government to abandon its dignified position. India it must be admitted is remarkably temperate in asking for the constitutional rights of justice and equality. Let not her just claims be despised because she appears feeble now.

Now we wait with keen anxiety the just and unbiassed decision of the Great British Nation in Parliament assembled. The important question at issue is, whether the Natives of this country, of a noble descent, with all their high attainments, their ability and their loyalty, or to be looked upon as an inferior races, whether India is to be governed by the grand constitutional principles of Freedom, Justice, and

Equality, as solemnly declared in British India's "Magna Charta" or not ? Our cause is a just one, and at the same time simple and plain. With much confidence in the justice and philanthropy of the British Nation, we submit this question, involving the true interests of this country, to their mercy ; and are prepared to bow to their decree.